



Month 2024

Our Ref: [Insert]

[Insert Addressee's name]
[Insert Addressee's title (eg. Technical Officer)]
[Insert Addressee's organisation]
[Insert Addressee's address line 1]
[Insert Addressee's address line 2]
[Insert Addressee's address line 3]

By email: [Email address]

Dear [Addressee]

[Insert Company name] | Batteries Research and Development Program 2024-2026 – Graphite Research and Development Grant Opportunity

The Commonwealth of Australia, acting through the Department of Industry, Science and Resources, (ABN 74 599 608 295) (**Commonwealth**) has established the Batteries Research and Development Program (**Batteries R&D Program**), which will be delivered by the CSIRO.

As part of the Batteries R&D Program, the CSIRO is administering the Graphite Research and Development Grant Opportunity (**Graphite Program**).

You submitted a Graphite Program research project proposal to the CSIRO, entitled '**Insert project title**' (**Project**), which is attached at **Schedule 1 (Project Application)**.

Your application has been approved, and the CSIRO intends to undertake the Project with you, subject to both parties entering into this letter agreement, which includes this cover letter, the attached Contract Details, General Terms and any schedules or annexures to these documents (**Agreement**).

Please confirm your acceptance of the terms of the Agreement by signing below and returning the signed Agreement to the CSIRO **by [insert date]** to [insert name and email that you would like signed contracts returned to].

The CSIRO may revoke this offer at any time before this date, and is under no obligation to undertake the Project or perform the Agreement if you do not return the signed Agreement to the CSIRO before this date.

Yours sincerely

[insert]

By signing below, the CSIRO and Company agree to be bound by the terms of the Agreement.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of the **CSIRO**
by its duly authorised officer:

.....
Signature

.....
Name

.....
Position

.....
Date

Signed for and on behalf of the **Company**
by its duly authorised officer:

.....
Signature

.....
Name

.....
Position

.....
Date

SAMPLE

Contract Details

Party details			
CSIRO	Commonwealth Scientific and Industrial Research Organisation (ABN 41 687 119 230) of CSIRO Black Mountain Science and Innovation Park, Clunies Ross Street, Black Mountain ACT 2601, established under the <i>Science and Industry Research Act 1949</i> (Cth)		
Company	Insert name (ABN ###) of insert address		
Term	Start Date: Insert date End Date: Insert date		
Key Contacts	CSIRO:	Name: Insert Title: Insert Address: Insert Email: Insert Phone: Insert	
	Company:	Name: Insert Title: Insert Address: Insert Email: Insert Phone: Insert	
Project details			
Project	Insert project name		
Project Description (Activities and Deliverables)	Insert project description, noting all activities that will be undertaken by and deliverables created and provided by CSIRO. Clearly set out any aspects of the Project that the Company must undertake, if anything.		
Background IP	CSIRO:	Insert	
	Company:	Insert	
Field of Use	Insert		
Payment details			
Cash and Other Contributions	Contributions are as follows (exclusive of GST):		
	Company Cash Contribution:	CSIRO Graphite Program Contribution:	Total Project Value:
	\$\$\$	\$\$\$	\$\$\$
Payment Terms	The Company's Cash Contribution must be paid to the CSIRO as follows: (a) \$Insert amount payable, and milestone that must be met for payment; (b) \$Insert amount payable, and milestone that must be met for payment.		

Contract Details

	<p>The CSIRO Graphite Program Contribution will be transferred internally within the CSIRO to the relevant CSIRO business unit at a time to be agreed between the CSIRO’s Key Contact and relevant CSIRO business unit.</p> <p>If the Company does not make a payment as and when due, then without limiting CSIRO’s other rights CSIRO may suspend the Project until all due Company Cash Contributions have been paid.</p>
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SAMPLE

General Terms

1. Term

- 1.1 Unless terminated earlier by written agreement between the parties or as otherwise permitted under this Agreement, this Agreement operates for the Term.
- 1.2 The Term may be extended by written agreement of the parties.

