

# **RESEARCH AGREEMENT**

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## BACKGROUND

- A. RIRDC has agreed to appoint the Research Organisation to carry out the Project and the Research Organisation has agreed to accept the appointment on the terms set out in this agreement.
- B. The parties acknowledge that:
- (a) the primary aim of the Project is to benefit Australian rural industries, including the development and dissemination of valuable Project Intellectual Property and Project Material; and
  - (b) maximisation of commercial returns is a secondary aim which will not be pursued to the detriment of the primary aim.

## AGREEMENTS

### 1. Definitions and interpretation

#### 1.1 Definitions

##### 1.1.1 Where commencing with a capital letter:

**Administrative Contact** means insert Admin Contact name here and such other person approved in writing by RIRDC;

**Assets** means RIRDC Assets and Research Organisation Assets;

**Background Intellectual Property** means all Intellectual Property owned, licensed or held by a party and made available by the party to the Project, including any specified in schedule 5;

**Budget** means the budget set out in schedule 2;

**Business Day** means Monday to Friday other than a public holiday in Canberra;

**Commercialise** means, in relation to Intellectual Property, to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, using the Intellectual Property, or to license any person to do any of those things;

**Confidential Information** means all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form;

**Dispose** means, in relation to any property, sell, transfer, assign, create any interest over, part with the benefit of or otherwise dispose of the property;

**Expert** means a suitably qualified expert valuer appointed by the Chairperson of the Australian Valuers Institute or his nominee, who has no direct or indirect personal interest in the outcome of the determination he is required to make under clause 6;

**Financial Year** means a period of 12 months commencing on 1 July and ending on 30 June;

**Funds** means RIRDC Funds and Research Organisation Funds;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**Intellectual Property** means all patents, trade marks, designs and plant breeder's rights (whether registered or not), copyright, know-how, trade secrets and eligible layout rights;

**Interest** means, in relation to each party, the proportion set out in schedule 4;

**Milestone** means a milestone specified in schedule 3;

**Principal Investigator** means insert PI name here and such other person approved in writing by RIRDC;

**Project** means the project described in schedule 1;

**Project Intellectual Property** means Intellectual Property subsisting in the Project Material or arising out of the Research Organisation's performance of its obligations under this agreement, other than the copyright in Reports;

**Project Material** means all material, other than Reports, brought into existence for the purpose of the Research Organisation performing its obligations under this agreement;

**Proposal** means the full research proposal provided by the Research Organisation to RIRDC dated insert date here;

**Reports** means reports to be provided by the Research Organisation to RIRDC under clause 3.6.1(b) and drafts of those reports and includes all text, photographs, illustrations and other content of those reports;

**Research Organisation Assets** means all assets specified in the Budget to be provided by the Research Organisation or purchased by the Research Organisation with Research Organisation Funds;

**Research Organisation Funds** means all funds specified in the Budget to be provided by the Research Organisation;

**Research Organisation Material** means all material and information to be provided by the Research Organisation for the purpose of this agreement specified in schedule 5;

**RIRDC Assets** means all assets specified in the Budget to be provided by RIRDC or purchased by the Research Organisation with RIRDC Funds;

**RIRDC Funds** means all funds specified in the Budget to be provided by RIRDC; and

**RIRDC Material** means all material and information to be provided by RIRDC to the Research Organisation for the purpose of this agreement specified in schedule 5.

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

## 1.2 Presumptions of interpretation

1.2.1 Unless the context otherwise requires:

- (a) a word which denotes:
  - (i) the singular denotes the plural and vice versa;
  - (ii) one gender denotes all genders; and

(iii) a person includes an individual, a body corporate, an association, a joint venture, a partnership, a government and any other legally recognised entities; and

(b) a reference to:

(i) a party includes the executors, administrators, successors and permitted assigns of the party;

(ii) any legislation includes any regulation or instrument made under it and any amended, re-enacted or replacement legislation;

(iii) any agreement or other document includes that agreement or document as amended or replaced; and

(iv) any thing (including any amount) is a reference to the whole and each part, and a reference to a group of persons is a reference to each of them collectively and individually.

