

# **THE GRAINS RESEARCH AND DEVELOPMENT CORPORATION**

## **MULTI-PARTY RESEARCH AGREEMENT**

**For projects starting in 2010-11**

**This agreement is for use with Projects where there are two  
or more Research Organisations**

*Notes to users:*

1. *This Research Agreement is the same as 2009-2010 Multi-party Research Agreement. Only the dates have changed.*
2. *GRDC has tailored the previous “one size fits all” Research Agreement into two agreements:*
  - a. *a standard two-party Research Agreement, to be used where there is only one Research Organisation or where any additional research participants will sign a sub-contract with the Research Organisation; and*
  - b. *this multi-party Research Agreement, to be used where there are two or more Research Organisations and all parties need to sign this agreement. This will most often occur where the Project Outputs are likely to need to be commercialised in order to maximise adoption.*

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**RESEARCH AGREEMENT** dated

**PARTIES:**

- (1) The **GRAINS RESEARCH AND DEVELOPMENT CORPORATION**, of Level 1, 40 Blackall Street, Barton, in the Australian Capital Territory (ABN 55 611 223 291) (**GRDC**); and
- (2) \_\_\_\_\_,  
of \_\_\_\_\_,  
(ABN \_\_\_\_\_) (**Lead Research Organisation**).
- (3) \_\_\_\_\_,  
of \_\_\_\_\_,  
(ABN \_\_\_\_\_) (**Research Organisation**).
- (4) \_\_\_\_\_,  
of \_\_\_\_\_,  
(ABN \_\_\_\_\_) (**Research Organisation**).

**RECITALS**

- A. The GRDC has agreed to provide funds to the Research Organisations and the Research Organisations have agreed to make Contributions, in order for the Research Organisations to carry out the Project.
- B. The Research Organisations have agreed to carry out the Project on the terms and conditions set out in this agreement.
- C. The Lead Research Organisation is responsible for coordinating the Project, liaising with GRDC and meeting the reporting and other requirements as set out in this agreement.
- D. The other Research Organisations are responsible for assisting the Lead Research Organisation to meet the reporting and other requirements as set out in this agreement.

**1 INTERPRETATION**

**1.1 Definitions**

In this agreement:

**Accountant** means a person who is:

- (a) registered as an auditor under the *Corporations Act 2001*; or

- (b) a member of The Institute of Chartered Accountants in Australia or CPA Australia;

**Background IP** means Intellectual Property and Commercial-in-Confidence Information that has been developed independently of this agreement and made available for the Project, but does not include Third Party IP;

**Capital Item** means any real or personal property acquired by a Research Organisation wholly or in part with Research Funds which costs in excess of \$7,500 (including land, buildings, improvements, yards, fencing, roads, irrigation facilities, plant and equipment) provided that where a number of substantially similar items are acquired at or near the same time (for example, laboratory equipment), it is the total cost of the group of items and not the unit cost which must be taken into consideration in determining whether the \$7,500 threshold has been reached;

**Commencement Date** means the date of commencement of the Project specified in the Schedule;

**Commercialisation** means, in relation to the Project Outputs:

- (a) to manufacture, sell, hire or otherwise exploit the Project Outputs for commercial gain;
- (b) if a product or process incorporates or is derived from the Project Outputs, to use, sell, hire or otherwise use the product or process for commercial gain;
- (c) if a service uses Project Outputs, to provide that service for commercial gain; or
- (d) to license a third party to do any of those things,

including the activities listed at “Commercialisation” in the Project Specification;

**Commercialisation Party** means:

- (a) the Party (if any) identified in the Schedule; or
- (b) if no Party is identified on the Commencement Date, the Party appointed by agreement between the Parties and identified subsequently in the Schedule,

as the party to lead the Commercialisation of Project Outputs on behalf of all the Parties under **clause 8.4**;

**Completion Date** means the date for the completion of the Project specified in the Schedule;

**Commercial-in-Confidence Information** means all information:

- (a) which is indicated by a Party to be confidential; or
- (b) which might otherwise reasonably be regarded by a Party as confidential,

including technical and commercial information and information the disclosure of which could prejudice the registration, exploitation or value of any Intellectual Property, but does not include information that:

- (c) is in the public domain, or comes into the public domain, other than as a result of a breach of this agreement; or

- (d) is rightfully known by the receiving Party and is not subject to an obligation of confidentiality before the date of receipt; or
- (e) has been independently developed or acquired by the receiving Party.

**Contribution** of a Party means the:

- (a) cash contributions (including Research Funds contributed by the GRDC); and
- (b) in-kind contributions (personnel, equipment, facilities services and access to premises),

of the Party to the Project, as set out and the cash value equivalent agreed in the Project Specification, but does not include Intellectual Property unless otherwise agreed;

**Depreciation Rate** means, in relation to a Capital Item, the depreciation rate nominated by the GRDC from time to time for items of that type (Australian Tax Office rate unless advised otherwise);

**Electronic Communication** has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

**Expected Outputs** means any required outputs or deliverables of the Project described in the Project Specification as amended by the Parties in writing from time to time;

**Final Report** means the detailed report to be prepared by the Lead Research Organisation under **clause 7.3**, in the form prescribed by the GRDC from time to time, the template for which is available at [www.grdc.com.au](http://www.grdc.com.au) together with instructions on how to complete it;

**Financial Year** means the period commencing on 1 July in each calendar year and finishing on 30 June in the next calendar year;

**Form B Statement** means the statement of receipts and expenditure to be prepared by the Lead Research Organisation under **clause 6.4**, setting out its receipts and expenditure for the Project, which must be in the form prescribed from time to time by the GRDC and available as "Form B" at [www.grdc.com.au](http://www.grdc.com.au), together with instructions on how to complete it;

**Intellectual Property** means any registered or unregistered intellectual property rights including any:

- (a) patents or rights concerning any discovery, invention, process, process improvement, procedure, manufacturing method, technique or information regarding the chemical or genetic composition of materials (whether patentable or not);
- (b) trade marks, business names or trading styles (whether registered or not);
- (c) copyright material and similar or neighbouring rights;
- (d) registered or registrable designs;
- (e) plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes; and
- (f) eligible layouts or protectable computer programs,

as well as any right to seek registration of, or to take action for infringement of, any such rights;

**Lead Research Organisation** means the Research Organisation identified as the Lead Research Organisation on page 1 and in the Schedule;

**Liability** means any liability, loss, action, claim, damage, injury, cost, charge, expense or diminution in value, including:

- (a) legal costs (on a solicitor and own client basis) and other costs incurred in connection with investigating, defending or settling any action or claim; and
- (b) those arising from damage or destruction to, or any loss of use of, any property or injury to or death of any person;

**Milestones** means the key delivery and decision points in the performance of the Project described in the Project Specification as amended by the Parties in writing from time to time;

**Net Commercialisation Income** means:

- (a) royalties, licence fees and other income received from Commercialisation of Project Outputs;
- (b) less any direct, bona fide amounts paid on an “arms’ length” basis for agreed costs to register and Commercialise Project Outputs under **clause 8.4**, except where those amounts were already listed as Contributions in the Project Specification (so already taken into account in determining Parties’ respective entitlements to Net Commercialisation Income in the Schedule);

**Party** means a party to this agreement;

**PIERD Act** means the *Primary Industries and Energy Research and Development Act 1989* of the Commonwealth, as amended from time to time;

**Progress Report** means the reports to be prepared by the Lead Research Organisation under **clause 7.1**, in the form prescribed by the GRDC from time to time, the template for which is available at [www.grdc.com.au](http://www.grdc.com.au), together with instructions on how to complete it.;

**Project** means the research and development project or projects named and described in the Project Specification;

**Project Aims** means the aims of the Project described in the Project Specification;

**Project Commercial-in-Confidence Information** means any Commercial-in-Confidence Information arising from the Project;

**Project Costs** means any direct costs or expenses which have been, or are to be, properly incurred in the conduct of the Project and which have been either disclosed in the Project Specification or otherwise agreed in writing between the Research Organisations and the GRDC, which may include:

- (a) direct salaries and direct on-costs of staff involved in the conduct of the Project (subject to **clause 11.2**);

