NCRIS
ACCESS AND PRICING CODE - BIOFUELS

1. DEFINITIONS

1.1 Dictionary

In this Schedule, the following definitions will apply except where the context otherwise requires:

"ASC" means the ASC-Biofuels;

"ASC-Biofuels" means the Access and Strategy Committee for the Biofuels Sub-Project;

"AusBiotech" means AusBiotech Limited ABN 87 006 509 726;

"AusBiotech Board" means the board of directors of AusBiotech;

"Biofuels Pilot Plants" means the individual NCRIS Facilities to be developed in South Australia (photobioreactor facility) and Queensland (biomass biorefinery pilot plant) and managed by the Consortium Participants, South Australian Research and Development Institute and Queensland University of Technology respectively;

"Biofuels Research Facilities" means the individual biofuels research facilities owned and operated by University of New South Wales, Queensland University of Technology, the University of Sydney and Macquarie University;

"Biofuels Sub-Project" means the sub-project to provide for the establishment of the Biofuels Pilot Plants, along with upgrades to research infrastructure at 3 universities to support research and development activities at the node, more specifically detailed in the project plan annexed to the Funding Agreement;

"CEO" means the Chief Executive Officer of AusBiotech;

"Code" means the access and pricing code comprised in this Schedule;

"Commercial Rate" means the market rate for the use of a particular NCRIS Facility;

"Consortium Participants (Biofuels)" means the University of New South Wales through the School of Biotechnology and Biomolecular Sciences, Queensland University of Technology, the State of South Australia through the Department of Primary Industries and Resources SA for the South Australian Research and Development Institute, Macquarie University and the University of Sydney;

"Department" means the Commonwealth of Australia acting through the Department of Education, Science and Training;

"Funding Agreement" means the funding agreement entered between AusBiotech and the Department dated 9 August 2007;

"Marginal Cost" means the cost of accommodating the additional user at the NCRIS Facility, including costs such as consumables and any additional support staff but it does not include capital or depreciation expenses;

"NCRIS Discount Certificate" means the certificate issued by the Program Manager certifying as to the classification of the researcher under clause 4.1 of this

Code and confirming the applicable rate payable by the researcher in respect of the conduct of the relevant project at the NCRIS Facility;

"NCRIS Facility" means any facility receiving funding from AusBiotech under the NCRIS Funding Subcontract;

"NCRIS Facility Access Agreement" means the agreement required to be developed by each NCRIS Facility Owner under clause **Error! Reference source not found.** of this Code;

"NCRIS Facility Access Application" means the application by a researcher for access to an NCRIS Facility, available through the NCRIS Project Website;

"NCRIS Facility Representative" means the representative of the NCRIS Facility authorised by the NCRIS Facility Owner to negotiate access arrangements with researchers and who will also, unless otherwise notified by the Consortium Participant (Biofuels)/NCRIS Facility Owner to the chairperson of the ASC-Biofuels and the Program Manager, the ASC representative of that Consortium Participant (Biofuels)/NCRIS Facility Owner appointed under clause 2.6 of this Code;

"NCRIS Facility Owner" means the Consortium Participant (Biofuels) who owns or has responsibility for the management and operation of the relevant NCRIS Facility.

"NCRIS Funding Subcontract" means the funding subcontract between AusBiotech and an individual Consortium Participant (Biofuels) governing the terms on which the funding received by AusBiotech under the Funding Agreement will be provided to that Consortium Participant;

"NCRIS Principles" means the key principles forming the basis for the provision of NCRIS funding by the Department;

"NCRIS Project Website" means the website containing information on the available NCRIS Facilities, activities which may be undertaken at the NCRIS Facilities, information for researchers about applying for access including a copy of this Code and other information specified in this Schedule;

"NCRIS Research Capability" means the biofuels component of the research capability identified in the NCRIS Roadmap as 'Biotechnology Products';

"NCRIS Roadmap" means the 'Roadmap for the National Collaborative Research Infrastructure Strategy, released in February 2006, which outlines priority areas for investment of NCRIS funds and is available from the Department's Internet website at the address: http://www.ncris.dest.gov.au/key_documents.htm;

"Process Development Facilities" means the individual NCRIS Facilities owned and operated by the University of New South Wales, University of Sydney and Macquarie University for developing manufacturing processes for biofuels.