1.2.2 In this agreement:

(a) clause headings are for convenience only and do not affect interpretation; and

(b) “includes” is not a word of limitation.

1.2.3 If an act must be done on a specified day which is not a Business Day, the specified day is taken to be the next Business Day.

### 1.3 **Several**

An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits those persons severally and not jointly or jointly and severally.

## 2. **Appointment**

### 2.1 **The Project**

RIRDC appoints the Research Organisation to carry out the Project in accordance with the Proposal, the Milestones and the Budget and the other terms set out in this agreement, and the Research Organisation accepts the appointment.

### 2.2 **The Proposal**

To the extent of any inconsistency between the terms of the Proposal and the terms of this agreement, the terms of this agreement prevail.

## 3. **Obligations of the Research Organisation**

### 3.1 **Conduct of the Project**

The Research Organisation must:

(a) only apply the Funds and use the RIRDC Assets for the purposes of the Project and in accordance with the Proposal, the Budget and the Milestones;

(b) use the Research Organisation Assets for the purposes of the Project and in accordance with the Proposal, the Budget and the Milestones;

- (c) not vary the Project, the Proposal, the Budget or the Milestones without RIRDC's prior written consent;
- (d) use its best endeavours to meet all Milestones and complete the Project in accordance with the Milestones; and
- (e) as reasonably required by RIRDC, attend meetings of committees established by RIRDC in connection with the Project.

### **3.2 Contributions**

The Research Organisation must, in accordance with the Budget, provide for the sole purpose of the Project:

- (a) the Research Organisation Funds;
- (b) the Research Organisation Material; and
- (c) the Research Organisation Assets to be provided by it.

### **3.3 Directions**

The Research Organisation must comply with all reasonable and lawful directions of RIRDC from time to time concerning the Project.

### **3.4 Comply with all laws**

The Research Organisation must comply with:

- (a) all relevant laws; and
  - (b) all applicable codes of conduct, industry standards or guidelines,
- when performing its obligations or exercising its rights under this agreement.

### **3.5 Financial records**

The Research Organisation must:

- (a) in accordance with all applicable Australian Accounting Standards, keep accurate books of account and other records;
- (b) provide RIRDC with a final financial report by the earlier of:
  - (i) 3 months after completion of the Project or earlier termination of this agreement; and
  - (ii) the end of the Financial Year in which completion or termination occurs; and
- (c) provide RIRDC with financial reports at other times reasonably requested by RIRDC,

that record the receipt of RIRDC Funds and the expenditure of Funds in sufficient detail so that the amounts payable to or by the Research Organisation under this agreement can be properly ascertained.

### **3.6 Reporting**

#### **3.6.1** The Research Organisation must:

- (a) keep RIRDC informed about the progress of the Project, including promptly notifying RIRDC of the development of any Project Intellectual Property or Project Material which might be Commercialised;
- (b) by the dates referred to in schedule 6, provide RIRDC with progress reports and a final report on the conduct and results of the Project;
- (c) ensure that all progress reports and the final report are in the form and contain the information specified in schedule 6 or otherwise notified by RIRDC to the Research Organisation;
- (d) without limiting paragraph (c), ensure that all progress reports and the final report are of a high standard acceptable to RIRDC on reasonable grounds; and
- (e) provide all other information in connection with the Project or this agreement that RIRDC may reasonably require.

#### **3.6.2** Without limiting clause 6.1.2, the Research Organisation:

- (a) acknowledges that RIRDC may as it considers appropriate alter any Report provided that any alteration is consistent with the author's moral or similar rights or any consent given under clause 6.11;
- (b) acknowledges that, notwithstanding any other provision of this agreement, RIRDC may as it considers appropriate copy, reproduce, publish, exploit or otherwise use or disclose any Report, including deciding not to publish, exploit or otherwise use or disclose it; and
- (c) must not copy, reproduce, publish, exploit or otherwise use or disclose any Report without the prior written consent of RIRDC.