2. Payments

- 2.1 The parties must make their Cash and Other Contributions in accordance with the Payment Terms in the Contract Details.
- 2.2 All invoices issued by the CSIRO to the Company must be paid within 30 days of the invoice date.
- 2.3 If an invoice for the Company Cash Contribution is not paid on time, the CSIRO may suspend the Project until the outstanding amount is paid.
- 2.4 In this clause words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning as in the GST Act. For GST purposes, the Contract Details and any receipts issued by the CSIRO are tax invoices. Any additional invoices issued by the CSIRO will be in the form of a tax invoice. All amounts payable by the Company to the CSIRO under this Agreement are exclusive of GST. The performance of the Project by the CSIRO is a taxable supply under the GST Act and upon receiving a tax invoice from the CSIRO the Company must pay the CSIRO an additional amount for GST at the same time and in the same way as the other party must pay the cash contribution.

3. Performing the Project

- 3.1 The parties will perform the Project to professional standards, and in doing so, must comply with all applicable laws, and Commonwealth policies as advised by the CSIRO from time to time.
- 3.2 If a party bails assets into the care and custody of the other party for the purposes of the Project, the receiving party is responsible for taking reasonable steps to ensure such property is protected from loss, damage or theft and unauthorised use.
- 3.3 A party providing equipment, materials, samples or prototypes to the other party for the purposes of the Project must ensure they are accompanied with appropriate information relating to hazards and safe use so as to enable the other party to ensure the health and safety of personnel and environment.

4. Company obligations

- 4.1 The Company represents and warrants:
 - (a) in applying for funding under the Graphite Program, it has not provided information which is incorrect, incomplete or misleading;
 - (b) it will comply with the terms of this Agreement and the Graphite Program Guidelines, including the eligibility criteria;
 - (c) its performance of this Agreement is not contrary to any obligation owed by it to any other person;
 - (d) it has full power and authority to meet its obligations and grant any rights under this Agreement to the CSIRO;
 - (e) it will keep the CSIRO fully and regularly informed of all matters affecting or relating to the Project;
 - (f) it will provide assistance to the CSIRO to undertake the Project and perform the Commonwealth Agreement, including:
 - (i) providing information and material to the CSIRO to assist the CSIRO to perform the Batteries R&D Program, including providing a brief written report on the outcomes of the Project upon completion of the Project in the format specified by the CSIRO, and any other reporting material reasonably requested by the CSIRO (**Reporting Material**);
 - (ii) providing information and access to personnel as reasonably requested to assist the CSIRO to undertake the Project;
 - (iii) if requested by the CSIRO following a request from the Commonwealth, providing access to all records relating to Project activities undertaken by the Company;
 - (g) all information provided to the CSIRO, including in reports and documents, is correct, complete and not misleading;
 - (h) there are no actual, perceived or potential Conflicts of Interest;
 - (i) it will not engage in any activity or obtain any interest which gives or is likely to give rise to a Conflict of Interest;

General Terms

- (j) it will immediately notify the CSIRO in writing of any event which gives or is likely to give rise to a Conflict of Interest, and the CSIRO may suspend performance of this Agreement until that actual or potential Conflict of Interest is resolved to the CSIRO's satisfaction;
 - (k) it is solvent and no financial difficulties have occurred, or is reasonably likely to occur, in relation to the Company with respect to its financial viability.
- 4.2 The Company may not subcontract its obligations under this Agreement without the prior written approval of the CSIRO, which may be withheld or given subject to conditions. If CSIRO approves a subcontractor request, the Company:
 - (a) must ensure that subcontractor complies with all relevant terms of this Agreement; and
 - (b) will remain primarily liable to the CSIRO for performance of its obligations under this Agreement and for any acts or omissions of its subcontractors.
- 4.3 The Company acknowledges and agrees the CSIRO:
 - (a) may update the Graphite Program Guidelines from time to time and will publish any updates on the CSIRO website;
 - (b) is not liable to the Company for any loss of revenue, profit or business opportunity, or for any loss of or damage to goodwill or reputation, which is suffered by the Company in connection with or as a result of any changes to the Graphite Program Guidelines, or decision to suspend the Project under **clause 2.3**.
- 5. Use of CSIRO name and logo**
- 5.1 The Company must not use the CSIRO's name (that is, "CSIRO" or "Commonwealth Scientific and Industrial Research Organisation") in a manner that suggests the CSIRO endorses or is associated with the Company's business, products or services. The Company may not use the CSIRO's logo without first receiving the CSIRO's prior written approval.
- 6. Publicity**
- 6.1 Subject to **clause 6.3**, the Company must include an acknowledgement of the CSIRO and Commonwealth:
 - (a) in any public statements and promotional material about the Batteries R&D Program, Graphite Program and Project;
 - (b) as otherwise reasonably requested by the CSIRO in relation to the Batteries R&D Program, Graphite Program and Project.
- 6.2 Unless or until otherwise notified by the CSIRO in writing, where reasonably practicable, the Company's acknowledgement of the CSIRO and Commonwealth must be in an appropriate and prominent position in the following form:

This project received grant funding from the Australian Government.
- 6.3 The Company will not, and will ensure its personnel do not, make any public statements, announcements, or publish any material about this Agreement, the Batteries R&D Program, the Graphite Program, or significant Project activities (as notified by the CSIRO in writing), without the prior written approval of the CSIRO.
- 6.4 The CSIRO may make public statements, announcements, and publish any material in relation to the Batteries R&D Program at its discretion, including in relation to this Agreement, the Graphite Program and the Project, and information relating to these such as general Project details and the identity of the Company and its key personnel involved in the Project.
- 6.5 The Company warrants and represents it has or will obtain all necessary permissions and licences from its personnel which are reasonably necessary to permit the CSIRO to engage in publicity and evaluation activities contemplated under **clause 6.4**.
- 7. Intellectual property**
- 7.1 Nothing in this Agreement affects the ownership of Background IP contributed by a party to the Project, or grants any licence to any Background IP except as provided in **clause 7.2**.
- 7.2 Each party grants to the other party a non-transferable, non-exclusive, royalty free right to use its Background IP to the extent necessary to perform the Project.
- 7.3 Each party represents that it is able to licence its Background IP as required by this **clause 7**.
- 7.4 The CSIRO assigns its right, title and interest in and to the Deliverables and Project IP to the Company on the date the Company Cash Contribution is fully paid (**Assignment Date**).
- 7.5 From the Assignment Date, the Company grants to the CSIRO a permanent, exclusive, worldwide, irrevocable, perpetual, fee- and royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-licence the Project IP:

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- (a) for all applications outside the Field of Use; and
- (b) inside the Field of Use for internal research purposes only.

Subject to **clause 7.6**, this licence includes a right to publish the Project IP, and is sublicensable.

7.6 The CSIRO must treat Project IP as the Company's Confidential Information, unless the:

- (a) Company agrees otherwise in writing; or
- (b) Project IP is not, or ceases to be, Confidential Information as defined in this Agreement.

7.7 The Company:

- (a) acknowledges that General Skills and Capability of the CSIRO's personnel have been developed in the course of carrying out experimental research and development activities for and in collaboration with third parties and will be further developed in carrying out the Project; and
- (b) agrees the CSIRO and its personnel may continue to use the General Skills and Capability for their own benefit and in working with third parties including in relation to research and development projects involving similar subject matter to that involved in this Agreement.

7.8 The Company grants the CSIRO a permanent, non-exclusive, worldwide, irrevocable, perpetual, fee- and royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-licence the:

- (a) Company's name and logo for publicity and promotional purposes in relation to the Batteries R&D Program, Graphite Program and Project, subject to reasonable restrictions notified by the Company to the CSIRO in writing;
- (b) Reporting Material for public accountability and reporting purposes, including incorporating that material in reporting prepared by the CSIRO and provided to the Commonwealth under the Commonwealth Agreement and which may be used by the Commonwealth for Commonwealth Purposes.

8. Moral rights

- 8.1 The CSIRO and Company will comply with the *Copyright Act 1968* (Cth), as amended from time to time, in relation to the Moral Rights of the CSIRO's personnel in subject matter authored by the CSIRO's personnel and comprised in the Project IP.
- 8.2 The Company warrants and represents that the CSIRO's exercising of its rights under **clause 7.8** will not infringe the Moral Rights of any person.

