

THE GRAINS RESEARCH AND DEVELOPMENT CORPORATION

RESEARCH AGREEMENT

2010-2011

This agreement is for use with Projects where there are only two parties, or additional research participants will sign a sub-contract with the Research Organisation

Notes to users:

1. *This 2010-2011 Research Agreement is the same as the standard 2009-2010 two-party Research Agreement. Only dates have changed.*
2. *GRDC has tailored the previous “one size fits all” Research Agreement into two agreements:*
 - a. *this 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. *a multi-party Research Agreement, to be used where there are two or more Research Organisations and all parties need to sign the agreement. This will most often occur where the Project Outputs are likely to need to be commercialised in order to maximise adoption.*
3. *The two agreements are largely the same, with the only differences being those resulting from the need to include extra parties in the multi-party agreement.*

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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 _____) (**Research Organisation**).

RECITALS

- A. The GRDC has agreed to provide funds to the Research Organisation and the Research Organisation has agreed to make Contributions, in order for the Research Organisation to carry out the Project.
- B. The Research Organisation has agreed to carry out the Project on the terms and conditions 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 the 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 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 one of the Parties to be confidential; or
- (b) which might otherwise reasonably be regarded by either of the Parties 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 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 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 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, 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;

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 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, 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 Parties, 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 the 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 Organisation, 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 Research Organisation by the GRDC under this agreement for the conduct of the Project;

Research Organisation Personnel means officers, employees, students and agents of, and consultants to, the 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) the words "includes" or "including" are not words of limitation;
- (e) approval means approval in writing; and
- (f) 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;
 - (iv) the Project Specification;
 - (v) the Annexures (other than the Project Specification).
- (b) If there is any inconsistency amongst the provisions in any of the documents listed in (i) to (v) 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 Research Organisation the Research Funds specified in the Schedule solely to enable the Research Organisation 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 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**); and
- (c) the GRDC will not be obliged to pay the 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.

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 Research Organisation each part of the Research Funds under this agreement unless:

- (a) the Research Organisation 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 not withhold payment without giving reasonable consideration to any reasons put forward by the Research Organisation for any failure to comply with its obligations; and
 - (iv) will identify any payment being withheld under this clause and provide reasons.
- (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 Organisation with at least 3 months' written notice of reduction in funds or termination in accordance with **clause 5.3** 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 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 the Research Organisation that **clause 2.4(a)** applies; and

- (ii) the Research Organisation may stop performing the Project until the GRDC notifies it that the GRDC will resume payments.

3 USE OF FUNDS

3.1 General obligation

The 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 the Research Organisation has not expended all Research Funds in the Financial Year for which they were received, the 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 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

Within 3 months after the end of the Project Term, the Research Organisation must return to the GRDC any Research Funds not expended on Project Costs.

3.4 Transfers of Expenditure

The 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) The 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) The 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 Carrying out of Project

The Research Organisation must:

- (a) carry out the Project 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 Project;

- (d) except as otherwise expressly provided in this agreement, obtain at its own expense all third party assistance specified in the Project Specification or required to carry out the Project;
- (e) take all reasonable steps to ensure that all 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 Project is conducted by the Research Organisation Personnel and that all 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.

4.2 Sub-contracting

- (a) Except to the extent specified in the Project Specification, the Research Organisation must not sub-contract the conduct of the Project without the prior written approval of the GRDC;
- (b) The Research Organisation remains responsible for any act or omission of any sub-contractor engaged by the Research Organisation even if the GRDC has approved the use of that sub-contractor; and
- (c) Subject to **clause 8.3**, the 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.

4.3 Variation of Project

- (a) The Research Organisation must not vary the Project Aims without the prior written approval of the GRDC.
- (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.

4.4 Additional funding

The Research Organisation must:

- (a) promptly notify the GRDC:
 - (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.

4.5 Delay

The Research Organisation must immediately notify the GRDC 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.

4.6 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 the other 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 the other Party:
 - (i) the disclosing Party must promptly notify the 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.

4.7 Criticism of the GRDC and Australian Government is not limited by this agreement

This agreement does not limit the Research Organisation's 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 Organisation.

5.2 Termination for default

- (a) Either party (**Terminating Party**) may terminate this agreement with immediate effect by written notice to the other party (**Defaulting Party**) if the Defaulting Party:
 - (i) breaches any provision of this agreement and the breach continues unremedied for 28 days after the Terminating Party has served the Defaulting Party 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 Defaulting Party is not a body corporate) or is unable to pay its debts as they fall due.
- (b) The GRDC may terminate this agreement with immediate effect by written notice to the Research Organisation if, in the reasonable opinion of the GRDC, the Research Organisation is not conducting the Project in a competent and diligent manner.
- (c) 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.