- (b) the actual cost of assets or facilities acquired for use on the Project (discounted by the amount that those assets or facilities are, or may be, used for other projects);
- (c) the cost of licensing in any Intellectual Property that is required for the conduct of the Project, the requirement for which has been disclosed in the Project Specification or approved by the GRDC;
- (d) approved travelling expenses;
- (e) approved operating expenses; and
- (f) costs associated with registering, maintaining and defending Project Outputs,

but not including:

- (g) any overhead or administrative expenses; or
- (h) other costs associated with any Background IP or Third Party IP,

unless listed in the Project Specification or otherwise approved by the GRDC;

**Project IP** means any Intellectual Property developed by a Research Organisation or its subcontractor during the Project Term in the course of conducting the Project but does not include copyright in Reports;

**Project Outputs** means Project IP, Project Commercial-in-Confidence Information, and all results, materials or information produced as part of the Project, but does not include copyright in Reports;

**Project Specification** means the project specification for Research Funds as agreed between the GRDC and the Research Organisations, a copy of which forms Annexure 1 to this agreement, together with any amendments agreed by the Parties from time to time;

**Project Term** means the period commencing on the Commencement Date, and ending on the earlier of the Completion Date or the date of termination of this agreement (including termination under **clause 5**);

**Reports** means Progress Reports, the Final Report and any additional report provided under **clause 7.2**;

**Research Funds** means all monies payable to the Lead Research Organisation by the GRDC under this agreement for the conduct of the Project, part of which is to be paid by the Lead Research Organisation to the other Research Organisation(s) under this agreement;

**Research Organisation** means the Party or Parties identified as the Research Organisation and includes the Lead Research Organisation where the context permits;

**Research Organisation Personnel** means officers, employees, students and agents of, and consultants to, a Research Organisation whose duties relate wholly or in part to the conduct of the Project as specified in the Project Specification or approved by the GRDC;

**Special Conditions** means any terms and conditions identified as special conditions and specified in the Schedule and/or annexed to this agreement;

**Third Party IP** means Intellectual Property owned by a person or entity that is not a Party to this agreement and that is made available to the Project, but does not include widely-available non-specialised Intellectual Property such as Microsoft Excel or Access software.

## **1.2 General**

In this agreement unless the context otherwise requires:

- (a) a reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (b) where any Party is constituted by more than one legal entity, they will be, unless otherwise expressly stated, jointly and severally liable in respect of all obligations arising under this agreement and jointly entitled to enjoy any rights granted by this agreement;
- (c) a reference to any document or agreement includes a reference to that document or agreement as properly amended, novated, supplemented, varied or replaced from time to time;
- (d) a reference to Research Organisation includes the Lead Research Organisation, unless specified otherwise;
- (e) the words "includes" or "including" are not words of limitation;
- (f) approval means approval in writing; and
- (g) all monetary amounts are in Australian currency.

## **1.3 Headings**

In this agreement, headings are for convenience only and do not affect interpretation.

## **1.4 Application of agreement throughout Project Term**

The terms of this agreement will apply to any research activities forming part of the Project conducted throughout the Project Term, including Project activities conducted prior to the date of execution of this agreement.

## **1.5 Constitution of agreement and inconsistency**

- (a) This agreement will be constituted by:
  - (i) any Special Conditions;
  - (ii) the Schedule (other than any Special Conditions);
  - (iii) these terms; and
  - (iv) the Project Specification.
- (b) If there is any inconsistency amongst the provisions in any of the documents listed in (i) to (iv) above, the provision in the earlier listed document will prevail, over the provision in the later listed document to the extent of the inconsistency.

## **2 PAYMENTS BY THE GRDC**

### **2.1 Agreement to provide funds**

During the Project Term the GRDC must provide to the Lead Research Organisation the Research Funds specified in the Schedule solely to enable the Research Organisations to carry out the Project.

### **2.2 Payment procedure**

Subject to **clause 2.3**:

- (a) during the Project Term the GRDC will make one or more payments to the Lead Research Organisation during each Financial Year up to the total amount for that Financial Year specified in the Schedule;
- (b) the GRDC will withhold half of the final payment until acceptance by the GRDC of a Final Report (in accordance with **clauses 7.3 and 7.4**) and receipt of the final Form B Statement (as required under **clause 6.4**);
- (c) the GRDC will not be obliged to pay the Lead Research Organisation the amount withheld under **clause 2.2(b)** unless within 6 months of the end of the Project Term the GRDC:
  - (i) has accepted or been deemed to have accepted the Final Report under **clause 7.4**; and
  - (ii) has received the final Form B Statement; and
- (d) the Lead Research Organisation must pay to each of the other Research Organisations the share(s) of Research Funds specified in the Schedule within 21 days after receipt of those Research Funds from the GRDC.

*Note to users: the combination of this clause, clause 7.3 and clause 7.4 mean that Final Reports should be delivered within 3 months of the end of the Project Term to minimise the risk of GRDC invoking this clause.*

### **2.3 GRDC obligation to make payments**

The GRDC has no obligation to pay the Lead Research Organisation each part of the Research Funds under this agreement unless:

- (a) the Research Organisation which is ultimately to receive that part of the Research Funds has complied with:
  - (i) all material obligations arising prior to the date of payment under any agreement between the Research Organisation and the GRDC; and
  - (ii) all of its obligations arising under this agreement, including using its best endeavours to achieve all Expected Outputs and Milestones to a standard acceptable to GRDC, acting reasonably;

provided that the GRDC:

- (iii) will only withhold payment of the part of Research Funds payable to the Research Organisation that has not complied with sub-clauses (i) and (ii);

- (iv) will not withhold payment without giving reasonable consideration to any reasons put forward by a Research Organisation for any failure to comply with its obligations; and
- (v) will identify any payment being withheld under this clause and provide reasons; but
- (vi) may withhold all payment where there is a failure to meet obligations under this agreement, and the GRDC acting in its reasonable discretion on the information made available to it by the Research Organisations, is unable to determine which Research Organisation has not met its obligations;

and the Lead Research Organisation is not obliged to pay that Research Organisation the part of the Research Funds withheld by the GRDC under this **clause 2.3(a)**;

- (b) the GRDC has, acting reasonably, accepted or been deemed to accept any Progress Reports under **clauses 7.1** and **7.4**; and
- (c) the GRDC has received sufficient funding in relation to the Financial Year in which the payment is to be made to enable it both to make the payment and to make payments during that Financial Year under all other research agreements entered into by the GRDC, provided that the GRDC has provided the Research Organisations with at least 3 months' written notice of reduction in funds or termination in accordance with **clause 5.5** if it does not receive sufficient funding under this subclause.

## **2.4 Approval of GRDC Annual Operational Plan**

- (a) The GRDC has no obligation to pay the Lead Research Organisation each part of the Research Funds under this agreement unless:
  - (i) the Minister has approved the GRDC's Annual Operational Plan (**AOP**) and R&D Plan under Part 2 of the PIERD Act in relation to the Financial Year in which the payment is to be made; and
  - (ii) the AOP and R&D Plan are consistent with the GRDC making the payment to the Research Organisation.

*Note: this is a requirement on the GRDC under section 33(1)(a) of the PIERD Act.*

- (b) If the GRDC relies on **clause 2.4(a)** to stop payments of the Research Funds:
  - (i) it must promptly notify each Research Organisations that **clause 2.4(a)** applies; and
  - (ii) each Research Organisation may stop performing the Project until the GRDC notifies that Research Organisation that it will resume payments.

## **3 USE OF FUNDS**

### **3.1 General obligation**

Each Research Organisation must use Research Funds only for the Project Costs.

### **3.2 Use of Research Funds not expended on Project Costs in a Financial Year**

Where a Research Organisation has not expended all Research Funds in the Financial Year for which they were received, that Research Organisation may carry the unused funds over for use on the Project Costs in the following Financial Year provided that it has notified the GRDC and the Lead Research Organisation of that intention and complied with any procedure required by the GRDC.

### **3.3 Obligation to return unused funds at the end of the Project Term**

- (a) Within 3 months after the end of the Project Term each Research Organisation must return to the GRDC any Research Funds it has received that have not expended on Project Costs; and
- (b) the Lead Research Organisation will not be responsible for any failure of any other Research Organisation to return Research Funds paid through the Lead Research Organisation under **clause 2.2(d)**.

### **3.4 Transfers of Expenditure**

A Research Organisation must not use Research Funds allocated for Capital Items for other Project Costs and must not use Research Funds allocated for other Project Costs to acquire Capital Items, without the prior written approval of the GRDC.

