ADVANCED MANUFACTURING GROWTH CENTRE

SME INDUSTRIAL DECARBONISATION FUND

PROJECT AGREEMENT

AMGC
ADVANCED MANUFACTURING
GROWTH CENTRE LTD

PROJECT AGREEMENT

DATED the ..... **of** ..... **202**...

PARTIES

1. **ADVANCED MANUFACTURING GROWTH CENTRE** (ABN 36 607 316 441) of, (AMGC); and
2. the Lead Participant identified in the Project Application (Lead Participant).
(collectively 'Parties' and separately each a Party).

BACKGROUND

a. AMGC is a not-for-profit company limited by guarantee to support the development of a world-leading advanced manufacturing industry in Australia.

b. AMGC has entered into a Funding Agreement with the Australian Renewable Energy Agency (ARENA) (ARENA Funding Agreement) in relation to the SME Industrial Decarbonisation Fund whereby ARENA will make available certain grant funding to AMGC.

c. The Lead Participant is an organisation involved in the Australian manufacturing industry.

d. The parties have agreed that AMGC will make available certain funding to the Lead Participant in connection with the SME Industrial Decarbonisation Fund.

EXECUTED as agreement

Executed for and on behalf of ADVANCED MANUFACTURING GROWTH CENTRE LTD

(ABN 36 607 316 441) in the presence of:

..... Date .....
Signature of authorised person

.....
Name of authorised person (print)

..... Date .....
Signature of witness

..... Date .....
Name of witness (print)

Executed for and on behalf of [COMPANY NAME]

(ABN xx xxx xxx xxx) in the presence of:

..... Date .....
Signature of authorised person

..... Date .....
Name of authorised person (print)

..... Date .....
Signature of witness

..... Date .....
Name of witness (print)

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1. DEFINITIONS

In this Agreement, unless the contrary intention is expressed, defined terms have the meanings set out below:

Agreement means the Project Application and these terms and conditions.

AMGC Funds means the funding provided by AMGC to the Project specified in the Project Application.

Background Intellectual Property (Background IP) means the background materials and technology specified in the Project Application or otherwise agreed between the Parties that a Party has agreed to contribute to the Project and includes Improvements to such Background IP but excludes Project IP.

Cash Contributions means the cash contribution of a Lead Participant or Collaborator specified in the Project Application. A cash contribution does not include an element for profit or fee.

Commercialise in relation to Project IP means to:

a. manufacture, sell, hire or otherwise exploit a product or process that uses or incorporates part or all of the Project IP; or
b. provide a service, incorporating the Project IP; or
c. license any third party to do any of those things; or
d. otherwise license or assign the Project IP, regardless of whether any revenue is generated or intended to be generated and 'Commercialisation' has a corresponding meaning.

Confidential Information means this Agreement, and any information (whether in electronic or material form) disclosed or otherwise made available by a Party, for, or in connection with this Agreement, including information which:

a. is marked as being proprietary or confidential to the Discloser; or
b. in the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith be treated as confidential;

whether the information was:

a. disclosed or created before, or after the date of this Agreement; or
b. disclosed because of discussions between the Parties concerning or arising out of this Agreement.

Contributions means:

a. in relation to a Lead Participant or Collaborator, all the Cash Contributions, and In-kind Contributions to be contributed by the Lead Participant or Collaborators to the Project, in accordance with clause 5; and
b. in relation to AMGC, the AMGC Funds and any personnel, facilities or services AMGC chooses to contribute to the Project.

Collaborator(s) means those organisations engaged to be involved in the Project but who are not Parties to this Agreement and being those organisations listed in the Project Application Form or as otherwise agreed by AMGC.

Corporations Act means the *Corporations Act 2001* (Cth).

Director Renewable Energy means the representative of AMGC specified in the Project Agreement.

Discloser means a Party who provides Confidential Information (belonging or relating to that Party) to a Recipient.

Eligible Expenditure means permitted expenditure as set out in the Guidance document.

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this Agreement. Guidance means the Guidance to Applicants available on AMGC website, **amgc.org.au**.

