



Research Agreement

2019 - TWO PARTY

GRDC CONTRACT CODE: [INSERT HERE]

**Grains Research and Development Corporation
(GRDC)**

**[insert name of the Researcher]
(Research Organisation)**

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RESEARCH AGREEMENT

PARTIES

GRAINS RESEARCH AND DEVELOPMENT CORPORATION ABN 55 611 223 291
(GRDC)

AND

[INSERT FULL LEGAL NAME OF THE RESEARCH ORGANISATION] ACN/ABN [insert]
(Research Organisation)

RECITALS

- A. GRDC has agreed to provide the Research Funds to the Research Organisation and the Research Organisation has agreed to provide its 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.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this agreement:

Accountant means a person who is:

- (a) registered as an auditor under the *Corporations Act 2001* (Cth); or
- (b) a member of the Institute of Chartered Accountants in Australia or CPA Australia;

Approved MTA means a template material transfer agreement available from the GRDC website or otherwise approved by GRDC;

Approved Sub-contractor means a sub-contractor specified in Item 16 of Schedule 1.

Australian Grains Industry means production in Australia of wheat, coarse grains, grain legumes and oil seeds, leviable under the *Primary Industries (Excise) Levies Act 1999* (Cth) as amended from time to time.

Background IP means Intellectual Property, Material and Confidential Information that has been developed independently of this agreement and made available by a Party 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 Item 6 of Schedule 1;

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 manufacture, 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.

Commercialisation Party means:

- (a) the Party (if any) identified in Item 17 of Schedule 1; or
- (b) if no Party is identified on the Commencement Date, the Party appointed by subsequent written agreement between the Parties,

as the party to lead the Commercialisation of Project Outputs on behalf of the Parties under clause 9.4;

Completion Date means the date for the completion of the Project specified in Item 7 of Schedule 1;

Confidential Information means all information:

- (a) which is indicated in writing by a Party to be confidential;
- (b) which is specified in the Special Conditions; or
- (c) 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:

- (d) is in the public domain, or comes into the public domain, other than as a result of a breach of this agreement; or
- (e) is rightfully known by the receiving Party and is not subject to an obligation of confidentiality before the date of receipt; or
- (f) has been independently developed or acquired by the receiving Party.

Contribution means the:

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

of a Party or a third party to the Project, as set out in Items 9-11 of Schedule 1 (and includes any cash value equivalent for in-kind contributions agreed, but does not include Intellectual Property unless otherwise agreed in Schedule 1);

Data means information, including information in raw or unorganised form which may be used for analysis;

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

Discovery means a Project Output that is likely to be sufficiently novel as to be eligible for patent protection or eligible for registration under the *Plant Breeders Rights Act 1994* (Cth) (as advised by a patent attorney), or that is otherwise likely to offer commercial value if Commercialised;

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

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

Fraud means dishonestly obtaining a benefit from the GRDC or causing a loss to the GRDC by deception or other means.

Genetically Modified (GM) means an organism where the genome has been manipulated by gene technology.

Gene Technology means tools and techniques which enable direct manipulation of an organism's genome.

GRDC Attribution Model means the attribution and logo to be used for different levels of GRDC investment in accordance with the GRDC Brand Style Guide as in force from time to time and available from the GRDC Brand Centre <http://brand.grdc.com.au>.

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;

IP Register means the table set out in Schedule 2 to this agreement as updated from time to time in accordance with this agreement.

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;

Material means equipment, assets and other materials, including biological and genetic material (germplasm etc), as applicable.

Milestone Report means a report demonstrating how a Milestone has been met.

Milestones means the key delivery and decision points in the performance of the Project described in Item 21 of Schedule 1;

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 9.4, except where those amounts were already listed as a Party's Contribution in Schedule 1 (so already taken into account in determining Parties' respective entitlements to Net Commercialisation Income under clause 9.5(b));

Party means a party to this agreement;

person includes a body politic or corporate as well as an individual.

PIRD Act means the *Primary Industries Research and Development Act 1989* (Cth), as amended from time to time;

Project means the research and development project named and described in Schedule 1;

Project Confidential Information means any Confidential Information arising from the Project;

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

Project Outputs means Project IP, Project Confidential Information, and all results, Material or Data produced as part of the Project, but does not include copyright in Milestone Reports;

Research Funds means all monies payable to the Research Organisation by GRDC specified in Item 8 of Schedule 1;

Research Organisation Personnel means officers, employees, Students, subcontractors 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 Schedule 1 or approved in writing by GRDC;

Special Conditions means any terms and conditions specified in Item 22 of Schedule 1;

State Records Legislation means legislation of the Commonwealth, a State or a Territory which governs the management of records by a government department, agency or statutory entity.