9. Confidentiality

- 9.1 Neither party or its personnel may disclose or make public any Confidential Information of the other party without that party's prior written approval, except in accordance with this Agreement, if required to do so by law or stock exchange, or as strictly required in relation to legal proceedings relating to this Agreement.
- 9.2 The CSIRO may disclose any of the Company's Confidential Information:
 - (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the CSIRO;
 - (b) for public accountability reasons, including a request for information by parliament or a parliamentary committee;
 - (c) for any other reporting requirements of the CSIRO, including under the Commonwealth Agreement; or
 - (d) to CSIRO personnel on a need-to-know basis where they have entered into an arrangement to preserve the confidentiality of the information.
- 9.3 If requested by the CSIRO, on termination or expiry of this Agreement, the Company must, at the CSIRO's option, promptly return or destroy all Confidential Information and Personal Information relating to this Agreement. Unless otherwise agreed in writing by the CSIRO, this excludes computer records or files created pursuant to automatic archiving or back-up procedures on secured central storage services and which cannot be reasonably deleted.
- 9.4 Despite **clause 9.3**, the Company may retain copies of Confidential Information to the extent required by law, or for its reasonable internal credit, risk, insurance, legal and professional responsibilities.

10. Privacy

- 10.1 In performing this Agreement, the Company must, and must ensure that its officers, employees, agents and subcontractors, comply with the *Privacy Act 1988* (Cth) (**Privacy Act**) and not do anything which, if done by the CSIRO, would breach an

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Australian Privacy Principle as defined in the Privacy Act. The Company must notify the CSIRO if it becomes aware that it may be required to disclose Personal Information (as defined in the Privacy Act) by law or to the Australian Information Commissioner.

- 10.2 The Company must notify the CSIRO if it experiences a data breach or a potential data breach in connection with this Agreement as soon as possible, but no later than 3 days following the breach and to comply with the 'Notifiable Data Breach Scheme' under Part IIIC of the Privacy Act.
- 10.3 In performing this Agreement, the Company must not send any Personal Information (as defined in the Privacy Act) outside Australia without the CSIRO's prior written approval. The CSIRO may impose any conditions it considers appropriate when giving its approval.

11. Fraud

- 11.1 The Company must ensure its personnel do not engage in any Fraud in relation to the Project.
- 11.2 If the Company becomes aware of:
- (a) any Fraud in relation to the Project; or
 - (b) any other Fraud that has had or may have an effect on the Project,
- then it must immediately notify the CSIRO and all appropriate law enforcement and regulatory agencies.
- 11.3 The CSIRO may, at its discretion, investigate any Fraud in relation to the Project. The Company must co-operate and provide all reasonable assistance at its own cost with any such investigation. If an investigation finds that the Company or its personnel have committed Fraud, or the Company has failed to take reasonable steps to prevent Fraud, the Company must reimburse or compensate CSIRO for the costs of that investigation in full.

12. Prohibited dealings

- 12.1 The Company must to take all reasonable steps to ensure that its personnel involved in the Project:
- (a) are not directly or indirectly engaged in preparing, planning, assisting in or the doing of a terrorist act;
 - (b) are not, and do not become a Listed Terrorist Organisation;
 - (c) are not, and do not become listed on the Consolidated List;
 - (d) are not, and do not become listed on the World Bank Listing of Ineligible Firms and Individuals;
 - (e) are not owned or controlled by any individual or entity mentioned in the lists referred to in **clauses 12.1(b) to (d)**; and
 - (f) do not provide direct or indirect support, resources or assets (including any Commonwealth funding) to any individual or entity associated with terrorism or mentioned in the lists referred to in **clauses 12.1(b) to (d)**.
- 12.2 The Company must immediately notify the CSIRO if it discovers that it or its personnel involved in the Project may or have contravened this **clause 12**.

13. Anti-corruption

- 13.1 The Company warrants and represents that:
- (a) it and its personnel involved in the Project have not engaged in an Illegal or Corrupt Practice;
 - (b) it will not, and will take all reasonable steps to ensure its personnel do not engage in:
 - (i) an Illegal or Corrupt Practice; or
 - (ii) any practice that could constitute the offence of bribing a foreign public official contained in s 70.2 of the *Criminal Code Act 1995* (Cth).
- 13.2 The Company must notify the CSIRO immediately if it becomes aware of any activity described in clause 13.1(b) being engaged in by it or its personnel in relation to the Project.

14. Work health and safety

- 14.1 The Company must comply at all times with all relevant laws in respect of work health and safety, including the *Work Health and Safety Act 2011* (Cth) and all applicable State and local government laws and regulations.