Improvements means any modification, enhancement, extension, adaptation, development of, applications of, mutations, improvement or other technical advance to a technology, material, document, software or substance in whatever form.

Ineligible Expenditure means expenditure not permitted as set out in the Guidance document.

In-kind Contributions means any contribution or use of equipment, facilities, personnel, services, Background IP or any other benefit provided by the Lead Participant or a Collaborator necessary for the performance of the Project including those specified in the Project Application where the Lead Participant or a Collaborator would have incurred the costs of such in-kind benefits regardless of its involvement in the Project but does not include the direct cost (plus a margin of 30% to cover superannuation, holiday pay and sick leave) of the Lead Participant's or Collaborator's employee's time spent working on the Project where that employee devotes a substantial proportion of their time to the Project and thereby displaces the need for the Lead Participant or Collaborator to engage an external subcontractor or other service provider to carry out the equivalent work on the Project.

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at civil, common law or in equity and wherever existing including:

a. patents, designs, copyright, rights in circuit layouts, database rights, trade marks, know-how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether registered or capable of registration;
b. any application or right to apply for registration of any of the rights in paragraph (a);
c. any registration of any of those rights or any registration of any application referred to in paragraph (b); and
d. all renewals and extensions of these rights.

Knowledge Sharing Plan means a plan that captures insights, data, and lessons learned from Project activities shared to maximise industry learning and to accelerate technology adoption and replicability for broader industry decarbonisation.

Lead Participant means that Party identified in the Project Application

Legally Committed means at any time a present or accrued obligation on the Lead Participant under contract or at Law to pay money to a third party. It does not include any future, contingent or conditional obligation to make payment to a third party that has not be satisfied at that time or which the Lead Participant has a right to cancel, suspend or terminate under the contract or under Law.

Milestone means a milestone specified in the Project Application.

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth.).

Parties mean AMGC, the Lead Participant.

Payment Contribution Schedule means the schedule at Attachment A to this Agreement

Personal Information means information or an opinion, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Project means the project specified in the Project Application.

Project Application means the project application setting out the details of the Project attached to this Agreement.

Project Duration means the period specified in the Project Application for performance of the Project.

Project Intellectual Property (Project IP) means Intellectual Property generated in the Project but excluding Background IP and any improvements to Background IP.

R&D Tax Incentive is established by Division 355 of the *Income Tax Assessment Act 1997* with functions relating to its administration included in the *Industry Research and Development Act 1986*.

Recipient means the Party to whom Confidential Information is disclosed or who possesses or otherwise acquires information belonging or relating to a Discloser.

Related Bodies Corporate has the meaning given to that term in section 9 of the Corporations Act.

Related Entity has the meaning given to that term in section 9 of the Corporations Act.

Start Date means the start date specified in the Project Application or otherwise agreed by the Parties.

2. TERM

a. This Agreement commences on the Start Date and, subject to clause 17, continues until expiry of the Project Duration.

b. The Parties may by written agreement determine that this Agreement will continue upon the terms specified in that written agreement.

3. PROJECT

a. Each Party agrees:

   i. to perform the Project in accordance with this Agreement;

   ii. to diligently conduct, observe and perform its respective obligations and commitments set out in this Agreement;

   iii. to perform its obligations under this Agreement professionally to a high standard in accordance with industry best practice;

   iv. not unreasonably delay any action, approval, direction, determination or decision which is required of it in relation to the Project;

   v. to use reasonable efforts to ensure that its directors, officers, employees, agents, contractors, students and other representatives involved in any way with the Project give full force and effect to the provisions of this Agreement;

   vi. to act reasonably and in good faith in performing its obligations under this Agreement;

   vii. to perform the Project in a safe manner and not do any act or omission which would breach the *Work Health and Safety Act 2011* (Cth) or associated regulations or codes of practice; and

   viii. comply with any laws applicable to the Project.

b. In the event of any inconsistency between this Agreement and the Project Application, the Project Application will prevail to the extent of the inconsistency, and the Parties will use their reasonable efforts to remove the inconsistency from this Agreement.

c. The Lead Participant will do all things reasonably necessary to engage the Collaborators in the Project and the Lead Participant will oversee their respective contributions to the Project and must ensure that its agreements with Collaborators include obligations necessary to enable AMGC to comply with (and do not otherwise prevent or in any way hinder compliance with) the ARENA Funding Agreement.

d. The Lead Participant must perform its obligations under this Agreement in a manner that enables AMGC to comply with its obligations under the ARENA Funding Agreement.