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 17);

Third Party IP means Intellectual Property and Material 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) a reference to "days" means calendar days unless otherwise stated;
- (c) 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;
- (d) 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;
- (e) the words "includes" or "including" are not words of limitation;
- (f) approval means approval in writing; and
- (g) all monetary amounts are in Australian currency.

1.3 Headings

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

1.4 Application of agreement throughout Term

The terms of this agreement will apply to any research activities forming part of the Project conducted throughout the 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) these terms;
 - (iii) Schedule 1 (other than any Special Conditions); and
 - (iv) any other Schedules or Annexures to this agreement.
- (b) If there is any inconsistency amongst the provisions in any of the documents listed in (i) to (iv) above, the provision in the earlier listed document will prevail, over the provision in the later listed document to the extent of the inconsistency.

2. PAYMENTS BY GRDC

2.1 Agreement to provide funds

During the Term GRDC must provide to the Research Organisation the Research Funds by way of payments in accordance with this clause 2, to enable the Research Organisation to carry out the Project.

2.2 Payment procedure

Subject to clause 2.3, during the Term GRDC will make a payment associated with a Milestone specified in Item 21 of Schedule 1 to the Research Organisation on acceptance of the Milestone Report in accordance with clause 8.3 of this agreement.

2.3 GRDC obligation to make payments

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 GRDC; and
 - (ii) all of its obligations arising under this agreement, including acceptance of all previous Milestone Reports by GRDC, acting reasonably;provided that 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) 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 GRDC, provided that GRDC has provided the Research Organisation with at least 3 months' written notice of reduction in funds or termination in accordance with clause 17.2 if it does not receive sufficient funding under this subclause.

2.4 Approval of GRDC Annual Operational Plan

- (a) GRDC has no obligation to pay the Research Organisation each part of the Research Funds under this agreement unless that payment is consistent with, and designed to give effect to, GRDC's Annual Operational Plan and R&D Plan prepared under Part 2 of the PIRD Act.
- (b) If 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) unless otherwise agreed in writing by the parties, the Research Organisation must stop performing the Project until GRDC notifies it that GRDC will resume payments.

3. USE OF FUNDS

3.1 General obligation

The Research Organisation must use Research Funds in accordance with this agreement.

3.2 Capital Items

Subject to clause 10, 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 Item 14 of Schedule 1, or unless it has obtained GRDC's prior written approval.

3.3 Other Contributions

- (a) In respect of all Contributions other than the Research Funds, the Research Organisation must:
 - (i) provide and use all the Research Organisation's Contributions for the Project at the times and in the manner specified in Schedule 1;
 - (ii) ensure that any third parties identified in Item 11 or Item 22 of Schedule 1 as providing Contributions for this Project, provide and make available their third party Contributions for the Project at the times and in the manner specified in Schedule 1; and
 - (iii) within 14 days after a written request from GRDC to do so, provide to GRDC satisfactory written evidence that confirms that the Contributions referred to in (i) and (ii) above have been provided and used for the Project in accordance with this agreement.
- (b) If, for any reason, the Research Organisation fails to provide its Contributions or is not able to obtain any Contributions from third parties (including any part thereof) as required under this agreement:
 - (i) the Research Organisation must notify GRDC as soon as practicable after it becomes aware of any likely failure to provide or obtain such Contributions; and
 - (ii) GRDC may (irrespective of whether it has received notice under clause 3.5(b)(i)):
 - (A) suspend payment of the Research Funds (or an instalment) until such Contributions are provided or obtained by the Research Organisation; or
 - (B) terminate this agreement for default in accordance with clause 17.1

4. CONDUCT OF PROJECT

4.1 Carrying out of Project

The Research Organisation must:

- (a) carry out the Project using all necessary and appropriate professional skill and diligence during the Term;
- (b) use its best endeavours to achieve all Project Outcomes, Project Outputs, Milestones and any other activities allocated to it in Schedule 1 by their due date;
- (c) except as otherwise expressly provided in this agreement, provide at its own expense all funds, personnel, Material, facilities, services and premises specified in Schedule 1 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 Schedule 1 or required to carry out the Project;
- (e) take all reasonable steps to ensure that its Research Organisation Personnel enable it to comply with its obligations under this agreement including, in particular, those obligations which relate to Project Outputs, Background IP and Third Party IP;
- (f) subject to clause 4.2(a), ensure that the Project is conducted by its Research Organisation Personnel and that its Research Organisation Personnel spend the amount of time working on the Project that is specified in Schedule 1 or otherwise approved by GRDC;
- (g) be responsible for the safekeeping and maintenance of any GRDC Background IP that is made available for the Project and must ensure that it is used, copied, supplied or reproduced only for the purposes as permitted under this agreement; and
- (h) comply with all applicable laws and regulations in carrying out the Project, including (as applicable) those specified in clause 13.