### **3.5 Acquisitions**

- (a) A Research Organisation must not use Research Funds to acquire a Capital Item unless the details of the need for, and costs of, the Capital Item are included in the Project Specification, or the GRDC has otherwise approved the acquisition.
- (b) A Research Organisation must not use Research Funds to acquire any computers, computer software, communications equipment or similar or related items unless specifically itemised in the Project Specification or otherwise approved by the GRDC.

## **4 CONDUCT OF PROJECT**

### **4.1 Roles of the Research Organisations**

- (a) The Lead Research Organisation is responsible for overall co-ordination of the Project, providing scientific leadership for the Project and being principal point of contact for liaising with the GRDC.
- (b) Each Research Organisation other than the Lead Research Organisation agrees to cooperate with the Lead Research Organisation, including by providing the Lead Research Organisation with all information reasonably requested by the Lead Research Organisation to enable it to comply with its reporting obligations under this agreement.
- (c) Each Research Organisation is responsible for:
  - (i) working collaboratively and cooperatively with each other Research Organisation;
  - (ii) performance of those parts of the Project for which it is responsible under the Project Specification;

- (iii) promptly advising the GRDC and Lead Research Organisation of any disputes between Research Organisations; and
- (iv) expenditure of the Research Funds allocated to it under the Project Specification.

#### **4.2 Carrying out of Project**

Each Research Organisation must:

- (a) carry out the aspects of the Project for which it is responsible in a proper and professional manner during the Project Term;
- (b) use its best endeavours to achieve all Expected Outputs, Milestones and any other activities allocated to it in the Project Specification or Schedule by their due date;
- (c) except as otherwise expressly provided in this agreement, provide at its own expense all funds, personnel, equipment, facilities, services and premises specified in the Project Specification or otherwise required to carry out the aspects of the Project for which it is responsible;
- (d) except as otherwise expressly provided in this agreement, obtain at its own expense all third party assistance allocated to it in the Project Specification or required to carry out that part of the Project for which it is responsible;
- (e) take all reasonable steps to ensure that its Research Organisation Personnel enable it to comply with its obligations under this agreement including, in particular, those obligations which relate to Project Outputs, Background IP and Third Party IP;
- (f) subject to **clause 4.2(a)**, ensure that the aspects of the Project for which it is responsible are conducted by its Research Organisation Personnel and that its Research Organisation Personnel spend the amount of time working on the Project that is specified in the Project Specification or otherwise approved by the GRDC; and
- (g) comply with all applicable laws in carrying out the Project.

#### **4.3 Sub-contracting**

- (a) Except to the extent specified in the Project Specification, a Research Organisation must not sub-contract the conduct of the Project without the prior written approval of the GRDC;
- (b) Each Research Organisation remains responsible for any act or omission of any sub-contractor engaged by that Research Organisation even if the GRDC has approved the use of that sub-contractor; and
- (c) Each Research Organisation must ensure that all rights in relation to any Intellectual Property created by a sub-contractor in the performance of any part of the Project are assigned to the Parties, to be owned as provided for in this agreement.

#### **4.4 Variation of Project**

- (a) No Research Organisation may vary the Project Aims without the prior written approval of the other Parties.
- (b) If the Parties agree to a variation of the Project, the Project will continue to be regulated in all other respects as set out in this agreement.

#### **4.5 Additional funding**

Each Research Organisation must:

- (a) promptly notify the other Parties:
  - (i) if it receives funds or other support in relation to the Project from any source, other than as specified in the Project Specification or the Schedule; and
  - (ii) of the terms upon which those funds or other support are provided; and
- (b) ensure that their provision does not have any impact on the ownership of Project Outputs unless approved by the GRDC and each other affected Party.

#### **4.6 Delay**

Each Research Organisation must immediately notify the other Parties if:

- (a) it does not commence work on the Project within 28 days of the later of:
  - (i) the Commencement Date; and
  - (ii) the date of execution of this agreement by the last of the Parties; or
- (b) it ceases work on the Project during the Project Term for any period greater than 28 days.

#### **4.7 Commercial-in-Confidence Information**

- (a) Each Party must, subject to this agreement, treat as confidential the Commercial-in-Confidence Information contributed to the Project by another Party.
- (b) The Parties may only use Project Commercial-in-Confidence Information in accordance with **clause 8**.
- (c) Where a Party is required by a court, governmental or administrative authority or any parliamentary authority or by applicable law or regulation to disclose Commercial-in-Confidence Information of another Party:
  - (i) the disclosing Party must promptly notify that other Party and consult with it about the form and content of any disclosure required; and
  - (ii) only disclose that part of the Commercial-in-Confidence Information as is necessary to comply with the relevant requirements.

#### **4.8 Criticism of the GRDC and Australian Government is not limited by this agreement**

This agreement does not limit the Research Organisations' rights to enter into public debate or criticism of the GRDC or the Australian Government.

## **5 TERM AND TERMINATION**

### **5.1 Term**

This agreement commences on the earlier of the date of this agreement or the Commencement Date and, subject to earlier termination in accordance with this agreement, expires on the date on which the Project is completed in accordance with this agreement and the GRDC has made all payments due to the Research Organisations.

### **5.2 Expulsion of a Research Organisation**

- (a) The GRDC must, where in its reasonable discretion it is practicable to do so, instead of terminating this agreement, elect to expel from the Project a Research Organisation that falls within **clause 5.2(c)**, by written notice to that Research Organisation with a copy to all other Research Organisations. If the Lead Research Organisation is expelled the GRDC will nominate a replacement Lead Research Organisation from among the remaining Research Organisations.
- (b) In determining whether expulsion is practicable, the GRDC and the proposed remaining Research Organisations will discuss whether the Project can be successfully continued without the involvement of the expelled Party. If the Parties do not agree that this is the case then the GRDC will not exercise such discretion.
- (c) The GRDC may expel a Research Organisation from the Project with immediate effect by written notice to it and the other Parties, if that Research Organisation:
  - (i) breaches any provision of this agreement and the breach continues unremedied for 28 days after the GRDC has served all the Research Organisations with written notice of the breach;
  - (ii) breaches a material provision of this agreement which is not capable of remedy;
  - (iii) persistently breaches a material provision of this agreement despite notice of the breach;
  - (iv) in the reasonable opinion of the GRDC, is not conducting the Project in a competent and diligent manner; or
  - (v) becomes an “externally-administered body corporate” as defined in section 9 of the *Corporations Act 2001* (or an equivalent circumstance arises if the Research Organisation is not a body corporate) or is unable to pay its debts as they fall due.

### **5.3 Consequences of Expulsion of a Research Organisation**

- (a) If a Research Organisation is expelled pursuant to **clause 5.2**, it:
  - (i) is not entitled to reimbursement of any additional costs incurred as a result of expulsion;
  - (ii) must assign its share of ownership of the Project Outputs to the remaining Parties on a pro rata basis calculated in accordance with Contributions of the remaining Parties to the Project;

- (iii) grants to the other Parties a world-wide, irrevocable, perpetual royalty-free non-exclusive licence (including the right to sublicense) to any of its Background IP, Third Party IP:
    - (A) that meets the description in **clause 8.1(a)(ii)**; and
    - (B) subject to any limitations disclosed in accordance with **clause 8.1(a) or (b)**,but only to the extent that they are required to disseminate or Commercialise the Project Outputs in accordance with this agreement;
  - (iv) may independently continue the Project (including access to Project IP and Commercial-in-Confidence Information) solely for the purpose of allowing a Student to complete their course work;
  - (v) remains entitled to receive a share of Net Commercialisation Income, being the proportion that its Contributions to the Project bears to the total amount of all Parties' Contributions to the Project, at the time of Commercialisation.
- (b) subject to clause 5.3(a), expulsion will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
  - (c) from the date of expulsion the GRDC will cease to be liable to pay or provide to the expelled Research Organisation any further Project Funds, except for payments related to legitimate expenses incurred before expulsion;
  - (d) from the date of expulsion, the expelled Research Organisation will cease to be liable to make any Contribution to the Project, scheduled to be made after the expulsion date.