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- 14.2 If the personnel of a party are provided access to the other party's premises for the purposes of the Project, the hosting party will ensure that those personnel are provided with a healthy and safe working environment and are properly inducted and supervised. It is the host party's responsibility to ensure that it informs the other party's personnel of its policies as to health, safety and security. The party whose personnel are accessing the host party's premises will instruct those personnel, while on the host party's premises, to comply with all reasonable directions given by the host party as to health, safety and security.
- 14.3 If requested by the CSIRO, the Company must provide copies of its work health and safety management plans and processes, and other details it has in place to meet the requirements of this **clause 14**.
- 14.4 The Company must, at its own expense, effect and maintain with a reputable insurer for the Term and until 12 months after the end of the Term adequate insurance in relation to its obligations under this Agreement, and must provide evidence of its insurance to the CSIRO immediately on request.
- 15. Relationship of the parties**
- 15.1 This Agreement and its context do not make the Company an employee, partner or agent of the CSIRO. The Company and its personnel must not represent themselves as being employees, partners or agents of the CSIRO.
- 16. Access and inspection**
- 16.1 The Company must give the CSIRO or any other person authorised by the CSIRO (such as the Commonwealth) reasonable access to premises where the Project is being performed, and to inspect and take copies of any documentation, records and personnel relevant to the Project.
- 17. Unforeseen events**
- 17.1 If an Unforeseen Event occurs, the non-performing party will not have to perform the affected obligations for as long as the circumstances prevail, provided the non-performing party is without fault in causing or reasonably failing to prevent the failure or delay and continues to use its best endeavours to recommence performance whenever and to whatever extent possible as soon as reasonably practicable.
- 17.2 If a party is delayed in its performance, it must promptly notify the other party and describe in reasonable detail the circumstances causing the delay.
- 18. Termination and suspension**
- 18.1 Either party may terminate this Agreement with immediate effect by providing written notice to the other party if the other party breaches a term of this Agreement, where the breach is:
- (a) not capable of remedy; or
 - (b) capable of remedy, if the other party fails to remedy the breach within 30 days of receiving initial notice requiring it to do so.
- 18.2 The CSIRO may terminate this Agreement in whole or in part by providing written notice to the Company if:
- (a) the CSIRO becomes aware that any representation made by the Company in this Agreement or in the course of applying for the Graphite Program is untrue or subsequently becomes untrue;
 - (b) a Conflict of Interest exists or arises and, in the CSIRO's view, has not been or cannot be appropriately resolved to the CSIRO's satisfaction;
 - (c) the Company ceases business or notifies the CSIRO that it is unable or unwilling to complete the Agreement;
 - (d) the Company becomes insolvent, an application is made to wind up the Company, insolvency is presumed under s 459C(2) of the *Corporations Act 2001* (Cth), or a receiver, receiver and manager, administrator or other external controller is appointed over the Company's assets or undertakings;
 - (e) the Commonwealth recovers or withholds, in whole or in part, funding provided under the Commonwealth Agreement;
 - (f) the Commonwealth Agreement is terminated; or
 - (g) the Company fails to perform its obligations under this Agreement for over 60 days due to an Unforeseen Event that the CSIRO did not cause.
- 18.3 In addition to the CSIRO's termination rights, where the CSIRO is entitled to terminate this Agreement or if the Commonwealth Agreement is suspended for any reason, the CSIRO may, by providing written notice to the Company:

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- (a) suspend this Agreement in whole or in part; or
 - (b) seek to vary the terms of this Agreement, in which case the parties will engage in good faith negotiations on an appropriate course of action.
- 18.4 If this Agreement is terminated for any reason then a party's rights of access to the other party's premises (if any) also terminates and the parties must each promptly return all of the other party's property in its possession, including any keys and access cards.
- 18.5 Termination or expiry of this Agreement does not affect any rights or obligations that have accrued prior to termination or expiry, or which by their context are intended to survive termination and expiry of this Agreement.