4.2 **Sub-contracting**

- (a) The Research Organisation may only sub-contract the conduct of the Project (in whole or in part) if the sub-contract is with an Approved Sub-contractor or if GRDC has provided the Research Organisation with prior written approval.
- (b) The Research Organisation must provide GRDC with a copy of any sub-contract on request.
- (c) The Research Organisation remains responsible for the conduct of the Project including any act or omission of any sub-contractor engaged by the Research Organisation.
- (d) Subject to clause 9.3, 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 relevant persons, to be owned as provided for in this agreement.
- (e) The Research Organisation acknowledges and agrees that GRDC may disclose the name of any sub-contractor engaged to undertake the Project under this agreement. The Research Organisation must inform its sub-contractors that their participation in undertaking the Project under this agreement may be publicly disclosed.

4.3 **Additional funding**

The Research Organisation must:

- (a) promptly notify GRDC:
 - (i) if it receives funds or other support in relation to the Project from any source, other than the Contributions as specified in Schedule 1; 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 GRDC.

4.4 **Delay**

The Research Organisation must immediately notify 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 Term for any period greater than 28 days.

4.5 Confidential Information

- (a) Each Party must, subject to this agreement, treat as confidential the Confidential Information contributed to the Project by the other Party.
- (b) The Parties may only use Project Confidential Information in accordance with clause 9.
- (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 Confidential Information of another 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 Confidential Information as is necessary to comply with the relevant requirements.

4.6 Fraud

The Research Organisation must take all reasonable steps to prevent and detect Fraud in carrying out the Project.

4.7 Safety

- (a) The Research Organisation must ensure that its activities in carrying out the Project comply, and that any site at which it carries out any part of the Project (**Site**) complies, with all applicable
 - (i) work health and safety laws and regulations and applicable industry codes of practice and Australian Standards, including in relation to consultation, representation and participation;
 - (ii) all applicable policies and procedures relating to work health and safety, when using those premises.
- (b) Without limiting its obligations under clause 4.2(a), the Research Organisation must ensure that any person involved in the Project or attending a Site is properly trained, informed, supervised and instructed in the use of the facilities and Material involved in the Project and otherwise ensure their health and safety and that they are provided with all necessary personal protective equipment.
- (c) The Research Organisation is solely responsible for all preparation and co-ordination required for carrying out the Project at a Site.

5. RESEARCH ORGANISATION PERSONNEL

5.1 Not employees of 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, GRDC.

5.2 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 (including parental leave or long service leave) unless they are disclosed in Schedule 1 or are otherwise approved in writing by GRDC.

5.3 Changes to Research Organisation Personnel

- (a) If any key members of the Research Organisation Personnel listed in Item 15 of Schedule 1 (being the Project Supervisor or other senior researchers with key roles in the Project) are unable to undertake work in respect of the Project to the extent required by this agreement, the Research Organisation must promptly notify GRDC in writing. The Research Organisation must, if requested in writing by GRDC, use reasonable endeavours to promptly provide replacement Personnel acceptable to GRDC.
- (b) If the Research Organisation is unable to provide acceptable replacement Personnel, GRDC may:
 - (i) suspend payment of the Research Funds (or an instalment) until acceptable replacement Personnel are provided by the Research Organisation; or
 - (ii) terminate this agreement in accordance with clause 17.1 (termination for default).

6. WARRANTIES AND UNDERTAKINGS

6.1 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 this agreement, that Research Organisation is not a party to any agreement that could limit or constrain any reasonably foreseeable dissemination or Commercialisation activities involving Project Outputs.

6.2 Intellectual Property

- (a) The Research Organisation warrants that except as disclosed in the IP Register in Schedule 2 to the best of its knowledge at the date of this agreement having made all reasonable enquiries:

- (i) 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;
 - (ii) in carrying out the Project, it will not breach any intellectual property rights of any person.
- (b) The Research Organisation provides the same warranty as described in clause 6.2(a) in relation to any additional Background IP or Third Party IP it provides in accordance with clause 9.19.1(b) of this agreement at the time of providing that IP.

6.3 Information provided will be correct

- (a) Subject to clause 6.2, the Research Organisation warrants that at the time it is provided, all information provided by the Research Organisation to GRDC:
- (i) in Schedule 1; and
 - (ii) in relation to the Project,
- is correct, complete and not misleading in any significant respect.
- (b) If at any time during the Project Term, the Research Organisation becomes aware that any information provided by the Research Organisation to GRDC is incorrect, incomplete or misleading in any significant respect, then the Research Organisation must immediately notify GRDC.