5.3 Termination by notice

The GRDC may terminate this agreement by 3 months’ written notice to the 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.

5.4 Consequences of termination

If this agreement is terminated under **clause 5.2** or **5.3**:

- (a) the GRDC, Research Organisation and any third party that owns Project Outputs under **clause 8.3**, retain their respective ownership proportions of Project Outputs, recalculated according to each Party’s contribution to the Project at the date of termination;
- (b) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
- (c) from the date of termination the GRDC will cease to be liable to pay or provide to the Research Organisation any further Project Funds;
- (d) from the date of termination the Research Organisation will cease to be liable to make further Contributions to the Project;

- (e) the Research Organisation must repay to the GRDC, within 28 days of termination, all Project Funds paid to the Research Organisation which have not been:
 - (i) used or applied for a purpose permitted under this agreement; or
 - (ii) committed for expenditure as permitted under this agreement;
- (f) where the GRDC has terminated the Project under **clause 5.3**, it may reimburse the Research Organisation for any reasonable additional costs necessarily incurred by the Research Organisation as a result of the early termination of the Project;
- (g) any licences of Background IP, Third Party IP and copyright in Reports remain in force;
- (h) each Party grants to the other Party 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;
- (i) where a Party:
 - (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 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 Research Organisation must immediately pay all Research Funds it receives from the GRDC into an account maintained by the Research Organisation with an Australian bank or a non-Australian bank approved by the GRDC.
- (b) The 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.

6.2 Books of account

The Research Organisation must maintain proper books of account in relation to 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

The 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, the Research Organisation must complete a Form B Statement relating to 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) Form B Statement must:
 - (i) be provided to the GRDC 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

The 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 the Research Organisation in relation to this Project to be audited. The 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 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 the 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 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 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 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 assume that no further funding is required by the Research Organisation in that Financial Year and may allocate those funds for investment in other research projects. If it does so, the GRDC may (but is not obliged to) provide the Research Organisation with written notice of the reallocation of funds.

7.2 Additional Information

The 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.

7.3 Final Report

- (a) Within 3 months after the end of the Project Term, the 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 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 Research Organisation to produce a non-confidential version of the Final Report in a form suitable for general distribution, and the 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 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 Research Organisation of the extent to which it believes the Report is deficient.
- (c) If the Research Organisation receives a notice under **clause 7.4(b)**, within 28 days of receipt the 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 Organisation will own the copyright in all Reports, but not necessarily the Project Outputs described in the Report.
- (b) The Research Organisation grants to the GRDC, subject to the provisions of **clause 8**, a perpetual, irrevocable, fully paid, royalty-free, worldwide non-exclusive licence to use the Reports and the information disclosed in them and any other copyright material provided with the Reports 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.

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 Party 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 Party;
- (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) The Research Organisation must notify the GRDC promptly of the discovery or production of any significant Project Outputs.
- (b) If required by the GRDC, the Research Organisation must:
 - (i) within 28 days after receiving notification, produce and provide to 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 GRDC.

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. The Parties acknowledge that other entities may own a share of Project Outputs in recognition of their contribution to the Project, but only if the entities are listed in the Schedule as owning a share of Project Outputs.
- (b) The Research Organisation warrants that, except as set out in the Schedule, to the best of its knowledge, having made reasonable enquiries, no other person owns or will own a share of the Project Outputs.
- (c) Where another entity contributes to the Project as specified in the Project Specification and owns a share of Project Outputs as specified in the Schedule:
 - (i) that other entity will be deemed to be included in the definition of “Parties” and “Research Organisation” for the purpose of **clause 8**;
 - (ii) the Research Organisation must use its best endeavours to ensure that the other entity has rights, and is subject to obligations, consistent with **clause 8**; and
 - (iii) that other entity will otherwise derive its rights and obligations in respect of the Project as though it were a sub-contractor to the Research Organisation. The Research Organisation will be responsible for entering into an appropriate agreement with the other entity to ensure the Research Organisation is able to comply with its rights and obligations under this agreement.
- (d) 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**.
- (e) 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 Party 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 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 the 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 agreed to commence 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 (**Continuing Party**) may at its cost arrange registration or maintenance;
 - (iv) the Continuing Party may require that the other Party (**Withdrawing Party**) promptly assign its share of that Project IP in the relevant country to the Continuing Party and take all steps reasonably required to transfer its share in that Project IP to the Continuing Party;
 - (v) despite anything to the contrary in this agreement, the Withdrawing Party:
 - (A) waives 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 Party must grant back to the Withdrawing Party 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) Subject to **clause 8.4(e)**, the Parties will share the costs of any registration of Project Outcomes, 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 Party 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 Party 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 (**Active Party**) may proceed to take that action in its own name and at its own expense;
 - (ii) the other Party (**Passive Party**) must execute any documents and do any things necessary to enable the Active Party to prosecute the action;
 - (iii) the Active Party must indemnify the Passive Party in respect of any expenses incurred by the Passive Party for providing the assistance referred to in **clause 8.7(c)(ii)**; and
 - (iv) the Active Party 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, neither Party may use, disseminate, assign, license or otherwise exploit or deal with any Project Outputs without the prior written consent of the other Party.
- (b) Subject to **clause 8.8(c)**, where either Party (**Breaching Party**) undertakes any of the activities referred to in **clause 8.8(a)** without the prior written consent of