#### **3.6.3** RIRDC acknowledges that, except to the extent of the Research Organisation's negligence, breach of this agreement or other default, it uses Reports at its own risk.

### **3.7 Audit or examination**

RIRDC may on 7 days' notice to the Research Organisation audit or examine the Research Organisation's books of account and other records to:

- (a) determine the correctness of any financial report or Report under this agreement or compliance by the Research Organisation of its obligations under this agreement; or
- (b) in the case of a failure by the Research Organisation to provide information in accordance with clause 3.5 or 3.6, to obtain information required to be provided under those clauses.

### **3.8 Retention**

The Research Organisation must retain the Research Organisation's books of account and other records required for the purposes of clause 3.7 for at least 5 years after completion of the Project.

### **3.9 Insurance**

- 3.9.1 The Research Organisation must at all times maintain:
- (a) adequate workers' compensation insurance as required by law for its employees;
  - (b) professional indemnity insurance in the amount of \$5 million for each claim; and
  - (c) public liability insurance in the amount of \$10 million for each claim.
- 3.9.2 The Research Organisation must, on request by RIRDC, produce evidence of the currency of the insurance policies referred to in clause 3.9.1.
- 3.9.3 Clause 3.9.1 does not apply where the Research Organisation is a department or statutory body of the Commonwealth of Australia or an Australian state or territory and self-insures.

### **3.10 Personnel**

- 3.10.1 The Research Organisation must cause the Principal Investigator to manage and supervise the day to day work on the Project.
- 3.10.2 The Research Organisation must cause the Administrative Contact to manage the Research Organisation's compliance with the day to day administrative requirements of this agreement.
- 3.10.3 The Research Organisation must not, without the prior written consent of RIRDC, engage agents, contractors or students to assist the Research Organisation in carrying out its obligations under this agreement. Where the Research Organisation engages agents, contractors or students, the Research Organisation is liable for all acts and omissions of the agent, contractor or student and remains liable for the Research Organisation's obligations under this agreement.

### **3.11 Warranties**

The Research Organisation warrants that:

- (a) all employees, agents, contractors and students employed or engaged by it have the necessary experience, skill and ability to properly carry out the Project on the terms set out in this agreement;
- (b) all work undertaken under this agreement will be undertaken diligently, competently, in a professional manner and in accordance with generally accepted professional, scientific and ethical principles and standards; and
- (c) it will obtain all necessary approvals, consents and authorisations for the purpose of carrying out the Project.

## **4. RIRDC contributions**

### **4.1 RIRDC's obligations**

RIRDC must, in accordance with the Budget, provide to the Research Organisation:

- (a) the RIRDC Funds;
- (b) the RIRDC Material; and
- (c) the RIRDC Assets to be provided by it,

for the sole purpose of the Project.

## **4.2 Suspension**

Without limiting RIRDC's rights under clause 11.2.1, RIRDC may suspend payment of any of the RIRDC Funds or provision of any RIRDC Material or RIRDC Assets if the Research Organisation:

- (a) does not achieve a Milestone which was to be completed by the due date for the payment or provision of RIRDC Material or RIRDC Assets to a standard acceptable to RIRDC on reasonable grounds;
- (b) does not provide Reports of a standard acceptable to RIRDC on reasonable grounds;
- (c) does not ensure that the Principal Investigator and other personnel specified in schedule 1 (or replacement persons approved by RIRDC) carry out the Project; or
- (d) is in breach of any other of its material obligations under this agreement,

until the matter is rectified to the reasonable satisfaction of RIRDC.

## **4.3 Assets**

4.3.1 The Research Organisation must, with the Funds, and in accordance with the Budget, purchase the Assets specified in the Budget to be purchased by it.

4.3.2 The Research Organisation may, with the prior written approval of RIRDC, use Funds to purchase Assets required for carrying out the Project in addition to those specified in the Budget.

4.3.3 The Research Organisation is responsible for the safekeeping and maintenance of and all other costs and liabilities associated with the Assets.