7. FINANCIAL PROVISIONS

7.1 Payments into account

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

7.2 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 7 years after the end of the Term.

7.3 Inspection by GRDC

The Research Organisation must permit GRDC (including any agent of GRDC) from time to time and at all reasonable times during the Term and for at least 7 years after the end of the Term:

- (a) to inspect work being carried out in connection with the Project, including the use by the Research Organisation of any GRDC Background IP provided as part of the Project (subject to 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).

7.4 **Audit**

GRDC may from time to time during the Term and for at least 7 years after the end of the Term 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 GRDC and its auditor in relation to any such audit. Nothing in this agreement derogates from the powers of the Auditor-General of the Commonwealth of Australia.

7.5 **Repayment**

Without limitation to any other right GRDC may have under this agreement or at law, where review of the documents referred to in clause 7.4, or conduct of the audit referred to in clause 7.5, discloses that Research Funds have been used other than in accordance with this agreement:

- (a) 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 GRDC a written response;
- (c) 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 GRDC for the reasonable costs of the audit; and
- (d) where the Research Organisation receives a notice under clause 7.6(c) requiring a refund or reimbursement, the Research Organisation must, within 14 days of receipt of the notice, pay to 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.

8. **REPORTING OBLIGATIONS**

8.1 **Milestone Reports**

- (a) The Research Organisation must submit a Milestone Report to GRDC in relation to each Milestone by the relevant due date specified in Item 21 of Schedule 1.
- (b) If the Milestone Report contains Confidential Information the Research Organisation must mark the Milestone Report accordingly on its cover and at those parts of the Milestone Report which may reasonably be viewed as containing Confidential Information.

8.2 Additional Information

The Research Organisation must, from time to time, promptly provide such information or reports to GRDC regarding the progress and results of the Project as GRDC may reasonably require.

8.3 Acceptance of Milestone Reports

- (a) Upon receipt of a Milestone Report submitted in accordance with this agreement, GRDC must determine whether or not to accept the Milestone Report in accordance with clause 8.3(b) and notify the Research Organisation of its determination by the date specified in Item 21 of Schedule 1 or if no date is specified then within 28 days of receiving the Milestone Report or of the due date of the Milestone Report, whichever is the later.
- (b) If GRDC reasonably determines that the Milestone Report does not adequately demonstrate that the relevant Milestone has been met, it must notify the Research Organisation that the Milestone Report has not been accepted and the reasons for the non-acceptance.
- (c) If the Research Organisation receives a notice under clause 8.3(b), it must:
 - (i) submit a revised Milestone Report for GRDC's consideration in accordance with this clause 8.3; or
 - (ii) give GRDC notice of a dispute under clause 16within the timeframe specified in the notice or within 28 days from the date the Research Organisation receives the notice under clause 8.3(b), whichever is the later.

8.4 Ownership and use of Reports

- (a) Subject to this agreement (including clauses 4.5 and 9), the Research Organisation will own the copyright and the information contained in Milestone Reports submitted by the Research Organisation under this agreement and any additional reports provided by the Research Organisation in accordance with clause 8.2 of this agreement.
- (b) The Research Organisation grants to GRDC, subject to the provisions of clause 9, a perpetual, irrevocable, fully paid, royalty-free, worldwide non-exclusive licence, including a right to sub-licence, to use the copyright and information in the Milestone Reports and any additional reports provided in accordance with clause 8.2 for GRDC's purposes (including reporting to its stakeholders, including the government) or in pursuance of the functions of GRDC arising under the PIRD Act.

9. PROJECT OUTPUTS

9.1 Background IP and Third Party IP

- (a) Each Party must provide Background IP and Third Party IP to the Project, as specified in the IP Register in Schedule 2.
- (b) A Party may provide additional Background IP and Third Party IP to the Project during the Term if:
 - (i) that Party provides the other Party with details of the IP and any restrictions on its use for dissemination or Commercialisation of Project Outputs;

- (ii) the other Party consents to the provision of the IP with the disclosed restrictions; and
 - (iii) that Party updates the IP Register accordingly and provides a copy to the other Party.
- (c) Where Third Party IP made available to the Project in accordance with clauses 9.1(a) and (b) involves the transfer of material (**Third Party IP material**) to the Research Organisation, the Research Organisation must use an Approved MTA for that transfer.
- (d) Prior to receiving the Third Party IP material the Research Organisation must:
- (i) have an executed Approved MTA with the third party that is providing the Third Party IP material; and
 - (ii) provide GRDC with a copy of the executed Approved MTA on request.
- (e) Where Background IP and Third Party IP is made available by a Party for the Project in accordance with clauses 9.1(a) and (b)), that Party 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 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 in the IP Register in Schedule 2.
- (f) Nothing in this agreement affects the ownership of Background IP and Third Party IP made available by a Party to the Project, unless agreed otherwise between the Parties in writing.