19. Risk allocation

- 19.1 The Deliverables are being provided to the Company for the Field of Use. The Project is speculative and the Company's use of the Deliverables or the ability of the Deliverables to produce commercially useful results or any particular outcome is not guaranteed. The Company must use its own judgment as to the applicability and fitness for purpose of the Deliverables for its intended use.
- 19.2 To the extent that the Company is permitted to disclose a Deliverable which is a report to a third party, and subject to the Company's rights to protect its Confidential Information, the Company may disclose the Deliverable in full except for redacting any of the CSIRO's Confidential Information expressly identified as such in the report.
- 19.3 All representations, warranties and conditions, whether express or implied by common law or statute, as to the manner, quality and timing of the Project, Deliverables and Project IP (including as to the merchantability or fitness for purpose of the Deliverables) are excluded, except for implied warranties the exclusion of which would contravene the law or cause any part of this Agreement to be void.
- 19.4 The Company agrees that:
- (a) it is responsible for ensuring that its use or disclosure of Deliverables and Project IP and any product and/or service it may offer or provide to third parties which embodies Project IP or the Deliverables will be safe and comply with all applicable laws; and
 - (b) it will make its own inquiries to determine that its use of the Project IP will not infringe any third party's IP rights.
- 19.5 The CSIRO's maximum liability to the Company for breach of any non-excludable consumer warranties is limited, at CSIRO's option, to re-performing the Project, the cost of having another party re-perform the Project, or refunding the Company Cash Contribution received by CSIRO.
- 19.6 The Company is responsible for ensuring any of its data or information that is provided to the CSIRO as part of the Project or used in conjunction with the Project, is backed up or stored on a daily basis on a system independent to the CSIRO, so that if there are any interruptions to or loss of data or information, the Company is able to access its data and information as it was at the time of back-up.
- 19.7 No party will be liable to another party under this Agreement for any indirect or consequential damage, loss of data, revenue, profit, goodwill or business opportunity, suffered by any party in any way arising under or in relation to this Agreement, or a party's use of Background IP, Project IP or the Deliverables.

20. Dispute resolution

- 20.1 If there is a dispute in relation to this Agreement (**Dispute**) the parties must comply with this **clause 20** to seek to resolve the Dispute before initiating legal proceedings. This **clause 20** does not prevent either party from seeking urgent interlocutory relief from a court.
- 20.2 If a party believes a Dispute has arisen, it must notify the other party in writing, adequately identifying and providing details of the Dispute (**Dispute Notice**). Following the giving of a Dispute Notice, the parties must use their best efforts to resolve the Dispute without delay, including by escalating the Dispute to authorised representatives of the parties who have authority to resolve the Dispute.
- 20.3 If the Dispute is not resolved within 90 days from the date that the Dispute Notice is received, the parties must attempt to resolve the Dispute through confidential mediation to be administered on a without prejudice basis by a mediator appointed by the Australian Disputes Centre (**ADC**), or by such other mediator as is agreed by the parties. Such mediation must be conducted in accordance with the ADC's mediation rules (or such other applicable rules as the parties agree) and take place at a mutually agreed location.

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- 20.4 If the parties are unable to resolve the Dispute by confidential mediation, either party may commence legal proceedings at the conclusion of the mediation.
- 20.5 Despite the existence of a Dispute, the Company must, unless directed by CSIRO in writing not to do so, continue to perform this Agreement.
- 20.6 If a party does not comply with this **clause 20** in relation to a Dispute, the other party does not have to comply with this **clause 20** in relation to the Dispute. This **clause 20** does not limit either party's termination rights under the terms of this Agreement or at law.

21. Notices

- 21.1 A party may deliver notices under this Agreement by prepaid postage, hand or email to the other party to the Key Contacts specified in the Contract Details, or as otherwise advised by a party in writing to the other party.

22. General

- 22.1 The parties must act reasonably in exercising their rights under this Agreement.
- 22.2 "Include", "for example", "such as", and similar expressions are not used, and must not be interpreted, as words of limitation.
- 22.3 References to dollars are stated in Australian currency unless otherwise specified.
- 22.4 This Agreement contains the entire agreement between the parties in respect of the Project and supersedes all prior correspondence, contracts and arrangements between the parties in respect of the Project, except to the extent this Agreement expressly incorporates them.
- 22.5 The Company must not assign or novate its rights or obligations under this Agreement without the CSIRO's prior written approval.
- 22.6 Variations to this Agreement must be in writing and signed by the parties.
- 22.7 This Agreement will be governed by the laws of or applicable in State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction in respect of any matter or dispute arising under this Agreement.
- 22.8 In the event of any inconsistency between the documents comprising this Agreement, those documents will be interpreted in the following order of priority: the General Terms, Contract Details, cover letter, schedules to this Agreement, Graphite Program Guidelines.
- 22.9 **Clauses 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 19, 20, 21 and 22** survive expiry and termination of this Agreement.