#### **5.4 Termination of this agreement for default**

- (a) The GRDC may terminate this agreement with immediate effect by written notice to the other Parties if any Research Organisation:
  - (i) breaches any provision of this agreement and the breach continues unremedied for 28 days after the GRDC has served all the Research Organisations with written notice of the breach;
  - (ii) breaches a material provision of this agreement which is not capable of remedy;
  - (iii) persistently breaches a material provision of this agreement despite notice of the breach; or
  - (iv) becomes an “externally-administered body corporate” as defined in section 9 of the *Corporations Act 2001* (or an equivalent circumstance arises if the Research Organisation is not a body corporate) or is unable to pay its debts as they fall due.
- (b) The withholding of payment by the GRDC under **clauses 2.2, 2.3, 2.4** or **7.4** does not constitute a breach of this agreement.

## 5.5 Termination by notice

The GRDC may terminate this agreement by 3 months' written notice to each Research Organisation if:

- (a) in the reasonable opinion of the GRDC, the Project is unlikely to produce the Expected Outputs anticipated by the GRDC from the Project at the time of entering this agreement;
- (b) in the reasonable opinion of the GRDC, the GRDC's finances do not enable it to continue to fund the Project whilst maintaining a prudent level of reserves;
- (c) in the reasonable opinion of the GRDC, the Project is not, or has ceased to be, relevant to the objectives or functions of the GRDC or otherwise ceases to be of value to the Australian grains industry; or
- (d) it would, in the reasonable opinion of the GRDC, be in the best interests of the Australian grains industry for the GRDC to cease to fund the Project so as to enable the GRDC to fund one or more proposed research projects that may, in the opinion of the GRDC, be of exceptional benefit to the industry.

## 5.6 Consequences of termination – ownership of Project Outputs and entitlements to Net Commercialisation Income

- (a) If the GRDC terminates this agreement under **clause 5.4**:
  - (i) any Party in breach of this agreement (**Breaching Party**) must assign its share of the Project Outputs to the Parties not in breach (**Non-breaching Parties**), on a pro rata basis calculated in accordance with Contributions of the Non-breaching Parties to the Project at the date of termination;
  - (ii) the Non-breaching Parties retain their respective ownership proportions of Project Outputs, recalculated according to each Non-breaching Party's Contribution to the Project at the date of termination; and
  - (iii) all Parties, including any Breaching Party, retain their respective entitlements to Net Commercialisation Income, recalculated according to each Party's Contribution to the Project at the date of termination.
- (b) If the GRDC terminates this agreement under **clause 5.5**, the Parties retain their respective ownership proportions of Project Outputs and entitlements to Net Commercialisation Income, recalculated according to each Party's Contribution to the Project at the date of termination;

## 5.7 Other consequences of termination

If the GRDC terminates this agreement under **clause 5.4** or **5.5**:

- (a) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
- (b) from the date of termination:
  - (i) the GRDC will cease to be liable to pay or provide to the Lead Research Organisation any Project Funds; and
  - (ii) the Lead Research Organisation will not be liable to pay or provide to the Research Organisations any Project Funds

for expenditure incurred after the termination date (except where it results from legitimate commitments entered into before the date of termination);

- (c) from the date of termination each Research Organisation will cease to be liable to make further Contributions to the Project;
- (d) each Research Organisation must repay to the GRDC, within 28 days of termination, all Project Funds paid to the Research Organisation which have not, as of the termination date, been:
  - (i) used or applied for a purpose permitted under this agreement; or
  - (ii) committed for expenditure as permitted under this agreement;
- (e) where the GRDC has terminated the Project under **clause 5.5**:
  - (i) it may reimburse any Research Organisation for any reasonable additional costs necessarily incurred by that Research Organisation as a result of the early termination of the Project, either directly or through the Lead Research Organisation; and
  - (ii) the Lead Research Organisation must pay to each other Research Organisation its share of any additional costs received under **clause 5.7(e)(i)**, within 21 days after receipt of those amounts from the GRDC; and
- (f) any licences of Background IP, Third Party IP and copyright in Reports remain in force;
- (g) each Party grants to the other Parties a world-wide, royalty-free, non-exclusive licence to use the Project Outputs to the extent necessary to:
  - (i) conduct research work consistent with the Project Specification; and
  - (ii) continue any dissemination or Commercialisation of Project Outputs that has already commenced at the date of termination;
- (h) where one or more Parties:
  - (i) uses Project Outputs to conduct further research work consistent with the Project Specification; and
  - (ii) wants to use Project Outputs to disseminate or Commercialise the results of that further research work,

the relevant Parties must negotiate in good faith, to agree on the terms under which the Project Outputs can be used.

## **6 FINANCIAL PROVISIONS**

### **6.1 Payments into account**

- (a) Upon receipt, the Lead Research Organisation must immediately pay all Research Funds it receives from the GRDC into an account maintained by the Lead Research Organisation with an Australian bank or a non-Australian bank approved by the GRDC.

- (b) The Lead Research Organisation must establish and maintain a separate bank account or a separate account code within a general ledger account for the Project to enable use of the Research Funds to be identified.
- (c) Each Research Organisation other than the Lead Research Organisation agrees to comply with **clauses 6.1(a) and (b)** in relation to Research Funds that the Lead Research Organisation pays to it.

## **6.2 Books of account**

Each Research Organisation must maintain proper books of account in relation to its part of the Research Funds and Project Costs. Such books of account must:

- (a) be kept complete and up to date;
- (b) record all Research Funds received and all Project Costs paid;
- (c) be kept in a manner that permits them to be conveniently and properly audited;
- (d) be drawn up in accordance with any applicable Australian Accounting Standards; and
- (e) relate only to the Project.

## **6.3 Retention of records**

Each Research Organisation must obtain invoices or receipts or other appropriate records for all expenditure relating to the Project and must retain such invoices, receipts and records for at least 3 years after the end of the Project Term.

## **6.4 Financial reports**

- (a) Following the end of each Financial Year, each Research Organisation must complete a Form B Statement relating to its part of the Project and all Research Funds received by it for the preceding Financial Year (or part of it, in the case of a terminating Project).
- (b) Each Form B Statement must:
  - (i) be provided to the GRDC and Lead Research Organisation within 3 months of the end of each Financial Year during which Research Funds are received by the Research Organisation (or, in the last year of the Project, within 3 months of the end of the Project); and
  - (ii) be certified to be true and correct by an Accountant.

## **6.5 Inspection by the GRDC**

Each Research Organisation must permit the GRDC (including any agent of the GRDC) from time to time and at all reasonable times:

- (a) to inspect work being carried out in connection with the Project (subject to the GRDC or its agent complying with any reasonable directions of the Research Organisation in respect of the safety or security of its premises);
- (b) to examine and copy all accounts and other records required to be kept or maintained by the Research Organisation under this agreement; and

- (c) to examine and copy all other documents relating to the Project including records of Project Outputs discovery and development (except for data provided to the Research Organisation by a third party on a confidential basis).

## **6.6 Audit**

The GRDC may from time to time at its expense arrange for the accounts and other relevant documents maintained by each Research Organisation in relation to this Project to be audited. Each Research Organisation must give all reasonable assistance to the GRDC and its auditor in relation to any such audit.

## **6.7 Repayment**

Without limitation to any other right the GRDC may have under this agreement or at law, where review of the documents referred to in **clause 6.5**, or conduct of the audit referred to in **clause 6.6**, discloses that Research Funds have been used other than in accordance with this agreement:

- (a) the GRDC must provide the relevant Research Organisation with a copy of the review outcome or audit papers and allow the Research Organisation 14 days in which to respond;
- (b) the Research Organisation may provide to the GRDC a written response;
- (c) the GRDC may, acting in a reasonable manner, accept or reject the Research Organisation's response (if any) in whole or in part and may require the Research Organisation by notice to refund the Research Funds which were misapplied and reimburse the GRDC for the reasonable costs of the audit; and
- (d) where a Research Organisation receives a notice under **clause 6.7(c)** requiring a refund or reimbursement, the Research Organisation must, within 14 days of receipt of the notice, pay to the GRDC:
  - (i) the Research Funds which were misapplied;
  - (ii) interest on those funds calculated at the commercial overdraft rate of the Commonwealth Bank of Australia applicable at the time of, and specified in, the notice; and
  - (iii) the reasonable costs of the audit specified in the notice.