9.2 IP Register

The Research Organisation must:

- (a) produce and maintain as part of the Project the IP Register in Schedule 2 that, as a minimum, sets out:
 - (i) all Background IP and Third Party IP provided to the Project in accordance with clause 9.1, including details of any such IP that is incorporated in the Project Outputs;
 - (ii) for Third Party IP, the owner or authorised licensor of that IP;
 - (iii) any impediments or restrictions on the use of the Background IP and Third Party IP referred to in clause 9.2(a)(i), including any restrictions on the royalty-free use of that IP for all reasonably foreseeable dissemination or Commercialisation activities involving the Project Outputs;
 - (iv) all Project Outputs created under this Project; and

- (v) the terms under which any Project Outputs are provided to a third party in accordance with this agreement;
- (b) regularly review and update the IP Register as necessary to reflect all changes from time to time in the IP and Confidential Information provided to the Project in accordance with clause 9.1;
- (c) provide up-to-date copies of the IP Register to GRDC:
 - (i) as required under any Milestone in this agreement; and
 - (ii) at any other time within 28 days after a written request from GRDC to do so; and
- (d) provide such evidence as GRDC may reasonably request from time to time in order to confirm the ownership and other arrangements on which Background IP and Third Party IP is made available for the Project.

9.3 Ownership of Project Outputs

- (a) The Project Outputs (including Project IP created by a Student in accordance with clause 9.11) will be owned by the Party specified in Item 12 of Schedule 1 or if more than one Party is specified by those Parties as tenants in common in equal shares.
- (b) The Parties acknowledge that:
 - (i) the owner/s of Project Outputs and the holder/s of a beneficial interest in a share of the Net Commercialisation Income from those Project Outputs may not be the same;
 - (ii) the two concepts described in clause 9.3(b)(i) are dealt with separately under this agreement.
 - (iii) other entities may own a share of Project Outputs in recognition of their contribution to the Project, but only if the Parties have agreed and those entities are listed in Item 12 of Schedule 1 as being an owner of Project Outputs.
- (c) The Research Organisation warrants that, except as set out in in Item 12 of Schedule 1, to the best of its knowledge, having made reasonable enquiries, no other person owns or will own a share of the Project Outputs.
- (d) Whilst it is recognised that the ownership of Project Outputs may be changed during the course of the Project, such an agreed change will only be effective if 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 9.3; and
 - (ii) undertakes to execute any documents and do any things that are necessary to give effect to that assignment.

9.4 Commercialisation and registration of Project Outputs (including Discoveries)

- (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) In addition to its reporting obligations under clause 8, the Research Organisation must notify GRDC in writing of any Discovery in connection with the Project within 28 days of first becoming aware of the Discovery.
- (c) If a Party considers on reasonable grounds that any Project Outputs (including Discoveries) may be Commercialised, it must notify the other Party accordingly, identifying the relevant Project Outputs and detailing a written proposal for Commercialisation of the Project Outputs, including expected costs, returns and benefits.
- (d) If a Party considers that it would be appropriate to seek registration of any Project Outputs (including Discoveries), it must notify the other Party of the details of a proposed registration strategy including details of:
 - (i) the type of registration;
 - (ii) the countries in which registration is to be sought; and
 - (iii) the anticipated costs and benefits of the registration.
- (e) The Parties must after receipt of a notice under clause 9.4(c) or 9.4(d) in good faith seek to agree on (as applicable):
 - (i) appropriate arrangements for protection (including registration) for the Project Outputs; and
 - (ii) a detailed plan for Commercialisation of the Project Outputs by the Commercialisation Party (or such other Party or person as agreed by the Parties), including the Commercialisation Terms in the form set out in Schedule 3 unless otherwise agreed by the Parties.
- (f) The Parties must protect and Commercialise the Project Outputs in accordance with any written agreement reached under clause 9.4(e). If:
 - (i) a Party wishes to register Project IP but the other Party is unable to agree on registration under clause 9.4(e)(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 own 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 of 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 9.4(f)(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.

9.5 **Sharing Commercialisation income and costs of registering Project Outputs**

Subject to clause 9.4(f) or an alternative agreement by the Parties entered into under clause 9.4(e), the Parties will share:

- (a) the costs of any registration of Project Outputs; and
- (b) the Net Commercialisation Income derived from Commercialisation of Project Outputs,

in proportion to their beneficial interest in the Project Outputs as specified in Item 13 of Schedule 1 or as otherwise agreed by the Parties in writing.

9.6 **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 Confidential 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.