4. DIRECTOR RENEWABLE ENERGY, PROJECTS AND LEAD PARTICIPANT

a. AMGC hereby appoints the Director Renewable Energy as its representative in relation to the Project.

b. The Director Renewable Energy will be responsible for the following:

   i. providing reports on progress of the Project to AMGC; and

   ii. authorising reimbursement of a Lead Participant's costs incurred in performance of the Project.

c. AMGC may at any time during the Project Duration by notice in writing to the Lead Participant replace the current Director Renewable Energy with a different person as its representative in relation to a Project.

d. The Lead Participant will:

   i. manage day-to-day conduct of the Project through to completion;

   ii. facilitate conduct of the Project in accordance with this Agreement; and

   iii. provide the reports required by clause 7 from time to time.

e. From time to time AMGC may delegate to the Lead Participant, on such terms and conditions as AMGC thinks fit, responsibility to authorise and pay reimbursement of Collaborators' costs incurred in the Project.

5. PROJECT CONTRIBUTIONS AND PROJECT FUNDS

a. Each Party will provide their respective Contribution to the Project in accordance with this Agreement at the times and in the manner specified in the Payment Contribution Schedule.

b. Where the Lead Participant has satisfied Eligible Expenditure requirements for each Milestone acquittal to receive reimbursement.

c. Where the Lead Participant is identified in the Payment Contribution Schedule to pay Cash Contributions to directly offset eligible expenditure incurred during Project execution:

   i. AMGC may at its absolute discretion taking into account such matters as it thinks relevant, including information derived from monthly progress and/or Milestone completion review meetings, the Lead Participant's financial capability, progress against predicted outcomes, alignment with agreed schedule, lead times for externally sourced inputs and third-party involvement requirements, authorise each such Lead Participant in writing to commence and progress one or more pending Milestones;

   ii. each such Lead Participant's activities relating to the commencement or progressing of a Milestone is at that Lead Participant's sole risk as to cost unless and until written authorisation is given by AMGC in accordance with paragraph (i);

   iii. each such Lead Participant will submit to AMGC at Milestone completion dates and in any case within 14 days of requesting Milestone acceptance by AMGC, evidence of Eligible Expenditure identified against the Milestone(s) to which the expenditure relates;

   iv. unless otherwise specified in the Project Application or in accordance with this paragraph (c), each such Lead Participant may receive AMGC Funds reimbursing up to 50% of verified Eligible Expenditure against authorised Milestones; and

   v. AMGC may pay all or any part of the AMGC Funds to the Lead Participant when acting reasonably and in accordance with this Agreement, provided that any such payment:

      (A) relates to verified Eligible Expenditure legally committed in respect of authorised Milestones; and

      (B) is made in a manner that enables AMGC to comply with its obligations under the ARENA Funding Agreement.

d. AMGC will keep financial accounts detailing each Party's Contributions to the Project and will provide the Lead Participant with:

   i. periodic reports detailing that each Party's Contributions made to the Project in the preceding period such reports to itemise each Party's In-kind Contributions and Cash Contributions as the case may be and to be prepared in accordance with the standard of the Australian Accounting Standards Board; and

   ii. unless otherwise specified in the Project Application not more than 14 days after the end of the Project, a final report prepared in accordance with the standard of the Australian Accounting Standards Board of each Party's final total In-kind Contributions and Cash Contributions.

e. The Parties may only use the AMGC Funds and Cash Contributions for the purposes of performing the Project in accordance with this Agreement.