"Program Manager" means the person appointed by AusBiotech to manage AusBiotech's obligations and responsibilities under the Funding Agreement;

"Researcher Satisfaction Survey" means the satisfaction survey to be submitted to researchers in the form developed by AusBiotech and provided to the Consortium Participants (Biofuels) from time to time;

"Sub-Project" means the Biofuels Sub-Project;

"Tier 1 Researcher" means any Australian higher education institution or public sector research organisation;

"Tier 2 Researcher" means:

(a) Australian companies with a meritorious project and less than 15 equivalent full-time employees;

(b) collaborations between a Tier 1 Researcher and one or more Tier 3 Researchers, where the Tier 3 Researcher does not hold substantial ownership of the outcomes or intellectual property generated under the project; and

(c) Australian companies owned wholly or in part by a Tier 1 Researcher.

"Tier 3 Researcher" means international companies and all Australian companies not satisfying the criteria for a Tier 2 Researcher;

1.2 Dictionary

Unless otherwise stated to the contrary in this Schedule:

(a) clause references are to clauses in this Schedule; and

(b) the definitions in clause 1.1 of this Agreement apply in this Schedule.

2. ESTABLISHMENT AND OPERATION OF ACCESS AND STRATEGY COMMITTEE - BIOFUELS

2.1 Role of Access and Strategy Committee (Biofuels)

The Access and Strategy Committee for the Biofuels Sub-Project will:

(a) develop, administer and implement access policies and pricing regimes consistent with NCRIS principles; and

(b) provide advice to the AusBiotech Board, the CEO and the Program Manager relating to the strategic direction of the NCRIS Research Capability.

2.2 Authority of Access and Strategy Committee - Biofuels

Except as provided in clause 7.2 of this Code, the ASC-Biofuels is an advisory body only and is not authorised to vary access policies or pricing regimes without the unanimous approval of AusBiotech, the Consortium Participants (Biofuels) and the Department.

3. AVAILABLE NCRIS FACILITIES

3.1 Availability of NCRIS Facilities

(a) The NCRIS Facilities made available under this Code by the Consortium Participants (Biofuels) are set out in the Project Plan and will be listed on the NCRIS Project Website.

(b) Policies on access pricing, treatment of intellectual property, compliance with industry standards, insurance, workplace health and safety and associated issues should not in themselves act as barriers to deter researchers from

gaining access to a particular NCRIS Facility. Nevertheless, it is recognised that researchers will need to comply with legislation, regulations and rules applying to the NCRIS site, including workplace health and safety, biosecurity and quarantine, environmental protection, and reasonable security and access standards where appropriate.

4. SELECTION CRITERIA FOR ACCESS TO NCRIS FACILITIES

4.1 Categories of researchers

(a) Access to NCRIS Facilities will be available to:

(i) Tier 1 Researchers;

(ii) Tier 2 Researchers;

(iii) Tier 3 Researchers.

(b) Researchers from outside the Consortium Participants (Biofuels) will be encouraged to apply for access.

4.2 Merit-based access

(a) Access to NCRIS Facilities will be assessed using a merit-based system using the following criteria:

(i) feasibility of the project – including consideration of work undertaken to date to progress the research and the benefit to research outcomes if access to the NCRIS Facility is provided;

(ii) research experience of the chief investigator;

(iii) potential for generation of quality publications in respect of the project or in the research area;

(iv) commercialisation potential of the research outcomes;

(v) potential benefits of research outcomes; and

(vi) speed in which the proposed project can be delivered.