4.3.4 The Research Organisation must not encumber or Dispose of any Asset.

4.3.5 On the termination of this agreement the Research Organisation must, subject to clause 4.3.6:

- (a) return to RIRDC all RIRDC Assets provided by RIRDC; and
- (b) at no cost to RIRDC assign to RIRDC free from all encumbrances ownership of that proportion of other RIRDC Assets purchased with RIRDC Funds.

4.3.6 RIRDC may, on termination of this agreement, by notice to the Research Organisation waive its rights under clause 4.3.5 on such conditions as RIRDC may notify to the Research Organisation.

## **4.4 GST**

4.4.1 Unless otherwise indicated, amounts stated in this agreement do not include GST.

4.4.2 In relation to any GST payable for a taxable supply by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice.

4.4.3 Terms used in this clause 4.4 which are defined in the GST Act have the same meaning as in the GST Act.

## **5. Background Intellectual Property**

### **5.1 Provision**

5.1.1 During the term of this agreement each party must make available for the Project the Background Intellectual Property to be provided by it.

5.1.2 When a party makes Background Intellectual Property available (other than that specified in schedule 5) it must give a notice to the other party identifying the Background Intellectual Property and the ownership of it, the right of the party to make it available and details of any encumbrances.

### **5.2 Warranties**

Each party warrants that:

- (a) it is the owner of, or is otherwise entitled to provide, the Background Intellectual Property which it makes available for the Project;
- (b) the use of the Background Intellectual Property in accordance with this agreement will not infringe any other person's Intellectual Property rights (excluding patent rights);
- (c) to the best of its knowledge and belief after due inquiry, the use of the Background Intellectual Property in accordance with this agreement will not infringe any other person's patent rights;
- (d) except to the extent disclosed to the other party at the time of making it available, the Background Intellectual Property is unencumbered; and
- (e) it will not Dispose of or Commercialise the Background Intellectual Property so as to prejudice its use in accordance with this agreement.

### **5.3 Interest**

Subject to the terms of this agreement, no party by virtue of this agreement obtains any interest in or right to use the other party's Background Intellectual Property for any purpose other than in accordance with this agreement.

### **5.4 Register**

RIRDC must maintain a register recording the provision of Background Intellectual Property (other than that specified in schedule 5) and, on request from a party, provide a copy of the register to the party.

### **5.5 Licence**

Subject to the terms of this agreement, each party has a non-exclusive royalty-free licence (including a right of sublicense to its agents, contractors and students engaged to work on the Project) to use the other party's Background Intellectual Property for the purposes of the Project.

### **5.6 Infringement**

Each party must give the party which provided the Background Intellectual Property prompt notice of any infringement of that Background Intellectual Property which comes to its attention.

## **6. Project Intellectual Property and Project Material**

## **6.1 Ownership**

- 6.1.1 Project Intellectual Property and Project Material is owned by the parties in accordance with their respective Interests as tenants in common.
- 6.1.2 RIRDC owns the copyright in all Reports as and when they are created.

## **6.2 Provision of information**

The Research Organisation must:

- (a) identify Project Intellectual Property and Project Material generated or developed by it in connection with the Project; and
- (b) provide RIRDC with monthly reports regarding the Project Intellectual Property and Project Material in sufficient detail to enable RIRDC to determine the nature of the Project Intellectual Property and Project Material and its potential use.

## **6.3 Notice**

The Research Organisation must promptly notify RIRDC if it considers that:

- (a) the Project Intellectual Property, Project Material or Reports anticipated by the parties from the Project at the time of entering into this agreement will or may be no longer of benefit to an Australian primary industry which was intended to benefit from the Project; or
- (b) the Project will or may not produce the Project Intellectual Property, Project Material or Reports anticipated by the parties from the Project at the time of entering into this agreement.