f. A commencement fee of three per cent will be applied at the start of each Project for AMGC governance. It is calculated on the industry's contribution amount. For example, the total Project amount is $400,000, with industry's contribution being no less than 50 per cent at $200,000. The commencement fee would be three per cent of $200,000 at $6,000 to be paid at the commencement of each Project.

g. A management fee of three per cent will be applied proportionally across the Project's milestone payments from industry over the duration of its Project for AMGC program oversight and acquittals. From the example amount above, a three per cent fee will be distributed across all milestones totalling $6,000 at the end of the Project.

h. AMGC Funds must not be used:

   i. for fit out of buildings unless otherwise agreed in writing with the AMGC;

   ii. to pay for indirect costs in relation to the Project;

   iii. to reimburse Collaborators for their In-kind Contributions;

   iv. on activities related to the Project conducted overseas unless otherwise agreed in writing with the AMGC and in any event not exceeding Eligible Expenditure of 10%, other than for equipment or materials; or

   v. on expenditure incurred prior to AMGC Board approval.

6. MODERN SLAVERY

The Lead Participant will:

a. take reasonable steps to identify, assess and address risks of modern slavery practices in the operations and supply chains used in the provision of the Project;

b. not enter into a contract in connection with the Project, if at any time, the Lead Participant becomes aware of modern slavery practices in the operations and supply chains used by a subcontractor unless the Lead Participant takes reasonable action to address or remove these practices;

c. if at any time becomes aware of modern slavery practices in the operations and supply chains used in the provision of the Project, promptly notify AMGC and take all reasonable action to address or remove these practices, including, where relevant, by addressing any practices of other entities in its supply chains and if requested by AMGC, provide a remediation plan, in a form and substance reasonable to enable AMGC to meet its reporting obligations under the ARENA Funding Agreement.

7. TAX

7.1. Purpose

a. Unless otherwise stated in this Agreement, all amounts payable by one Party to another Party are exclusive of GST.

b. If GST is imposed or payable on any supply made by a Party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

c. Party's right to payment under clause 5(b) is subject to a valid tax invoice being delivered to the Party liable to pay for the taxable supply.

7.2. R&D Tax Incentive

The Parties must co-operate fully with each other to assist any other Party (if it is an R&D entity) to claim the R&D Tax Incentive, by working together to the extent necessary to develop a ratio for calculation of the proportion of Contributions from the Collaborator to the Project that have been expended on either:

a. Core R&D activities (as defined under section 355–25 of the *Income Tax Assessment Act 1997*); or

b. Supporting R&D activities (as defined under section 355–30 of the Income Tax).

8. REPORTING

a. The Lead Participant must provide AMGC with those reports specified in the Project Application containing the information in the form and frequency specified in the Project Application or as may otherwise be reasonably requested by AMGC from time to time.

b. Without limiting clause 4(d), the Lead Participant must provide such information, documents and assistance as AMGC reasonably requires to enable AMGC to comply with its obligations under the ARENA Funding Agreement, including in connection with any reporting, review or evaluation of the Project.

c. The Lead Participant acknowledges that AMGC may disclose information relating to the Project (including information provided under this clause) to third parties, including government agencies, where required for AMGC to comply with the ARENA Funding Agreement or for knowledge sharing purposes.

9. RECORDS

a. The Lead Participant will keep adequate books and records in accordance with standards maintained by the Australian Accounting Standards Board in sufficient detail to enable all receipts and payments related to the Project to be identified and reported to AMGC and the AMGC Funds to be determined.

b. The Lead Participant must maintain for a period of 7 years after expiry or termination of this Agreement all books and records relating to the Project.