(b) Other relevant factors in determining access priority will be:

(i) the potential for projects seeking access to Biofuels Research Facilities to also utilise Biofuels Pilot Plants; and

(ii) meritorious early career researchers where supported by experienced senior researchers.

(iii) Where an NCRIS Facility is approaching maximum capacity in accommodating researchers under this Code, priority may be given to applications from meritorious Tier 1 and Tier 2 Researchers.

5. PROCEDURE FOR ACCESS BY RESEARCHERS TO NCRIS FACILITIES

5.1 Initial Discussions with the Program Manager

(a) Researchers requiring information on the suitability and availability of NCRIS Facilities for their project requirements are recommended to contact the Program Manager. The Program Manager will recommend to the researcher one or more NCRIS Facilities which may meet the researcher's project requirements. The Program Manager's recommendations will be made based on an assessment of the relevant NCRIS Facilities in respect of the following criteria:

(i) capacity – whether the NCRIS Facility has the necessary expertise;

(ii) availability – whether the NCRIS Facility is available for the proposed project at the time requested by the researcher;

(iii) location – whether the NCRIS Facility is conveniently located to the researcher's site;

(iv) cost – the competitiveness of the cost of using the NCRIS Facility for the researcher's project; and

(v) NCRIS Facility use – NCRIS Facilities that have not received a significant number of NCRIS research projects, will receive special consideration.

(b) A recommendation by the Program Manager is not confirmation that the researcher will be successful in obtaining access to the chosen NCRIS Facility or that the researcher will qualify to receive subsidised access to the chosen NCRIS Facility.

5.2 **Negotiations with the NCRIS Representative/s**

(a) Before formally applying for access to one or more of the NCRIS facilities, it is recommended that the researcher discusses specific project requirements, availability, access terms and other relevant considerations including IP ownership with the NCRIS Facility Representative/s. The Program Manager's involvement during these discussions is at the discretion of the NCRIS Facility Representative and/or the researcher.

(b) The NCRIS Facility Representative must agree on the terms of the NCRIS Facility Access Agreement to govern the researcher's access to the NCRIS Facility.

(c) A NCRIS Facility Representative may refuse to grant a researcher access to the NCRIS Facility where:

(i) the researcher refuses to comply with the NCRIS Facility Owner's reasonable requirements in respect of insurance coverage or workplace health and safety procedures;

(ii) the researcher and the NCRIS Facility Representative are unable to agree on the terms of the NCRIS Facility Access Agreement; or

(iii) in the reasonable assessment of the NCRIS Facility Owner in consultation with the chairperson of the ASC, the project, if undertaken, would consume too much of the available time at the NCRIS Facility or conflict with the development of other projects at that NCRIS Facility.

(iv) the Facility is not fit-for-purpose.

5.3 **Researchers with projects valued at $100,000 or less**

(a) Researchers with projects valued at $100,000 or less may gain access to the NCRIS Biofuels Facilities by completing and submitting a NCRIS Capability 5.5 Biofuels Application Form to the Program Manager.

5.4 **Researchers with projects greater than $100,000 in value**

(a) Researchers with projects above $100,000 in value and must complete and submit an NCRIS Capability 5.5 Biofuels Application Form to the Program Manager for consideration by the ASC-Biofuels before gaining access to an NCRIS Facility.

5.5 **Review of application**

(a) For research projects to which clause 5.3 applies, the Program Manager will determine whether the researcher is a Tier 1, Tier 2 or Tier 3 Researcher according to the established criteria and, based on that classification and the pricing principles set out in this Code, the amount of any discount to apply in respect of the researcher's access to the NCRIS Facility. The Program Manager may choose to seek the recommendations of the chairperson of the ASC-Biofuels when assessing the merit of project applications and the amount of discount to be applied.

(b) For research projects to which clause 5.4 applies, the ASC will be responsible for assessing the merit of the proposed research, determining the Tier classification, and the level of discount. However, this will also be consistent with the established criteria and, based on the classification and the pricing principles set out in this Code.