## **6.4 Licence**

- 6.4.1 Subject to this agreement, each party has a non-exclusive royalty-free right to use Project Intellectual Property and Project Material for the purposes of the Project.
- 6.4.2 Subject to this agreement, each party has a non-exclusive royalty-free right to use Project Intellectual Property and Project Material for the purposes of research and development provided that, where Commercialisation of Intellectual Property arising out of that research and development requires access to the Project Intellectual Property or Project Material, it may only use the Project Intellectual Property or Project Material for the purposes of that Commercialisation under licence on terms agreed between the parties or, failing agreement, on reasonable arm's length terms determined by an Expert.
- 6.4.3 Project Intellectual Property and Project Material may not be used by a party for purposes other than those set out in clauses 6.4.1 and 6.4.2 except with the agreement of the other party.
- 6.4.4 Subject to this agreement, the Research Organisation has a non-exclusive royalty-free right to use Reports for the purposes of research and development provided that, where Commercialisation of Intellectual Property arising out of that research and development requires access to the Project Intellectual Property or Project Material, it may only use the Reports for the purposes of that Commercialisation under licence on terms agreed with RIRDC.
- 6.4.5 Reports may not be used by the Research Organisation for purposes other than those set out in clause 6.4.4 except with the agreement of RIRDC.

## **6.5 Commercially valuable Project Intellectual Property or Project Material**

6.5.1 If a party considers on reasonable grounds that the parties may Commercialise any Project Intellectual Property or Project Material, it may notify the other party accordingly, identifying the Project Intellectual Property or Project Material and detailing how it might be Commercialised.

6.5.2 On receipt of a notice under clause 6.5.1, any subsequent use by a party of the Project Intellectual Property or Project Material must not without the prior written agreement of the other party prejudice:

- (a) the ability of the parties to obtain protection for the Project Intellectual Property or Project Material; or
- (b) Commercialisation by the parties of the Project Intellectual Property or Project Material.

6.5.3 The parties must after receipt of a notice under clause 6.5.1 in good faith seek to agree:

- (a) appropriate protection for the Project Intellectual Property or Project Material; and
- (b) a plan for Commercialisation of the Project Intellectual Property or Project Material.

6.5.4 The parties must protect and Commercialise the Project Intellectual Property and Project Material as agreed under clause 6.5.3.

6.5.5 The parties acknowledge that:

- (a) the costs of any protection; and
- (b) the net proceeds of Commercialisation,

agreed under clause 6.5.3 will be shared by them in proportion to their respective Interests or as otherwise agreed in writing between them.

6.5.6 If the parties are unable within 1 month after receipt of a notice under clause 6.5.1 to agree appropriate protection for Project Intellectual Property or Project Material under clause 6.5.3(a), a party may at its cost arrange appropriate protection and is entitled to recover its costs of doing so from the proceeds of Commercialisation agreed under clause 6.5.3(b) before the net proceeds of Commercialisation are shared by the parties.

6.5.7 Where Commercialisation of Project Intellectual Property or Project Material requires access to a party's Background Intellectual Property, the party must, subject to this clause 6.5, license the Background Intellectual Property for the purposes of that Commercialisation on terms agreed between the parties or, failing agreement within 2 months after receipt of a notice under clause 6.5.1, on reasonable arm's length terms determined by an Expert.

## **6.6 Expert determination**

In making a determination under clause 6.4 or 6.5:

- (a) the Expert acts as an expert and not as an arbitrator;
- (b) his decision is, in the absence of manifest error, final and binding on the parties; and

- (c) the costs of the Expert are to be borne by one or more of the parties as determined by the Expert.

## **6.7 Disposal of Interest**

No party may Dispose of its interest in Project Intellectual Property or Project Material without the prior written consent of the other party, such consent not to be unreasonably withheld.

## **6.8 Full ownership**

RIRDC is not obliged to comply with clauses 6.4.3, 6.5 and 6.7 if its Interest is 100%.

## **6.9 Warranties**

The Research Organisation warrants that:

- (a) the carrying out of the Project will not infringe any other person's Intellectual Property rights (excluding patent rights);
- (b) to the best of its knowledge and belief after due inquiry, the carrying out of the Project will not infringe any other person's patent rights;
- (c) subject to encumbrances disclosed under clause 5.1.2, each party will be entitled to use the Project Intellectual Property and the Project Material without the consent of any other person; and
- (d) subject only to provision of consents under clause 6.11, RIRDC will be entitled to use the Reports without the consent of any other person.