10. AUDITS

a. AMGC or its authorised nominee may initiate and conduct audits relevant to the performance of the Lead Participant under this Agreement or in respect of the Project in accordance with this clause 10.

b. The Lead Participant must comply with its obligations as set out in this clause 10.

c. The matters to which AMGC may conduct an audit under this clause 10 include: performance of the Lead Participant in relation to the Project;

   i. reporting compliance;

   ii. the Lead Participant's operational practices and procedures as they relate to this Agreement;

   iii. the accuracy of the Lead Participant's invoices and reports;

   iv. the Lead Participant's compliance with its confidentiality and privacy obligations under this Agreement;

   v. material (including books, research and records) in the possession of the Lead Participant relevant to the or this Agreement; and

   vi. any other reason AMGC deems relevant to this Agreement or the Project.

d. The Lead Participant will cooperate with and assist AMGC or its nominee to conduct any audit including by providing reasonable access to its personnel, records and information (however stored), facilities and premises, assistance in respect of any inquiry into or concerning the Project or this Agreement, and will provide all such data and information fully, honestly and accurately.

e. Unless otherwise agreed in writing, the Lead Participant and AMGC must bear their own costs of any audits.

11. INTELLECTUAL PROPERTY

11.1 Background Intellectual Property

a. Unless otherwise specified in the Project Application, each Party or Collaborator that contributes its Background IP to the Project (Contributing Party) will do so on the terms of this clause 11.

b. All Intellectual Property Rights in any Background IP remain vested in the Contributing Party and, except as specified in clause 11.1(c), no licence is granted to any other Party.

c. Unless otherwise specified in the Project Application, each Contributing Party grants to the other Parties a worldwide, irrevocable, non-exclusive, royalty-free licence to use, reproduce, adapt, modify and communicate their Background IP for the Project Duration for the purposes of carrying out the Project, subject to any restrictions on its use.

d. Each Party hereby assigns to the Contributing Party all their rights, title and interest in any Improvements and Intellectual Property Rights in those Improvements to a Contributing Party's Background IP arising from that Party's use of the Contributing Party's Background IP in the Project immediately on their creation.

e. The Parties must cooperate with each other and promptly do all acts and things and execute all documents which may be necessary to vesting ownership in accordance with clause 11.1(d).

f. The Parties agree that they will take all necessary steps to give the Contributing Party prompt notice of any infringement of the Contributing Party's Background IP which comes to their attention, including complying with any additional obligations placed on a Party under the Project Application. A Party may provide the Contributing Party such assistance as the Contributing Party may reasonably require from time to time in relation to that infringement of the Background IP at the Contributing Party's cost.

11.2 Project Intellectual Property

a. Unless otherwise specified in the Project Application or agreed by the Parties under a separate agreement, upon its creation, all Project IP will be owned by the Lead Participant and governed by the terms of this clause 10.

b. The Parties must cooperate with each other Party and promptly do all acts and things and execute all documents which may be necessary to vest ownership in accordance with clause 11.2(a).

c. The Lead Participant grants to, or obtains for AMGC a perpetual, irrevocable, world-wide, royalty-free, fee-free, non-exclusive licence to use, reproduce, adapt, modify, communicate, broadcast, distribute, publish, disseminate and sublicense the Licensed Materials solely for:

   i. The purpose of giving effect to the Knowledge Sharing Plan; or

   ii. To enable AMGC to carry out its obligations under the ARENA Funding Agreement, but not including the right to exploit the Licensed Materials for commercial purposes.

d. The Lead Participant must obtain all consents (including any Moral Rights consents or waivers) necessary to enable AMGC to carry out its obligations under the ARENA Funding Agreement.

11.3 Infringement of Intellectual Property Rights

A Party must give the other Parties prompt notice of any infringement of any Intellectual Property Rights in the Project IP which comes to their attention and each Party agrees to give the other Parties all such assistance which it may reasonably require to protect the Intellectual Property Rights in the Project IP (but only if the Party pays the other Party providing the assistance for all reasonable costs and expenses of doing so).

11.4 Moral Rights

a. Each Party acknowledges and agrees that contributing its Background IP under this Agreement or participating in the creation or use of Project IP may involve treatment that would otherwise infringe an individual's Moral Rights.

b. Each Party undertakes to obtain all necessary Moral Rights consents and waivers to enable each Party to:

   i. make full use the Background IP; or

   ii. make full use of (including Commercialise) or own (as applicable) the Project IP, in accordance with the terms of this Agreement without infringing a third party's Moral Rights.