9.7 **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 9.7(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, pay for any reasonable expenses incurred by the Passive Party for providing the assistance referred to in clause 9.7(c)(ii); and
 - (iv) the Active Party may retain any damages recovered in taking the action.

9.8 Limitation on use of Project Outputs

- (a) Except as provided in clauses 4 or 9, 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) If a Party (**the Transferor**) intends to transfer Material that is a Project Output to a third party, the Transferor must use an Approved MTA, unless otherwise agreed in writing by GRDC.
- (c) Prior to transferring the Material the Transferor must:
 - (i) comply with clause 9.8(a); and
 - (ii) execute an Approved MTA with the third party.
- (d) The Transferor must:
 - (i) record any transfer of Material that is a Project Output on the IP Register;
 - (ii) immediately notify the other Party to this agreement if the third party breaches any term of the Approved MTA.

9.9 Internal Research and Education

- (a) Each Party grants the other Party an irrevocable, royalty-free, non-exclusive licence to use the Project Outputs for the purposes of internal research or education subject to clauses 9.9(b) and (c).
- (b) Where a Party has provided Background IP and Third Party IP for the Project, that Party grants the other Party an irrevocable royalty-free, non-exclusive licence to use the Background IP and Third Party IP contributed by it; for the purpose of internal research or education
- (c) Where a Party uses Project Outputs or the Background IP or Third Party IP made available by the other Party in accordance with clause 9.9(a) or (b):
 - (i) 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
 - (ii) where Commercialisation of Intellectual Property arising out of the internal research requires access to the Project Outputs, the Background IP or the Third Party IP, it may only be used on terms agreed between the Parties.
- (d) If the Research Organisation wishes to grant a sub-contractor a licence to use some or all of the Project Outputs, the Research Organisation must seek GRDC's prior written consent by submitting a written request to GRDC specifying the Project Outputs, the purpose and any conditions of the proposed licence.
- (e) GRDC must consider any request submitted in accordance with clause 9.9(d) and respond to the Research Organisation within 28 days of receiving the request.

9.10 Publication and acknowledgement

- (a) A Party (**Publishing Party**) may publish any information relating to the Project or otherwise publicly disclose any Project Outputs without the prior written consent of the other Party, except where the publication or disclosure may:
 - (i) disclose any Project Confidential Information;

- (ii) prejudice the future registration, value or Commercialisation of any Project Outputs; or
 - (iii) prejudice the best interests of the Australian Grains Industry,
(together **Disclosure or Prejudice**).
- (b) Where the proposed publication may cause Disclosure or Prejudice:
- (i) the Publishing Party must:
 - (A) notify the other Party and provide a copy of the proposed publication and explanation of the likely effect of the Disclosure or Prejudice; and
 - (B) request in writing that the other Party approve publication of the paper;
 - (ii) the other Party must advise the Publishing Party in writing whether:
 - (A) it consents to publication;
 - (B) it consents to publication with alterations to minimise the Disclosure or Prejudice; or
 - (C) it does not consent to publication.
 - (iii) If altering the publication is impractical or if the other Party does not consent to publication, the Publishing Party must delay publication for a stipulated period not exceeding 12 months from the date of the request; and
 - (iv) the other Party will be deemed to have agreed to publication under clause 9.10(b)(ii)(A) unless it notifies the Publishing Party otherwise within 28 days of receiving notice under clause 9.10(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, presentation made or at any field and trial sites used, by the Party in relation to the Project.
- (d) The Research Organisation must comply with the GRDC Attribution Model when referring to GRDC's contribution to the Project.
- (e) The Research Organisation must promptly provide a copy of all publications relating to the Project to GRDC.

9.11 **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 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) GRDC may request that the Research Organisation arrange for a supervisor or examiner to enter into an agreement to protect any Confidential Information.

9.12 **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 9.

9.13 **Exceptions to clause 9 requirements**

- (a) Clauses 9.6, 9.7, 9.8, and the restrictions in clause 9.9, do not apply to a Party that is the sole owner of the relevant Project Outputs under this agreement.

10. **CAPITAL ITEMS**

10.1 **Maintenance and repairs**

The Research Organisation must, at its own expense unless included in Schedule 1, maintain all Capital Items in good condition for the Term, and effect all necessary repairs.

10.2 **Ownership**

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

10.3 **No securities to be given**

The Research Organisation must not, without the prior written consent of 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 Term.

10.4 **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 Term, unless that damage or destruction is caused by reasonable wear and tear.

10.5 Sale of Capital Item during or after the Term

If:

- (a) the Research Organisation sells or otherwise disposes of a Capital Item during or after the 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 GRDC of the sale or disposal and, if GRDC requests it:

- (c) pay to 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 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.