## **6.10 Publications**

### **6.10.1 The Research Organisation must:**

- (a) not publish or disseminate Reports without the prior written consent of RIRDC;
- (b) not publish or disseminate other information relating to the Project or its results without the prior written consent of RIRDC, such consent not to be unreasonably withheld;
- (c) ensure that any publication or dissemination of that information acknowledges the contribution to and support of the Project by RIRDC in a manner acceptable to RIRDC; and
- (d) ensure that any publication or dissemination of that information contains a disclaimer of liability acceptable to RIRDC.

### **6.10.2 A party must not use a logo or trade mark of the other party without the other party's consent, and may only any use the logo or trade mark in accordance with any directions of the other party.**

## **6.11 Moral rights**

The Research Organisation must take all reasonable steps to procure from the Principal Investigator and any other author involved in the creation of, or anything that forms part of:

- (a) the Research Organisation Material;

- (b) Research Organisation Background Intellectual Property;
- (c) the Project Material; or
- (d) the Reports,

a consent in relation to them to the following acts and omissions:

- (e) the failure to attribute the Principal Investigator or the author;
- (f) the alteration of them in any manner reasonably authorised by RIRDC; and
- (g) the use of them other than as contemplated by this agreement.

## **7. Confidentiality**

### **7.1 Obligations**

7.1.1 Each party must during and after the term of this agreement:

- (a) keep the Confidential Information of the other party confidential; and
- (b) use the Confidential Information of the other party only as contemplated by this agreement.

7.1.2 Each party must, subject to its legislative requirements, on request from the other party return all Confidential Information of the other party to the other party and permanently delete from all computer systems under the party's control all Confidential Information of the other party which is in electronic form, subject to retention of 1 copy for archival purposes.

### **7.2 Exceptions**

The obligations of a party under clause 7.1 do not apply to any Confidential Information which a party can demonstrate:

- (a) was in the party's possession at the time of disclosure to the party and was not acquired in breach of or under an obligation of confidence;
- (b) is in the public domain other than as a result of breach of this agreement;
- (c) was acquired from a third party, provided that it was not acquired by the third party unlawfully or in breach of or under an obligation of confidence; or
- (d) is required to be disclosed by law.

### **7.3 Personnel**

7.3.1 Each party must use its best endeavours to ensure that:

- (a) each employee, agent, contractor and student employed or engaged by it who has access to the Confidential Information of another party is bound by obligations of confidentiality in substantially the same terms as these obligations of confidentiality; and
- (b) any of the employees, agents, contractors and students who cease to be employed or engaged by the party continue to be bound by such obligations of confidentiality.

7.3.2 Each party may only disclose Confidential Information of the other party to those persons requiring access for the purpose of the Project.

## **8. Material**

### **8.1 Ownership**

8.1.1 The RIRDC Material remains the property of RIRDC.

8.1.2 The Research Organisation Material remains the property of the Research Organisation.

### **8.2 Safekeeping**

The Research Organisation is responsible for the safekeeping and maintenance of the RIRDC Material, the Project Material and the Reports and must ensure that they are used, copied, supplied or reproduced only for the purposes of this agreement.

### **8.3 Provision**

On termination of this agreement the Research Organisation must immediately on request from RIRDC:

- (a) return the RIRDC Material and all copies of it to RIRDC and permanently delete from all computer systems under the control of the Research Organisation all RIRDC Material which is in electronic form;
- (b) provide RIRDC with a copy of all Project Material, including all Project Material which is in electronic form; and
- (c) provide RIRDC with all copies of the Reports and permanently delete from all computer systems under the control of the Research Organisation all Reports which are in electronic form, subject to retention of 1 copy for archival purposes.

## **9. Conflict of interest**

The Research Organisation must not, during the term of this agreement, without the prior written consent of RIRDC undertake any activity that will adversely impact on the Research Organisation's ability to undertake the Project fairly and independently in accordance with the terms of this agreement.