11.5 Background Intellectual Property Warranties

a. Each Contributing Party that contributes Background IP pursuant to this Agreement represents and warrants to each other Party that:

   i. to the best of its actual knowledge and belief the contribution of its Background IP and the licence granted under clauses 11.1(c) of this Agreement does not infringe any Intellectual Property Rights or Moral Rights of any third party; and

   ii. it is entitled, and will be entitled at all relevant times, to deal with the Intellectual Property Rights in the Contributing Party's Background IP as required under this Agreement, except to the extent disclosed in the Project Application or other document between Parties.

b. Each Contributing Party that contributes its Background IP pursuant to this Agreement represents and warrants to each other Party that it has not and will not encumber or otherwise deal with the Contributing Party's Background IP in a manner that is inconsistent with or restricts the rights granted to the other Parties as described in this Agreement.

c. Each Collaborator represents and warrants that it will not encumber any Project IP unless otherwise permitted to do so in accordance with the prior written approval of the other Parties.

12. CONFIDENTIALITY

12.1 Recipient Obligations

a. Subject to clause 12.2, a Recipient must keep all Confidential Information confidential and must not, without the prior written approval of the Discloser, disclose Confidential Information to any third party.

b. A Recipient must keep, take or cause to be taken all necessary precautions to keep the Confidential Information secure and protected from any use, disclosure or access that is inconsistent with this Agreement.

c. A Recipient must only use Confidential Information for the purposes of performing and only to the extent required to perform the Recipient's obligations under this Agreement.

12.2 Representatives

a. Despite clause 12.1, a Recipient may disclose Confidential Information to its officers, employees, agents or sub-contractors (Representatives):

   i. if that disclosure is necessary to achieve the purposes referred to in clause 12.1(c); and

   ii. only to the extent that the disclosure is necessary to achieve the purposes referred to in clause 12.1(c).

b. In respect of each Representative the Recipient must:

   i. inform the Representative of the Recipient's obligations under this Agreement; and

   ii. except where the Representative is an employee of the Recipient (in which case the disclosure must nonetheless be made in confidence), the Representative undertakes to the Recipient (for the benefit of the Discloser) to be bound by the obligations in this clause 11 as if the Representative were the Recipient in relation to the Confidential Information to be disclosed to the Representative.

12.3 Other Disclosures

Nothing in this clause 12 prohibits the disclosure of Confidential Information:

a. as permitted by this Agreement;

b. with the prior written consent of the Discloser;

c. to the extent required by:

   i. any law; or

   ii. directions of any government agency, but if any Party to this Agreement is requested to make such disclosure, that Party will as soon as possible notify the other Party(ies) and if requested to do so will take all reasonable practical legal steps to prevent disclosure and will ensure any disclosed information is kept to the minimum required by law or the government agency.

12.4 Return or destruction of Confidential Information

Immediately on the written request of the Discloser or on termination of this Agreement for any reason, a Recipient must:

a. cease the use of all Confidential Information of or relating to the Discloser;

b. deliver to the Discloser all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Discloser, destroy, and certify to the Discloser that it has destroyed, those documents and materials; and

c. for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

12.5 Exceptions

The obligations of confidentiality in this Agreement do not apply to any Confidential Information that:

a. is disclosed to a Recipient by a third party who is entitled to make that disclosure outside of any obligations of confidence; and

b. is either generally available to the public at the date of this Agreement, or subsequently becomes available to the public other than because of a breach of this Agreement.

12.6 Publicity

AMGC is principally responsible for making announcements about AMGC, its activities and any Project. However, and without limiting the rights of the Lead Participant or Collaborators under clause 12.2 or 12.3, the Lead Participant or Collaborators may make an announcement or issue any other written publicity about this Agreement providing it obtains prior written approval from AMGC.