11. INSURANCE

11.1 Government Self Insurer

The Research Organisation is not subject to clauses 11.2 (excluding clause 11.2(b)) and 11.3 if it is a Commonwealth, State or Territory government department, agency or statutory entity and self-insures.

11.2 Insurance required

Subject to clause 11.1 or any alternative insurance requirements specified in Item 18 of Schedule 1, the Research Organisation must:

- (a) maintain all appropriate insurances for the Project including:
 - (i) adequate workers' compensation insurance;
 - (ii) public liability insurance in the amount of at least \$10 million for each claim;
 - (iii) professional indemnity insurance in the amount of at least \$5 million per claim that covers key activities to be undertaken by the Research Organisation in connection with the Project; and
 - (iv) insurance in respect of loss or damage to Capital Items; and
- (b) ensure that any sub-contractors engaged by the Research Organisation maintain appropriate insurances for the relevant Project activities, including the insurances specified in subclauses 11.2(a)(i) to (iii) above.

11.3 Documentation

The Research Organisation must, on request by GRDC, provide evidence of the currency of the insurance policies required under clause 11.2.

12. CONFLICT OF INTEREST AND OVERLAPPING PROJECTS

12.1 Warranties regarding conflict of interest

The Research Organisation warrants to GRDC, that:

- (a) except as disclosed in writing to 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 12.2, 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.

12.2 Notice of conflict of interest

The Research Organisation agrees to:

- (a) give notice to 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 GRDC to deal with the conflict of interest.

12.3 Limitation of clauses

GRDC agrees that clauses 12.1 and 12.2, 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.

12.4 Notice of overlapping project

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

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

13. CONDUCT OF RESEARCH

13.1 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.

13.2 Gene Technology

- (a) If the Project involves the use of any Gene Technologies or similar techniques, the Research Organisation must:
- (i) comply with all applicable State and Federal laws and regulations relevant to the activity, including the *Gene Technology Act 2000*;
 - (ii) comply with any safety guidelines established from time to time by the Gene Technology Regulator or any other similar body established by the Commonwealth or (as applicable) State governments;
 - (iii) implement industry best practice stewardship procedures consistent with 'Excellence Through Stewardship' guides in force from time to time and available from <http://www.excellencethroughstewardship.org/>;
 - (iv) immediately notify GRDC on becoming aware of any suspected breach of the requirements in clauses 13.2(a)(i)– (iii) including details of the nature of the breach.
- (b) If the Project is not intended to involve the use of any Gene Technologies but GM material is inadvertently introduced into the Project, the Research Organisation must immediately:
- (i) notify GRDC of the GM material and the circumstances surrounding its introduction;
 - (ii) manage the Project in accordance with clause 13.2(a) of this agreement to minimise any negative impacts.

13.3 Environment

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

13.4 Defence Trade Controls

If the Project involves the use of any '**DSGL technology**' (as defined in the *Defence Trade Controls Act 2012* (Cth)), the Research Organisation:

- (a) is responsible for ensuring compliance with the *Defence Trade Controls Act 2012* (Cth) and related export control laws and regulations, including by obtaining any necessary permits or approvals relating to the supply or publishing of DSGL technology in connection with the Project; and
- (b) must ensure that any DSGL technology made available to GRDC in connection with the Project is clearly identified as such, and that any restrictions on the use or disclosure by GRDC of that technology under the *Defence Trade Controls Act 2012* (Cth) are disclosed to GRDC in writing.

13.5 Import and export

The Research Organisation is responsible for ensuring compliance with any applicable laws and regulations relating to the import or export of goods, and to cross-border transfers of information, by the Research Organisation in connection with the Project, including any relevant requirements concerning tariffs, duties, clearances, treatments, chemical registrations and quarantine.

13.6 Privacy

- (a) GRDC is an 'agency' for the purposes of the *Privacy Act 1988* (Cth) ('**Privacy Act**') and is required to comply with the *Australian Privacy Principles* ('**APPs**') set out in Schedule 1 of that Act. GRDC's privacy policy is available at: <https://grdc.com.au/About-Us/Policies/Legal/Privacy/Privacy-Policy..>
- (b) The following clauses apply to the Research Organisation if it is a '**contracted service provider**' as defined in the Privacy Act:
 - (i) the Research Organisation must not do an act, or engage in a practice, in connection with undertaking this agreement, that would breach an APP if done or engaged in by GRDC as an 'agency';
 - (ii) the Research Organisation must not authorise its sub-contractors (if any) to do an act, or engage in a practice in connection with undertaking a sub-contract under this agreement, that would breach an APP if done or engaged in by GRDC as an 'agency'; and
 - (iii) the Research Organisation must immediately notify GRDC of any breach of any of the obligations on the Research Organisation or its sub-contractors under this clause 13.6.
- (c) Nothing in this agreement should be taken as authorising the Research Organisation to do or engage in an act or practice that is prohibited under clause 13.6(b).