23. Defined terms

- 23.1 Unless the context otherwise requires, where capitalised in this Agreement:
- (a) **Agreement** means the cover letter, Contract Details, these General Terms, and any schedules and annexures to these documents.
 - (b) **Background IP** means the IP listed in the Contract Details and any IP which is or has been created independently of the Project which is contributed by a party to perform the Project, and includes any modification, enhancement or improvement made to a party's Background IP in the course of carrying out the Project.
 - (c) **Batteries R&D Program** means the Batteries Research and Development Program established by the Commonwealth.
 - (d) **Commonwealth** means the Commonwealth of Australia, acting through the Department of Industry, Science and Resources, (ABN 74 599 608 295).
 - (e) **Commonwealth Agreement** means the agreement between the CSIRO and Commonwealth under which the Commonwealth provides the CSIRO with funding to undertake the Batteries R&D Program, including the Graphite Program.
 - (f) **Confidential Information** means information that:
 - (i) is by its nature confidential;
 - (ii) is designated by a party as confidential;
 - (iii) either party knows or ought to know is confidential;

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- (iv) is comprised of or relates to information the CSIRO provides to the Company in connection with this Agreement, including documents, equipment, information and data stored by any means,
but does not include information which:
- (v) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (vi) a party has independently developed or acquired.
- (g) **Conflict of Interest** means any interest the Company or its personnel owe to third parties that may reasonably be anticipated to conflict with or restrict them in performing this Agreement or the Project fairly and impartially.
- (h) **Consolidated List** means the list of all individuals and entities subject to targeted financial sanctions pursuant to the *Charter of the United Nations Act 1945* (Cth) and the *Autonomous Sanctions Act 2011* (Cth). This list is available at <https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>.
- (i) **Fraud** means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud.
- (j) **General Skills and Capability** means the skills, experience, capability and know-how of a party's personnel which they cannot be permanently legally restrained from using or disclosing, whether or not developed or enhanced in the course of carrying out the Project.
- (k) **Graphite Program** means the Graphite Research and Development Grant Opportunity administered by the CSIRO as part of the Batteries R&D Program, as described in the Graphite Program Guidelines.
- (l) **Graphite Program Guidelines** means 'Batteries Research and Development Program – Graphite R&D Grant Opportunity Guidelines' published and made available by the CSIRO on its website, and which may be updated by the CSIRO from time to time.
- (m) **GST** has the meaning as in the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).
- (n) **Illegal or Corrupt Practice** means directly or indirectly:
 - (i) making or causing to be made, any offer, gift, payment, consideration or benefit of any kind to any party; or
 - (ii) receiving or seeking to receive, any offer, gift, payment, consideration or benefit of any kind from any party, as an inducement or reward in relation to the Project, which would or could be construed as an illegal or corrupt practice.
- (o) **Intellectual Property** or **IP** means all copyright and industrial and intellectual property rights of whatever nature throughout the world, including all rights in relation to know-how, inventions, 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 and artistic fields, but excludes Moral Rights.
- (p) **Listed Terrorist Organisation** means an organisation listed as a terrorist organisation under Division 102 of the *Criminal Code Act 1995* (Cth). This list is available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>.
- (q) **Moral Rights** means the right of attribution of authorship, the right of integrity of authorship, and the right not to have authorship falsely attributed, as conferred by the *Copyright Act 1968* (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.
- (r) **Project** means the Activities to be undertaken by the parties as described in the Contract Details.
- (s) **Project IP** means all IP which is:
 - (i) created by the CSIRO or Company, or both, as a direct result in the course of carrying out the Project; and
 - (ii) described or subsists in the Deliverables,but excludes General Skills and Capability.
- (t) **Unforeseen Event** means any event which is not in the reasonable control of the party affected, including a declared pandemic, but does not include any act or omission of the other party or its personnel.
- (u) **World Bank Listing of Ineligible Firms and Individuals** means the list of firms and individuals ineligible to be awarded a World Bank-financed contract. This list is available at <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>.

Schedule 1 | Project Application

Attached

SAMPLE