13. PRIVACY

a. Each Party must ensure that when it collects, uses, discloses or transfers Personal Information while performing its obligations under this Agreement it complies with the *Privacy Act 1988* (Cth.).

b. Without limiting clause 13(a), each Party must:

   i. only use Personal Information provided to it under this Agreement to perform its obligations under this Agreement or as required by law;

   ii. not disclose Personal Information provided to a Party under this Agreement without the prior written consent of the individual to which the Personal Information relates or as required by law;

   iii. take all reasonable steps to protect any Personal Information provided to the Party under this Agreement from misuse and loss and from unauthorised access, modification or disclosure;

   iv. immediately notify the Party that provided the Personal Information of any suspected or actual loss of Personal Information or any unauthorised access or disclosure of Personal Information (Incident) including the nature of the Incident, how the Personal Information was compromised, and the kind of Personal Information affected.

14. WARRANTY

The Lead Participant and each Collaborator represents and warrants that it and its directors, officers, employees, agents, contractors, students and other representatives involved in any way with the Project has the necessary experience, skill, knowledge, expertise and competence to undertake the Project and will hold such licences, permits or registrations required under any State, Territory or Commonwealth legislation to undertake the Project and are fit and proper people.

15. INDEMNITY

Each Party (Indemnifying Party) indemnifies each other Party (Indemnified Party) from and against any and all liability, loss, harm, damage, cost or expense (including legal fees on a full indemnity basis and net of any GST input tax credits to which the Indemnified Party is entitled), howsoever arising, which the Indemnified Party may suffer or incur as a result of:

a. a wilful breach by the Indemnifying Party (or by any person acting on its behalf, including a Related Entity, director, officer, employee, agent or subcontractor (Personnel)) of this Agreement;

b. unlawful or negligent act or omission by the Indemnifying Party (or by the Indemnifying Party's Personnel) arising in relation to the Project;

c. the Indemnifying Party damaging or causing damage to or loss of any tangible property;

d. the Indemnifying Party infringing the Intellectual Property Rights of a third party;

e. the exercise by Indemnified Party of any rights granted to it in relation to the Background IP by this Agreement; or

f. the Indemnifying Party causing personal injury to, or the death of, any person.

16. LIABILITY

a. A Party's liability under this Agreement will be reduced proportionately to the extent that the liability, loss, harm, damage, cost or expense referred to in clause 15 was caused or contributed to by an Indemnified Party.

b. A Party is not liable to any other Party for any special, indirect or consequential loss or damages (including loss of income or profits, and loss of expectation of income or profits) arising under or pursuant to this Agreement.

c. Each Indemnified Party under clause 15 must promptly notify the Indemnifying Party (or Indemnifying Parties) of any event or circumstance that may reasonably give rise to the Indemnified Party relying upon the indemnity in clause 15.

17. TERMINATION

a. AMGC may terminate this Agreement:
   i. immediately on written notice to the Lead Participant where the ARENA Funding Agreement is terminated; or
   ii. at any time in its absolute discretion by providing the other Parties with 90 days' prior written notice, in the event of termination under 17(a) the Lead Participant is entitled to receive monies due before the effective date of the termination but only to the extent that those monies have been spent or Legally Committed and in any event not exceeding the amount of funding received by AMGC under the ARENA Funding Agreement in relation to the termination.

b. AMGC may terminate the Project:
   i. on 30 days written notice to the Lead Participant if a Milestone is not achieved by the date specified in the Project Application, and is not achieved after 30 days (or as otherwise specified by AMGC) following a notice from AMGC to the Lead Participant; or
   ii. on 30 days written notice to the Lead Participant if any deliverable has not been provided by the date specified in the Project Application, and is not provided after 30 days (or as otherwise specified by AMGC) following a notice from AMGC to the Lead Participant; or
   iii. immediately on written notice to the Lead Participant where AMGC reasonably believes a significant milestone or deliverable will not be achieved in relation to the Project or the primary objective of the Project will not be achieved.

c. On receipt of a notice under paragraphs (a) or (b), the Lead Participant must take all available steps to minimise loss resulting from that termination and to protect the Background IP and Project IP.

d. Each of the obligations under this clause 17, and clauses 5(c)(ii), 8(b), 9, 10, 11, 12, 13, 14 and 15, are continuing obligations independent of a Party's other obligations and survives termination or expiry of this Agreement.