(b) For research projects to which clause 5.5(b) applies, the chairperson and the Program Manager may act on behalf of the ASC-Biofuels for projects in which the researcher or the relevant NCRIS Facility Representative has made a written request that project details not be disclosed to the other Consortium Participants.

(c) The Program Manager will issue an NCRIS Discount Certificate to the researcher.

5.6 **Review of Classification**

(a) Where the Program Manager is uncertain as to the classification to apply to a researcher, or if the researcher disputes the classification determined by the Program Manager under clause 5.5, the proposal must be referred to the chairperson of the ASC-Biofuels for resolution.

(b) If the ASC is unable to reach a unanimous decision, the issue will be referred to the CEO of AusBiotech whose decision will be final.

5.7 **Payment to NCRIS Facility**

(a) The researcher must present the NCRIS Discount Certificate to the NCRIS Facility Owner at the time that payment for access is due under the relevant NCRIS Facility Access Agreement.

6. PRICING PRINCIPLES

6.1 General

(a) AusBiotech and the Consortium Participants (Biofuels) will in determining the pricing principles for the NCRIS Facilities governed by this Code, aim to ensure that the NCRIS Facilities are available to the widest possible pool of researchers and that the pricing principles do not operate to deter any class of researcher from seeking access.

6.2 NCRIS Facilities - Rates

(a) The rates payable by researchers accessing NCRIS Facilities under this Schedule are set out in the table.

Researcher Classification	Applicable Rate
Tier 1 Researcher	Marginal Cost
Tier 2 Researcher	Intermediate Cost*
Tier 3 Researcher	Commercial Rate (no discount)

* The discount applicable to a Tier 2 researcher will be considered on a case-by-case basis with regard to the relative amounts of public and private funding for the project and the relative sharing of the benefits of project intellectual property between the public and private funding organisations.

For example, for projects involving collaboration between a Tier 1 and Tier 3 Researcher where funding and the benefits derived from project intellectual property are equally shared between the Tier 1 and 3 Researchers the Applicable Rate would be halfway between a Marginal Cost and a Commercial Rate.

7. REVIEW

7.1 Review of Project

(a) The Program Manager in consultation with the ASC-Biofuels and the Consortium Participants (Biofuels) will undertake a review of the access arrangements established under this Code every 6 months.

(b) This review will cover the costing of access to NCRIS Facilities, pricing principles and include information gathered from the Researcher Satisfaction Surveys, other reports and data provided under **Error! Reference source not found.** of this Code and the information provided by the Consortium Participants (Biofuels) under the NCRIS Funding Subcontracts.

7.2 Review

(a) Subject to subclause (b) below, any proposed amendments to this Code will be referred to the ASC-Biofuels in the first instance and then AusBiotech, the Consortium Participants and the Department for approval.

(b) If the ASC unanimously approves an amendment to the rates set out in clause 6.2, subject to approval by the Department, these new rates will take immediate effect and will be deemed to be incorporated into this Code.

8. COMPLAINTS AND GRIEVANCES PROCESS

8.1 Internal escalation process

(a) Without derogating from the dispute resolution process established between AusBiotech and each Consortium Participant (Biofuels) under their respective NCRIS Funding Sub-contracts, all parties will adopt the following escalation process in relation to complaints and grievances under this Code:

(i) referral to the Program Manager in the first instance,

(ii) if unable to be satisfactorily resolved through discussions with the Program Manager, then the Program Manager will refer the matter on to the chairperson of the ASC-Biofuels;

(iii) if unable to be satisfactorily resolved by the chairperson, the chairperson will refer the matter to the CEO of AusBiotech;

(iv) if unable to be resolved by the CEO of AusBiotech, the CEO will refer the matter to the Board of AusBiotech.

8.2 External process

(a) If the internal process under clause 8.1 is unsuccessful, the dispute resolution processes under the NCRIS Funding Subcontract (where the issue is between AusBiotech and a Consortium Participant) or the standard access agreement (where the issue is between the NCRIS Facility Owner and the researcher) will apply.