## **7 REPORTING OBLIGATIONS**

### **7.1 Progress Reports**

- (a) If the Project Term is greater than 12 months, the Lead Research Organisation must submit to the GRDC an annual Progress Report in relation to the Project. The Progress Report must:
  - (i) be provided by 1 March (or any later date advised by the GRDC) in any Financial Year during which the Lead Research Organisation receives or is entitled to receive Research Funds; and
  - (ii) be in writing in the form reasonably prescribed by the GRDC from time to time.

- (b) If the Progress Report contains Commercial-in-Confidence Information the Lead Research Organisation must mark the Progress Report accordingly on its cover and at those parts of the Progress Report which may reasonably be viewed as containing Commercial-in-Confidence Information.
- (c) Where the GRDC has not received the Progress Report by 1 March (or any later date advised by the GRDC), it may:
  - (i) notify each Research Organisation that it has not received the Progress Report and that it intends to reallocate Research Funds if the GRDC does not receive the Progress Report within 28 days of the date of the notice; and
  - (ii) if the GRDC does not receive the Progress Report within 28 days of the date of the notice, assume that no further funding is required by the Research Organisations in that Financial Year and allocate those funds for investment in other research projects.

## 7.2 Additional Information

Each Research Organisation must, from time to time, provide such information or reports to the GRDC regarding the progress and results of the Project as the GRDC may reasonably require. Each Research Organisation other than the Lead Research Organisation must provide to the Lead Research Organisation all information as necessary for the Lead Research Organisation to report to the GRDC in accordance with this agreement.

## 7.3 Final Report

- (a) Within 3 months after the end of the Project Term, the Lead Research Organisation must provide to the GRDC a Final Report in relation to the Project in the form reasonably prescribed by the GRDC from time to time.
- (b) If a Final Report contains Commercial-in-Confidence Information:
  - (i) the Lead Research Organisation must indicate on the cover of the Final Report that the Final Report contains Commercial-in-Confidence Information and must also mark as confidential the parts of the Final Report which may reasonably be viewed as containing Commercial-in-Confidence Information; and
  - (ii) the GRDC may request the Lead Research Organisation to produce a non-confidential version of the Final Report in a form suitable for general distribution, and the Lead Research Organisation must do so within 28 days of receiving that request.

## 7.4 Acceptance of Reports

- (a) The GRDC will be deemed to have accepted a Report that it has received unless it notifies the Lead Research Organisation under **clause 7.4(b)**, within 3 months of the later of:
  - (i) receipt of the Report; or
  - (ii) the date on which the Report is due(the **Deemed Report Acceptance Date**).

- (b) If before the Deemed Report Acceptance Date, the GRDC reasonably forms the view that the relevant Report does not adequately describe the conduct and outcomes of the Project, it may notify the Lead Research Organisation of the extent to which it believes the Report is deficient.
- (c) If the Lead Research Organisation receives a notice under **clause 7.4(b)**, it must consult with the other Research Organisations and within 28 days of receipt the Lead Research Organisation must:
  - (i) submit a revised Report which rectifies the deficiency; or
  - (ii) give the GRDC notice of a dispute under **clause 17**.

## **7.5 Ownership and use of Reports**

- (a) The Research Organisations that author a Report will own the copyright in that Reports as tenants in common in equal shares, but not necessarily the Project Outputs described in the Report.
- (b) Each Research Organisation that authors a Report grants, subject to the provisions of **clause 8**, a perpetual, irrevocable, fully paid, royalty-free, worldwide non-exclusive licence to use that Report, the information disclosed in it and any other copyright material provided with it:
  - (i) to the GRDC, for the GRDC's purposes (including reporting to its stakeholders, including the government) or in pursuance of the functions of the GRDC arising under the PIERD Act; and
  - (ii) to each other Research Organisation, for research and education purposes.

## **8 PROJECT OUTPUTS**

### **8.1 Background IP and Third Party IP**

Each Party may contribute Background IP and Third Party IP to the Project. If it does so:

- (a) it grants the other Parties an irrevocable, royalty-free, non-exclusive licence to use the Background IP and Third Party IP contributed by it:
    - (i) for the purposes of the Project during the Project Term; and
    - (ii) where the Background IP or Third Party IP:
      - (A) is embodied in the Project Outputs or the Project Outputs have been developed using it; and
      - (B) is required for dissemination or Commercialisation of the Project Outputs in accordance with this agreement,
- to then disseminate or Commercialise the Project Outputs in accordance with this agreement,
- subject to any limitations disclosed:
- (iii) in the Project Specification; or

- (iv) in writing at the time of making it available and agreed in writing by the other Parties;
- (b) it must disclose any Third Party IP, in the Project Specification or in writing at the time of contributing it;
- (c) nothing in this agreement affects the ownership of Background IP and Third Party IP, unless agreed otherwise between the Parties in writing.

## 8.2 Reporting discoveries and IP Register

- (a) Each Research Organisation must notify the Lead Research Organisation and the GRDC promptly of the discovery or production of any significant Project Outputs.
- (b) The GRDC or Lead Research Organisation may, by notice, require one or more Research Organisations, to:
  - (i) within 28 days after receiving notification, produce and provide to the Lead Research Organisation and the GRDC a register (**IP Register**) that sets out:
    - (A) all Background IP and Third Party IP likely to be incorporated in the Project Outputs;
    - (B) for Third Party IP, the owner of those rights;
    - (C) any impediments to Background IP and Third Party IP being used royalty-free for all reasonably foreseeable dissemination or Commercialisation activities involving the Project Outputs; and
    - (D) Project Outputs;
  - (ii) regularly review and update the IP Register as necessary to reflect all changes from time to time in the IP used in respect of the Project; and
  - (iii) make the IP Register available to the other Parties.
- (c) Each Research Organisation other than the Lead Research Organisation must ensure that it keeps the Lead Research Organisation informed of any significant Project Outputs in order to enable the Lead Research Organisation to comply with this **clause 8.2**.

## 8.3 Ownership of Project Outputs

- (a) The Parties will share the ownership of any Project Outputs (including Project IP created by a Student in accordance with **clause 8.12**) in the proportions specified in the Schedule, unless changed in accordance with this agreement.
- (b) Each Research Organisation warrants that to the best of its knowledge, having made reasonable enquiries, no other person owns or will own a share of the Project Outputs created by it.
- (c) Whilst it is recognised that the Parties may agree to change the shares of ownership of Project Outputs during the course of the Project, such an agreed change will only be effective where it is the subject of a formal variation to this agreement under **clause 19.4**.

- (d) Each Party irrevocably:
  - (i) assigns such of its right, title and interest in any existing and future Project Outputs as is necessary to comply with this **clause 8.3**; and
  - (ii) undertakes to execute any documents and do any things that are necessary to give effect to that assignment.

#### **8.4 Commercialisation and registration of Project Outputs**

- (a) The Parties acknowledge that the primary aim of the Project is to benefit the Australian grains industry and that maximisation of commercial returns is a secondary aim which will not be pursued to the detriment of the primary aim. Accordingly, the Parties undertake to work together, in good faith, to seek adoption, dissemination and Commercialisation of Project Outputs which maximises the benefit to the Australian grains industry.
- (b) If a Party considers on reasonable grounds that the Parties may Commercialise any Project Outputs, it must notify the other Parties accordingly, identifying the relevant Project Outputs and detailing how they might be profitably Commercialised. If a Commercialisation Party has been listed in the Schedule, the Commercialisation Party agrees to use reasonable endeavours to lead Commercialisation of the Project Outputs.
- (c) The Parties must after receipt of a notice under **clause 8.4(b)** in good faith seek to agree:
  - (i) appropriate protection (including registration) for the Project Outputs;
  - (ii) a plan for Commercialisation of the Project Outputs; and
  - (iii) if required, a licence of Project Outputs from the Parties (to the Commercialisation Party) to enable the Commercialisation Party to Commercialise the Project Outputs.
- (d) The Parties must protect and Commercialise the Project Outputs as agreed under **clause 8.4(c)**.
- (e) If:
  - (i) a Party wishes to register Project IP but all the other Parties are unable to agree on registration under **clause 8.4(c)(i)** within 2 months of a Party proposing in writing that it be registered; or
  - (ii) having commenced registration, the Parties are unable to agree on continuation or maintenance of the registration, by 3 months before the deadline for continuation or maintenance of registration,then:
  - (iii) a Party or Parties (**Continuing Parties**) may at their own cost arrange registration or maintenance;
  - (iv) the Continuing Parties may require that the other Parties (**Withdrawing Parties**) promptly assign their share of that Project IP in the relevant country to the Continuing Parties and take all steps reasonably required to transfer their share of that Project IP to the Continuing Parties;

- (v) despite anything to the contrary in this agreement, the Withdrawing Parties:
  - (A) waive any rights in relation to that Project IP in that country other than the licence-back in **clause 8.4(e)(vi)**; and
  - (B) will not be entitled to any proceeds of Commercialisation of that Project IP in that country; and
- (vi) the Continuing Parties must grant back to the Withdrawing Parties a perpetual, non-exclusive royalty-free licence to use the assigned Project IP for education, research and other non-commercial purposes, but only to the extent that the use does not prejudice the future registration or Commercialisation of any Project Outputs.