18. DISPUTE RESOLUTION

a. If a dispute or complaint against the other Party(ies) in relation to any of the matters contemplated under this Agreement arises, including any question regarding its existence, validity or termination (Dispute), a Party must comply with this clause before commencing court proceedings (except proceedings for interlocutory relief).

b. If a Party has a Dispute, that Party (Notifying Party) must notify the other Parties to the Dispute in one of the ways described in clause 18 (Dispute Notice). The Notifying Party must ensure that the notice contains specific detail identifying the nature of the Dispute.

c. The Parties to the Dispute (Dispute Parties) will within 21 days of delivery of a Dispute Notice, meet and use their best endeavours to resolve the Dispute to the mutual satisfaction of the Dispute Parties as soon as possible within the 21-day period.

d. If the Dispute Parties cannot resolve the Dispute within the period specified in clause 18(c), they must refer the Dispute to a mediator agreed between the Dispute Parties. If the Dispute Parties cannot agree on a mediator within 7 days after the expiry of the period under clause 18(c), the chairperson or the chairperson's nominee will appoint a mediator. In any event the mediator must:

   i. have reasonable qualifications, and commercial and practical experience in the area of Dispute;

   ii. have no interest or duty which conflicts or may conflict with the mediator's function as a mediator, the mediator to fully disclose any such interest or duty before their appointment; and

   iii. not be an employee of or previously have provided services to any of the Parties or their Related Bodies Corporate.

e. The role of the mediator is to assist in negotiating a resolution to the Dispute. A mediator may not make a binding decision on a Dispute Party except if the Dispute Parties agree in writing.

f. Where a Dispute referred to mediation is not resolved within 21 days of referral of the Dispute to mediation under this clause 17, a Dispute Party may commence court proceedings.

g. The costs of the mediation will be shared equally between the Dispute Parties.

h. Nothing in this clause 18 prevents:

   i. a Party from seeking urgent interlocutory relief; or

   ii. a Party from seeking recovery for any claim that that Party reasonably considers to be a monetary claim, from a court of competent jurisdiction or by such other manner as is appropriate in the circumstances.

19. NOTICES

a. A notice or other communication to be given or made under this Agreement must be in writing and addressed to the Representative of each of the Parties at the address or email address (as the case may require) outlined in the Project Application.

b. However, if the intended recipient has notified a changed postal address, or email address, then the communication must be to that postal address or email address.

20. GENERAL

a. The Lead Participant may not assign or subcontract this Agreement without the prior written consent of AMGC.

b. This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all previous agreements, negotiations and understandings between the Parties in relation to its subject matter.

c. An amendment or variation to this Agreement is not effective unless it is in writing and signed by all the Parties.

d. Each Party must at its own cost do all things reasonably necessary to give effect to this Agreement.

e. This Agreement may be entered into in any number of counterparts. A Party may execute this Agreement by signing any counterpart. All counterparts, taken together, constitute one agreement.

f. The failure of a Party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that Party to require that performance subsequently.

g. If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement and does not affect the validity, operation or enforceability of any other provision of this Agreement, unless the severance would change the underlying principal commercial purpose or effect of this Agreement.

h. The Parties acknowledge and agree that this Agreement and the performance of this Agreement does not represent or imply a partnership, agency, fiduciary relationship or joint venture.

i. This Agreement is governed by the laws of New South Wales Australia, and the Parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

j. The Lead Participant acknowledges that giving false or misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995*.

ATTACHMENT A – PAYMENT CONTRIBUTION SCHEDULE

PARTICIPANT	CONTRIBUTION METHOD	DUE DATE	CASH CONTRIBUTION	IN-KIND CONTRIBUTION	TOTALS
	Cash	Per milestone, on completion of prior milestone, as per milestone schedule.			
	Cash	3% on project commencement, 3% distributed across milestones.			
AMGC	Cash	Per milestone, on completion of prior milestone, as per milestone schedule.			
ALL OTHER PARTNERS	In Kind	In accordance with Milestone schedule			
TOTAL:					

AMGC
ADVANCED MANUFACTURING
GROWTH CENTRE LTD