## **10. Force Majeure**

### **10.1 Event**

10.1.1 If a party (**Affected Party**) becomes unable because of Force Majeure to perform an obligation placed on it under this agreement (other than an obligation to pay money), the Affected Party must give the other party prompt written notice of:

- (a) reasonable particulars of the Force Majeure; and
- (b) so far as is known, the probable extent to which the Affected Party will be unable to perform the obligation.

10.1.2 In this clause 10 **Force Majeure** means, in respect of a party, any reason or cause, other than lack of funds, which could not with reasonable diligence be controlled or prevented by the party, including war, insurrection, riot, civil commotion, strikes, lock-

outs, labour or industrial disputes, acts of God, acts of Governments, flood, storm, power shortages or failures or inability to obtain sufficient labour, raw materials, fuel or utilities.

## **10.2 Effect**

If clause 10.1 applies:

- (a) the obligation will be suspended during the Force Majeure;
- (b) the Affected Party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible, although it is not required to settle any labour or other dispute creating the Force Majeure on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation or decree by way of legal proceedings; and
- (c) a party may, by notice to the other party, terminate this agreement if the Force Majeure continues for 3 continuous months.

## **10.3 Unavailability of funds**

10.3.1 RIRDC may rely on either or both of an appropriation of revenue from the Commonwealth and industry levy funds in order to perform its obligations under this agreement.

10.3.2 RIRDC is not obliged to make any payment under this agreement unless:

- (a) the Minister for Agriculture, Fisheries and Forestry has approved RIRDC's Annual Operational Plan (**AOP**) and research and development plan (**R&D Plan**) under Part 2 of the *Primary Industries and Energy Research and Development Act 1989* in relation to the Financial Year in which the payment is to be made; and
- (b) the AOP and R&D Plan are consistent with RIRDC making the payment.

10.3.3 Subject to clause 10.3.2, RIRDC will use its best endeavours to ensure that it has sufficient funds from the Commonwealth and industry levies to perform its obligations under this agreement, but will not be in breach of or liable for any losses under this agreement if, due to insufficient funds from the Commonwealth or industry levies, it is unable to perform its obligations under this agreement.

## **11. Term and termination**

### **11.1 Term**

This agreement commences on the date of this agreement and, subject to earlier termination in accordance with this agreement, terminates on the date on which the Project is completed in accordance with this agreement.

### **11.2 Default**

11.2.1 If a party (**Defaulting Party**):

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) fails, within 1 month after receipt of notice from the other party, to remedy any breach of a material provision of this agreement;

- (c) breaches a material provision of this agreement which is not capable of remedy; or
- (d) persistently breaches a material provision of this agreement,

the other party may, by notice to the Defaulting Party, terminate this agreement.

**11.2.2** If this agreement is terminated under clause 11.2.1:

- (a) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
- (b) if the Defaulting Party is RIRDC, it must pay the Research Organisation all monies outstanding for work completed and expenses properly incurred up to the date of termination and any reasonable costs of the Research Organisation directly attributable to the early termination of the Project;
- (c) termination is without prejudice to any other rights of the other party against the Defaulting Party;
- (d) any licences of the Defaulting Party's Background Intellectual Property remain in force; and
- (e) the Defaulting Party retains the interest which it has as at the date of termination in Project Intellectual Property and Project Material and, in the case of RIRDC, copyright in Reports.

**11.3 Notice**

**11.3.1** If RIRDC considers on reasonable grounds that:

- (a) the Project is no longer relevant to RIRDC's objects or functions;
- (b) the Project Intellectual Property, Project Material or Reports anticipated by RIRDC from the Project at the time of entering into this agreement will or may be no longer of benefit to an Australian primary industry which was intended to benefit from the Project;
- (c) the Project will or may not produce Project Intellectual Property, Project Material or Reports anticipated by RIRDC from the Project at the time of entering into this agreement; or
- (d) due to insufficient funds from the Commonwealth or industry levies, RIRDC will be unable to perform its obligations under this agreement,

RIRDC may, by 3 months' notice to the Research Organisation, terminate this agreement.