### **8.5 Sharing Commercialisation income and costs of registering Project Outputs**

- (a) The Parties that own a Project Output will share the costs of any registration of it, in proportion to their ownership of the Project Outputs at the time of incurring those costs, unless otherwise agreed in writing between them.
- (b) The Parties will share Net Commercialisation Income derived from Commercialisation of Project Outputs, in the proportions set out in the Schedule, unless otherwise stated in this agreement or agreed in writing between them.

### **8.6 Notification of infringements**

A Party must notify the other Parties within 14 days if it:

- (a) becomes aware of or suspects an infringement or threatened infringement of Project IP or a misuse of Project Commercial-in-Confidence Information; or
- (b) becomes aware of any claim that carrying out the Project or the dissemination, Commercialisation or other use of the Project Outputs infringes or is likely to infringe the intellectual property rights or other legal rights of a third party.

### **8.7 Acts to defend Project Outputs**

- (a) Where a Party believes that action should be taken to defend Project Outputs because they are, or are likely to be, infringed or misused by a third party:
  - (i) it must notify the other Parties of details of a proposed defence strategy including details of the anticipated costs and benefits of the action; and
  - (ii) the Parties must seek to agree on a defence strategy.
- (b) If the Parties agree on a defence strategy they will proceed according to that defence strategy.
- (c) If the Parties do not agree on a defence strategy within 28 days of the notice under **clause 8.7(a)**, then:
  - (i) a Party or Parties (**Active Parties**) may proceed to take that action in their own name and at their own expense;
  - (ii) the other Parties (**Passive Parties**) must execute any documents and do any things necessary to enable the Active Parties to prosecute the action;

- (iii) the Active Parties must indemnify the Passive Parties in respect of any expenses incurred by the Passive Parties for providing the assistance referred to in **clause 8.7(c)(ii)**; and
- (iv) the Active Parties may retain any damages recovered in taking the action.

### **8.8 Limitation on use of Project Outputs**

- (a) Except as provided in the other provisions of this **clause 8** or as agreed in the Project Specification, no Party may use, disseminate, assign, license or otherwise exploit or deal with any Project Outputs without the prior written consent of the other Parties.
- (b) Subject to **clause 8.8(c)**, where any Party (**Breaching Party**) undertakes any of the activities referred to in **clause 8.8(a)** without the prior written consent of the other Parties (**Innocent Parties**), without prejudice to any other rights of the Innocent Parties, that will constitute a continuing breach of this agreement and the Breaching Party must:
  - (i) indemnify, and keep indemnified, the Innocent Parties in respect of any Liability that the Innocent Parties or any of their officers, employees or agents may suffer or incur arising out of, related to or connected with the unapproved activities, including from:
    - (A) the use of the Project Outputs by any person;
    - (B) the grant, performance or breach of any sub-licence granted (or purportedly granted) by the Breaching Party; or
    - (C) any infringement of the Intellectual Property of any person; and
  - (ii) pay to the Innocent Parties the share of Net Commercialisation Income derived from undertaking the activities to which they are entitled under this agreement.

### **8.9 Use of Project Outputs for research related to the Australian grains industry**

The Parties may at any time agree to allow a third party to non-exclusively use Project Outputs for the purpose of research conducted in Australia and related to the Australian grains industry (but not for Commercialisation), on terms to be agreed.

### **8.10 Internal Research and Education**

Any Party may use Project Outputs for the purposes of internal research or education, provided that:

- (a) it obtains any necessary licences of other Parties' Background IP or Third Party IP;
- (b) it must not do so in a manner which might prejudice the future registration, value or commercial exploitation of any Project Outputs unless that Party has the prior written consent of the other Parties owning Project Outputs to do so; and
- (c) where Commercialisation of Intellectual Property arising out of the internal research requires access to the Project Outputs, it may only use the Project

Outputs for the purposes of that Commercialisation on terms agreed between the Parties that own Project Outputs.

### **8.11 Publication and acknowledgement**

- (a) One or more Research Organisations (**Publishing Party**) may publish any information relating to its part(s) of the Project or otherwise publicly disclose any Project Outputs produced by it (or them) without the prior written consent of any other Party, except where the publication may:
  - (i) disclose any Project Commercial-in-Confidence Information or any other Party's Commercial-in-Confidence Information;
  - (ii) prejudice the future registration, value or commercial exploitation of any Project Outputs; or
  - (iii) prejudice the best interests of the Australian grains industry(together **Disclosure or Prejudice**).
- (b) Where the proposed publication may cause Disclosure or Prejudice:
  - (i) the Publishing Party must:
    - (A) provide a copy of the proposed publication and explanation of the likely effect of the Disclosure or Prejudice to the relevant Parties; and
    - (B) request in writing that the relevant Parties approve publication of the paper;
  - (ii) the relevant Parties must advise the Publishing Party whether:
    - (A) they agree to publication;
    - (B) they will agree to publication with alterations to minimise the Disclosure or Prejudice; or
    - (C) if altering the publication is impractical, the Publishing Party must delay publication for a stipulated period not exceeding 12 months from the date of the request;
  - (iii) the relevant Parties will be deemed to have agreed to publication under **clause 8.11(b)(ii)(A)** unless one or more Parties notifies the Publishing Party otherwise within 28 days of receiving information under **clause 8.11(b)(i)**.
- (c) Each Party must prominently acknowledge the contribution of the other Parties to the Project at all reasonable and appropriate opportunities, including in any document published, or presentation made, by that Party in relation to the Project.
- (d) Each Research Organisation must promptly provide a copy of all publications to the other Parties.

## 8.12 Students

- (a) The Parties acknowledge and agree that students of a Research Organisation or other educational institution (**Student**) may be involved in the Project.
- (b) The Parties agree that the Student may publish the results of their research work:
  - (i) without restriction, where it will not cause Disclosure or Prejudice:
  - (ii) where it may cause Disclosure or Prejudice:
    - (A) after 12 months from the end of the Project Term; or
    - (B) at any earlier time agreed by the Parties, and on any conditions agreed by the Parties (such as allowing deposit in the Research Organisation's library subject to confidentiality obligations).
- (c) The copyright in the Student's work, including any thesis, will remain with the Student.
- (d) Unless otherwise agreed, each relevant Research Organisation must enter into an agreement with its Student to ensure that:
  - (i) the Student assigns all Project IP created by the Student (other than copyright in the Student's work) to the Research Organisation and licenses the Parties to reproduce any thesis or research paper for the purposes of the Project and Commercialisation of the Project Outputs; and
  - (ii) the Student observes the confidentiality requirements set out in this agreement and which apply to the Project.
- (e) The Student and the relevant Research Organisation may give the Student's thesis to external supervisors and examiners for assessment.
- (f) Any Party may request that a Research Organisation arrange for a supervisor or examiner to enter into an agreement to protect any Commercial-in-Confidence Information.

## 8.13 Access to Project Outputs, Background IP and Third Party IP

Each Party must give all other Parties all information and material reasonably required by the other Parties to fully enjoy all rights of access to, and use and exploitation of, Project Outputs, Background IP and Third Party IP that the other Parties are granted under this **clause 8**.

## 8.14 Exceptions to clause 8 requirements

- (a) **Clauses 8.6, 8.7, 8.8(a) and (b)**, and the restrictions in **clause 8.10**, do not apply to a Party that is the sole owner of the relevant Project Outputs under this agreement.
- (b) Where only some Parties own Project Outputs, reference to Parties in **clauses 8.4 and 8.7** is only to the Parties owning Project Outputs.

## **9 CAPITAL ITEMS**

### **9.1 Maintenance and repairs**

Each Research Organisation must, at its own expense unless included in the Project Specification, maintain all of its Capital Items in good condition for the Project Term, and effect all necessary repairs.