the other Party (**Innocent Party**), without prejudice to any other rights of the Innocent Party, that will constitute a continuing breach of this agreement and the Breaching Party must:

- (i) indemnify, and keep indemnified, the Innocent Party in respect of any Liability that the Innocent Party or any of its 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 Party the share of Net Commercialisation Income derived from undertaking the activities to which it is 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

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

- (a) it obtains any necessary licences of the other Party's 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 Party 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.

8.11 Publication and acknowledgement

- (a) The Research Organisation may publish any information relating to the Project or otherwise publicly disclose any Project Outputs without the prior written consent of the GRDC, except where the publication may:
 - (i) disclose any Project 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 Research Organisation must:
 - (A) provide to the GRDC a copy of the proposed publication and explanation of the likely effect of the Disclosure or Prejudice; and
 - (B) request in writing that the GRDC approve publication of the paper;
 - (ii) the GRDC must advise the Research Organisation whether:
 - (A) it agrees to publication;
 - (B) it will agree to publication with alterations to minimise the Disclosure or Prejudice; or
 - (C) if altering the publication is impractical, the Research Organisation must delay publication for a stipulated period not exceeding 12 months from the date of the request;
 - (iii) the GRDC will be deemed to have agreed to publication under **clause 8.11(b)(ii)(A)** unless it notifies the Research Organisation otherwise within 28 days of receiving information under **clause 8.11(b)(i)**.
- (c) Each Party must prominently acknowledge the contribution of the other Party to the Project at all reasonable and appropriate opportunities, including in any document published, or presentation made, by the Party in relation to the Project.
- (d) The Research Organisation must promptly provide a copy of all publications to GRDC.

8.12 Students

- (a) The Parties acknowledge and agree that students of the 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, the Research Organisation must enter into an agreement with the 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 Research Organisation may give the Student's thesis to external supervisors and examiners for assessment.
- (f) The GRDC may request that the 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 the other Party all information and material reasonably required by the other Party to fully enjoy all rights of access to, and use and exploitation of, Project Outputs, Background IP and Third Party IP that the other Party is granted under this **clause 8**.

8.14 Exceptions to clause 8 requirements

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.

9 CAPITAL ITEMS

9.1 Maintenance and repairs

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

9.2 Ownership

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

9.3 No securities to be given

The Research Organisation must not, 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

The 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) the 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,

the 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 the Research Organisation's proportionate contribution to the purchase price of the Capital Item and the Research Organisation's reasonable costs of disposal of the Capital Item.

10 INSURANCE

10.1 Government Self Insurer

The 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**, the 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 Research Organisation and the GRDC, in the amount of at least \$5 million per claim.

10.3 Documentation

The 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

The Research Organisation must not 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, the 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 the Research Organisation is unable to provide acceptable replacement Personnel, the GRDC may terminate this agreement with immediate effect, in accordance with **clause 5.2** (termination for default).

12 WARRANTIES AND UNDERTAKINGS

12.1 Capacity and legality

The 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, the 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

The 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 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**, the 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

The 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 the Research Organisation's ability to meet its obligations under this agreement.

13.2 Notice of conflict of interest

The 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) the 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, the Research Organisation 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, the 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

The 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

Neither 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, the other Party.

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 other Party.

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 the other Party notice of a dispute arising out of, or relating to, this agreement (**Notice**), a dispute will be deemed to have arisen (**Dispute**), and the Parties 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 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 Research Organisation 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 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 the 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 8 and 19.2** of this agreement, neither Party may assign its rights under this agreement without the prior written consent of the other Party.

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, 4.6, 5.4, 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. Both executed counterparts constitute one document.

SCHEDULE

Project Number:

GRDC Panel:

Program:

Project Title:

Name of Research Organisation:

Research Funds (payable by the GRDC):

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

Project Outputs: Ownership of all Project Outputs is:

GRDC	%
Research Organisation	%
[Other entity – complete or delete]	%
TOTAL	100%

*Note: 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.*

Commencement Date:

Completion Date:

Special Conditions: N/A

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

ANNEXURE

Project Specification – to be attached