**11.3.2** If this agreement is terminated under clause 11.3.1:

- (a) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
- (b) on termination the Research Organisation must cease entering into commitments to expend RIRDC Funds;
- (c) the Research Organisation must take all reasonable steps to minimise payments to be made by the Research Organisation for commitments entered into up to the date of termination;

- (d) RIRDC's obligation to contribute RIRDC Funds ceases, other than, subject to paragraph (c), for monies properly expended or committed by the Research Organisation up to the date of termination which have not by that date been paid to the Research Organisation under this agreement;
- (e) any licences of a party's Background Intellectual Property remain in force;
- (f) each party retains the interest which it has as at the date of termination in Project Intellectual Property and Project Material; and
- (g) RIRDC retains its copyright in Reports.

#### **11.4 Uncommitted RIRDC Funds**

On termination of this agreement, unless otherwise agreed in writing by RIRDC:

- (a) if any RIRDC Funds paid to the Research Organisation remain uncommitted by the Research Organisation, the Research Organisation must repay those RIRDC Funds to RIRDC; and
- (b) the Research Organisation must deliver to RIRDC the RIRDC Material.

### **12. Dispute resolution**

#### **12.1 Dealing with disputes**

- 12.1.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.
- 12.1.2 If a party requires resolution of a dispute it must do so in accordance with this clause 12.
- 12.1.3 The parties acknowledge that compliance with this clause 12 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
  - (a) in the case of applications for urgent interlocutory relief; or
  - (b) a breach by the other party of this clause 12.

#### **12.2 Resolution by management**

- 12.2.1 If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party.
- 12.2.2 If the dispute is not resolved within 30 days of submission of the dispute to them, or such other time as they agree, the provisions of clause 12.3 will apply.

#### **12.3 Conciliation**

- 12.3.1 Disputes must be submitted to conciliation in accordance with and subject to The Institute of Arbitrators and Mediators Australia *Conciliation Rules*.
- 12.3.2 A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 30 days of submission to conciliation, or such other time as the parties agree.

### **13. Relationship**

Nothing in this agreement constitutes any party as an agent, partner, joint venturer or employee of any other party or creates any agency, partnership, joint venture or employment relationship. A party or any person acting on its behalf may not hold itself out as being entitled to contract or accept payment in the name of or on account of any other party.

### **14. Australian Government**

For the avoidance of doubt, no right or obligation arising from this agreement is to be read or understood as limiting the Research Organisation's rights to enter into public debate or criticism of the Australian Government, its agencies, employees, servants or agents.

### **15. Miscellaneous**

#### **15.1 Notices**

15.1.1 A notice under this agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid post to the address of the addressee; or
- (c) sending it by fax to the fax number of the addressee,

and the notice will be deemed to have been received by the addressee on receipt.

15.1.2 A fax is deemed to have been received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the addressee.

#### **15.2 Amendment**

This agreement may only be varied by the written agreement of the parties.

#### **15.3 Assignment**

A party may only assign a right under this agreement with the prior written consent of the other party.

#### **15.4 Entire agreement**

15.4.1 This agreement embodies the entire understanding and agreement between the parties as to its subject matter.

15.4.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

#### **15.5 Further assurance**

Each party must promptly:

- (a) sign all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it; and

- (b) act reasonably in effecting, perfecting and completing this agreement and all transactions incidental to it.

**15.6 Legal costs**

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this agreement and all documents incidental to it.

**15.7 Governing law and jurisdiction**

15.7.1 This agreement is governed by and must be construed in accordance with the laws of the Australian Capital Territory.

15.7.2 Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

SIGNED AS AN AGREEMENT

Signed by **Rural Industries Research and Development Corporation:**

.....  
Signature of witness

.....  
Signature of authorised person

.....  
Name of witness (print)

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

.....  
Office held

Signed by **Insert Research Org here:**

.....  
Signature of witness

.....  
Signature of authorised person

.....  
Name of witness (print)

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

.....  
Office held