### **9.2 Ownership**

A Research Organisation will own all Capital Items that it acquires.

### **9.3 No securities to be given**

No Research Organisation may, without the prior written consent of the GRDC, grant, or permit to arise, any security interest (including mortgages, charges or liens but excluding floating charges given in the ordinary course of business) over any Capital Item, during the Project Term.

### **9.4 Replacement**

A Research Organisation must, at its own expense, promptly replace or repair any Capital Item in its possession or control, that is lost, damaged or destroyed during the Project Term, unless that damage or destruction is caused by reasonable wear and tear.

### **9.5 Sale of Capital Item during or after the Project Term**

If:

- (a) a Research Organisation sells or otherwise disposes of a Capital Item during or after the Project Term; and
- (b) at the time of the sale or disposal, the Capital Item has not been fully depreciated at applicable Depreciation Rates,

that Research Organisation must advise the GRDC of the sale or disposal and, if the GRDC requests it:

- (c) pay to the GRDC within 28 days of the date of the sale or disposal of the item an amount equal to the proportion of the undepreciated value of the Capital Item owned by it (calculated at the applicable Depreciation Rate) that is equivalent to the proportion of the purchase price of the Capital Item that was funded from Research Funds; or
- (d) pay to the GRDC within 28 days of the date of the sale or disposal the proceeds of the sale or disposal, less an amount equal to the sum of that Research Organisation's proportionate contribution to the purchase price of the Capital Item and that Research Organisation's reasonable costs of disposal of the Capital Item.

## **10 INSURANCE**

### **10.1 Government Self Insurer**

A Research Organisation is not subject to **clauses 10.2** and **10.3** if it is a Commonwealth, State or Territory government department, agency or statutory entity and self-insures.

## **10.2 Insurance required**

Subject to **clause 10.1**, each Research Organisation must maintain all appropriate insurances for the Project including:

- (a) adequate workers' compensation insurance;
- (b) public liability insurance in the amount of at least \$10 million for each claim;
- (c) insurance in respect of loss or damage to Capital Items; and
- (d) professional indemnity insurance:
  - (i) of a type to the reasonable satisfaction of the GRDC; and
  - (ii) unless otherwise agreed in writing between the relevant Research Organisation and the GRDC, in the amount of at least \$5 million per claim.

## **10.3 Documentation**

Each Research Organisation must, on request by the GRDC, provide evidence of the currency of the insurance policies required under **clause 10.2**.

## **11 RESEARCH ORGANISATION PERSONNEL**

### **11.1 Not employees of the GRDC**

No Research Organisation Personnel will, by reason of this agreement or the conduct of the Project, be considered to be in the service or employ of, or to be the partner or agent of, the GRDC.

### **11.2 No funding of statutory entitlements of Research Organisation Personnel or other employment related expenses**

No Research Organisation may use Research Funds to fund any statutory entitlements of its Research Organisation Personnel or any other employment related expenses unless they are disclosed in the Project Specification and approved by the GRDC or are otherwise approved by the GRDC.

### **11.3 Changes to Research Organisation Personnel**

- (a) If any key members of the Research Organisation Personnel listed in the Project Specification (being the Project Supervisor or other senior researchers with key roles in the Project) are unable to undertake work in respect of the Project to the extent required by this agreement, that Research Organisation must promptly notify the GRDC in writing. The Research Organisation must, if requested in writing by the GRDC, use reasonable endeavours to promptly provide replacement Personnel acceptable to the GRDC.
- (b) If that Research Organisation is unable to provide acceptable replacement Personnel, the GRDC may:
  - (i) expel that Research Organisation with immediate effect, in accordance with **clause 5.2** (expulsion); or

- (ii) where GRDC decides in its reasonable discretion that expulsion is not practicable, terminate this agreement in accordance with **clause 5.4** (termination for default).

## **12 WARRANTIES AND UNDERTAKINGS**

### **12.1 Capacity and legality**

Each Research Organisation warrants that:

- (a) it has the power to enter into this agreement and to carry out the Project;
- (b) it has or will obtain all necessary approvals, consents and authorisations to enable it to carry out the Project; and
- (c) except as specified in the Project Specification or Special Conditions, or otherwise approved by the GRDC prior to execution of this agreement, that Research Organisation is not a party to any agreement that could limit or constrain any reasonably foreseeable dissemination or Commercialisation activities involving Project Outputs.

### **12.2 Intellectual Property**

Each Research Organisation warrants that except as specified in the Project Specification, Special Conditions, and subject to any limitations disclosed in accordance with **clause 8.1(a) or (b)**, to the best of its knowledge at the date of this agreement having made all reasonable enquiries:

- (a) all Background IP and Third Party IP contributed to the Project by it will be able to be used royalty-free for all reasonably foreseeable dissemination or Commercialisation of Project Outputs in accordance with this agreement, including the Commercialisation activities listed in the Project Specification;
- (b) in carrying out its part of the Project, it will not breach any intellectual property rights of any person.

### **12.3 Information provided will be correct**

Subject to **clause 12.2**, each Research Organisation warrants that at the time it is provided, all information provided by the Research Organisation to the GRDC:

- (a) in the Project Specification; and
- (b) in relation to the Project,

is correct, complete and not misleading in any significant respect.

## **13 CONFLICT OF INTEREST AND OVERLAPPING PROJECTS**

### **13.1 Warranties regarding conflict of interest**

Each Research Organisation warrants to the GRDC, that:

- (a) except as disclosed in writing to the GRDC prior to execution of this agreement, the Research Organisation and Research Organisation Personnel did not, or will

not at the Commencement Date, hold any rights or property or have any obligations; and

- (b) except as disclosed under **clause 13.2**, the Research Organisation agrees not to, at any time while the Project is being carried out, acquire any rights or property or undertake any obligations,

that might limit that Research Organisation's ability to meet its obligations under this agreement.

### **13.2 Notice of conflict of interest**

Each Research Organisation agrees to:

- (a) give notice to the GRDC of any matter, event or circumstance by reason of which any such conflict of interest is created, or might reasonably be expected to arise, as soon as reasonably possible after becoming aware of the matter, event or circumstance; and
- (b) comply with any reasonable direction from the GRDC to deal with the conflict of interest.

### **13.3 Limitation of clauses**

The GRDC agrees that **clauses 13.1 and 13.2**, to the extent that they apply to Research Organisation Personnel, are limited to Research Organisation Personnel engaged on or reasonably having knowledge of the Project sufficient to protect the interest of either Party in the Project and its results.

### **13.4 Notice of overlapping project**

The Parties acknowledge the need for efficient use of the grains industry's limited research resources. Accordingly:

- (a) each Research Organisation must promptly advise GRDC of any research project it commences which utilises similar scientific approach or methodology to achieve the same or similar objectives as the Project; and
- (b) the Parties must negotiate in good faith about whether this Project should be amended or terminated and the Research Funds utilised elsewhere.

## **14 CONDUCT OF RESEARCH**

### **14.1 Animals**

If the Project involves the use of animals, Research Organisations must comply with all requirements set out in the "Australian code of practice for the care and use of animals for scientific purposes" endorsed by the National Health and Medical Research Council, as amended from time to time.

### **14.2 Gene Technology**

If the Project involves the use of any manipulation of genetic material or similar techniques, each Research Organisation must comply with the *Gene Technology Act 2000* and any safety guidelines established from time to time by the Gene Technology Regulator or any other similar body established by the Commonwealth government.

### **14.3 Environment**

Each Research Organisation must carry out the Project in accordance with any relevant environmental legislation and must not (except as fully disclosed to the GRDC) adversely affect the environment to a significant extent.

## **15 RELATIONSHIP BETWEEN PARTIES**

### **15.1 No employment, joint venture or partnership**

This agreement does not give rise to any employment, joint venture or partnership relationship between the Parties.

### **15.2 No agency**

No Party to this agreement has, except as otherwise specified in this agreement, any right to act on behalf of, represent itself as agent for, or otherwise bind, any other Party.

### **15.3 Liability is separate**

The rights, obligations and liabilities of each Party under this agreement are several, not joint or joint and several.

## **16 NOTICES**

### **16.1 Writing**

All notices or communications given under this agreement must be in writing, must be signed by the Party giving the notice and must be delivered, sent by pre-paid post or transmitted by facsimile or Electronic Communication to the relevant other Party or Parties.

### **16.2 Address**

All notices or communications to be given to a Party under this agreement may be sent to the address of that Party set out in the description of the Parties, or such other address as may be advised by that Party in writing from time to time. Formal notices and communications to the GRDC must be addressed to the Managing Director.

### **16.3 Receipt of notice**

A notice given in accordance with this clause is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 3 days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless the recipient advises the sender within one business day that the facsimile was illegible or not fully received; or
- (d) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but any notice that would be deemed to have been received out of business hours or on a non-business day will instead be deemed received on the next business day.

## **17 DISPUTE RESOLUTION**

### **17.1 Process**

If a Party gives another Party notice of a dispute arising out of, or relating to, this agreement (**Notice**), a dispute between those Parties will be deemed to have arisen (**Dispute**), and the Parties to the Dispute must resolve the Dispute in accordance with the provisions of this **clause 17**. Compliance with the provisions of this **clause 17** is a condition precedent to seeking relief in any court or tribunal in respect of the Dispute.

### **17.2 Negotiations in good faith**

The Parties to the Dispute agree to negotiate in good faith and to use their best endeavours to resolve the Dispute.

### **17.3 Reference to management**

If the Dispute is not resolved within 28 days of the receipt of the Notice referred to in **clause 17.1**, the Dispute must be immediately referred in the first instance to the Managing Director of the GRDC and the Chief Executive Officer (or equivalent) of the other Party or Parties to the Dispute, or their nominees, for the purposes of negotiating a resolution to the Dispute.

### **17.4 Assistance of third party mediator**

If the Dispute is not resolved within 28 days of the commencement of the process of negotiation referred to in **clause 17.3**, the Parties to the Dispute agree to then co-operate in seeking the assistance of a third party mediator conversant with the issues concerned to assist in resolving the Dispute.

### **17.5 Courts**

Nothing in this **clause 17** will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction.

## **18 GOODS AND SERVICES TAX**

### **18.1 Definitions**

Terms used in this **clause 18** which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in that Act.

### **18.2 Research Funds do not include GST**

Unless otherwise indicated, the Research Funds specified in the Schedule do not include GST.

### **18.3 If GST is payable**

In relation to any GST payable on a taxable supply by a Party under this agreement, the recipient of the supply must pay the GST subject to:

- (a) the supplier providing a tax invoice; or
- (b) if a Research Organisation is the supplier, at the option of the GRDC (that may be varied from time to time at the GRDC's discretion), the supplier either:

- (i) issues to the GRDC a tax invoice; or
- (ii) agrees to the issue by the GRDC of a recipient created tax invoice (**RCTI**)

and provides any other documentation required by the GRDC to claim any input tax credits claimable in relation to the supply.

## **19 GENERAL**

### **19.1 Assignment**

Subject to **clauses 5.3(a)(ii), 5.6(a)(i), 8 and 19.2** of this agreement, no Party may assign its rights under this agreement without the prior written consent of the other Parties.

### **19.2 Delegation by GRDC**

The GRDC may delegate the exercise of its rights or the performance of its functions under this agreement to any person.

### **19.3 Waiver**

The non-exercise of or delay in exercising any power or right conferred on a Party by this agreement does not operate as a waiver of that power or right.

### **19.4 Amendment**

- (a) No amendment to this agreement involving a change of more than \$25,000 to the amount payable is effective or valid unless it is made by a Deed of Variation.
- (b) No other amendment to this agreement is effective or valid unless it is agreed in writing between the Parties.

### **19.5 Governing Law**

This agreement is governed by the laws in force in the Australian Capital Territory.

### **19.6 Submission to Jurisdiction**

The Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

### **19.7 Survival of Clauses**

**Clauses 3.3, 4.7, 5.3, 5.6, 5.7, 6.3, 6.4, 6.5, 6.6, 6.7, 7.3, 7.4, 7.5, 8, 9.5 and 12** survive the termination or expiry of this agreement.

### **19.8 Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

# SCHEDULE

**Project Number:**

**GRDC Panel:**

**Program:**

**Project Title:**

**Name of Lead Research Organisation:**

**Names of other Research Organisations:**

(1)

(2)

(3)

**Commencement Date:**

**Completion Date:**

**Commercialisation Party (clause 8.4(b)):** [may not be required]

**Ownership of Project Outputs:**

Ownership of all Project Outputs is:

GRDC	%
[name of Research Organisation]	%
[name of Research Organisation]	%
[name of Research Organisation]	%
TOTAL	100%

*Notes:*

- 1. Ownership is to be proportionate to agreed cash and in-kind Contributions in the Project Specification. But the Schedule prevails where there is an inconsistency, so it is important that the proportions listed here are correct.*
- 2. Under **clause 8.3**, only the entities listed here will own a share of Project Outputs. Any other collaborators listed in the Project Specification will not own any share of Project Outputs.*

**Net Commercialisation Income (clause 8.5):**

*Note: it is the same as ownership of Project Outputs unless listed differently here*

**Special Conditions:**

*[Note to users: this agreement does not explicitly govern terms of material transfers between Research Organisations. If required, a standard form of Material Transfer Agreement can be attached here].*

*Note: the Expected Outputs and Milestones tables will be automatically uploaded from the Project Specification, except for the last column (Which Research Organisation(s) is responsible). This will need to be entered in this Schedule manually.*

**Expected Outputs:**

<b>Number</b>	<b>Delivery Date</b>	<b>Description</b>	<b>Recurring Years</b>	<b>Which Research Organisation(s) is responsible</b>
1				
2				
3				

**Milestones:**

<b>Number</b>	<b>Related Output</b>	<b>Achievement Date</b>	<b>Description</b>	<b>Recurring Years</b>	<b>Which Research Organisation(s) is responsible</b>
1					
2					
3					
4					
5					
6					
7					
8					

9					
10					
11					
12					
13					
14					
15					

**Research Funds** (payable by the GRDC):

<b>Financial Year</b>	<b>Capital</b>	<b>Non-capital</b>	<b>Total</b>
<b>2010/2011</b>	\$	\$	\$
<b>2011/2012</b>	\$	\$	\$
<b>2012/2013</b>	\$	\$	\$
<b>2013/2014</b>	\$	\$	\$
<b>Total</b>	\$	\$	\$

**Proportion of the Research Funds that the Lead Researcher must pay to each Research Organisation:**

<b>Financial Year</b>	<b>Lead Researcher retains</b>		<b>[Name of Research Organisation 2]</b>		<b>[Name of Research Organisation 3]</b>		<b>[Name of Research Organisation 4]</b>		<b>Total</b>
	Capital	Non-capital	Capital	Non-capital	Capital	Non-capital	Capital	Non-capital	
<b>2010/2011</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>2011/2012</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>2012/2013</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>2013/2014</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>TOTAL</b>	\$	\$	\$	\$	\$	\$	\$	\$	\$

*Check: the totals in the two tables should be the same.*

**EXECUTED BY THE PARTIES AS AN AGREEMENT**

**SIGNED** for and on behalf of )  
the **GRAINS RESEARCH AND** )  
**DEVELOPMENT CORPORATION** by an )  
authorised delegate in the presence of: )

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Delegate

\_\_\_\_\_  
Name of Witness

**SIGNED** for and on behalf of [ )  
 )  
by its duly authorised signatory / duly ] )  
authorised officer in the presence of : )  
 )

\_\_\_\_\_  
Signature of Authorised Signatory / Officer

\_\_\_\_\_  
Signature of Witness / Officer

\_\_\_\_\_  
Name of Authorised Signatory / Officer

\_\_\_\_\_  
Name of Witness / Officer

\_\_\_\_\_  
Title of Authorised Signatory / Officer

\_\_\_\_\_  
Title of Witness / Officer

**SIGNED** for and on behalf of [ )  
 )  
by its duly authorised signatory / duly ] )  
authorised officer in the presence of : )  
 )

\_\_\_\_\_  
Signature of Authorised Signatory / Officer

\_\_\_\_\_  
Signature of Witness / Officer

\_\_\_\_\_  
Name of Authorised Signatory / Officer

\_\_\_\_\_  
Name of Witness / Officer

\_\_\_\_\_  
Title of Authorised Signatory / Officer

\_\_\_\_\_  
Title of Witness / Officer

# **ANNEXURE**

**Project Specification – to be attached**