Note: this is a requirement on GRDC under section 95B of the Privacy Act.

14. RELATIONSHIP BETWEEN PARTIES

14.1 No employment, joint venture or partnership

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

14.2 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, any other Party.

15. NOTICES

15.1 Writing

All notices 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.

15.2 Address

All notices to be given to a Party under this agreement may be sent to the address of that Party set out in Item 19 of Schedule 1, or such other address as may be advised by that Party in writing from time to time. Notices must be addressed for the attention of the receiving Party's authorised representative under clause 19.2.

15.3 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, 5 business 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 on a non-business day, will instead be deemed received on the next business day. For the purpose of this clause, reference to a "business day" means Monday to Friday (excluding public holidays) in the place where the recipient of the notice resides as determined by the address of that Party specified under clause 15.2.

16. DISPUTE RESOLUTION

16.1 Process

If a Party gives the other Party notice of a dispute arising out of, or relating to, this agreement, a dispute will be deemed to have arisen (**Dispute**), and the Parties must resolve the Dispute in accordance with the provisions of this clause 16. Compliance with the provisions of this clause 16 is a condition precedent to seeking relief in any court or tribunal in respect of the Dispute.

16.2 Negotiations in good faith

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

16.3 Reference to management

If the Dispute is not resolved within 28 days of the receipt of the notice referred to in clause 16.1, the Dispute must be immediately referred in the first instance to the Managing Director of 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.

16.4 Assistance of third party mediator

- a) If the Dispute is not resolved within 28 days of the commencement of the process of negotiation referred to in clause 16.3, 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.
- b) If the Parties cannot agree on a third party mediator within 7 days the Parties agree that the Dispute must be immediately referred to the Australian Dispute Centre (**ADC**) for mediation.

16.5 Courts

- a) If the Dispute is not resolved within 60 days of referral to a third party mediator or the ADC in accordance with clause 16.4, either party is entitled to commence proceedings in a court of appropriate jurisdiction.
- b) Nothing in this clause 16 will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction.

17. TERMINATION

17.1 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;
 - (iv) breaches a provision of this agreement that expressly provides for termination under this clause 17.1; or
 - (v) subject to the *Treasury Laws Amendment (2017 Enterprise Incentives No 2) Act 2017* (Cth), becomes an “externally-administered body corporate” as defined in section 9 of the *Corporations Act 2001* (Cth) (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) GRDC may terminate this agreement with immediate effect by written notice to the Research Organisation if, in the reasonable opinion of GRDC, the Research Organisation is not conducting the Project in a competent and diligent manner.
- (c) The withholding of payment by GRDC under clauses 2.2, 2.3, 2.4, 3.3, 5.3 or 8.1 does not constitute a breach of this agreement.

17.2 Termination by notice

GRDC may terminate this agreement by 3 months’ written notice to the Research Organisation if:

- (a) in the reasonable opinion of GRDC, the Project is unlikely to produce the Project Outputs anticipated by the GRDC from the Project at the time of entering this agreement;
- (b) in the reasonable opinion of GRDC, 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 GRDC, the Project is not, or has ceased to be, relevant to the objectives or functions of GRDC or otherwise ceases to be of value to the Australian Grains Industry; or

- (d) it would, in the reasonable opinion of GRDC, be in the best interests of the Australian Grains Industry for GRDC to cease to fund the Project so as to enable GRDC to fund one or more proposed research projects that may, in the opinion of GRDC, be of exceptional benefit to the industry.

17.3 Consequences of termination

- (a) If this agreement is terminated under clause 17.1 or 17.2:
 - (i) GRDC, the Research Organisation and any third party that owns Project Outputs under clause 9.3, retain their respective ownership proportions of Project Outputs, recalculated according to each Party's Contribution actually provided to the Project at the date of termination; and
 - (ii) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
 - (iii) from the date of termination GRDC will cease to be liable to pay or provide to the Research Organisation any further Research Funds or Contributions;
 - (iv) from the date of termination, the Research Organisation will cease to be liable to make any of its further Contributions to the Project;
 - (v) the Research Organisation must:
 - (A) unless otherwise approved by GRDC in writing, immediately cease any ongoing expenditure of Research Funds in its custody or control and not enter into any new commitments in respect of any Research Funds;
 - (B) repay to GRDC, within 28 days of termination, all Research 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; and
 - (vi) any licences of Background IP, Third Party IP and copyright in Milestone Reports and other rights and obligations of the Parties remain in force to the extent they are expressed to survive termination of this agreement.
- (b) If this agreement is terminated under clause 17.1, then (in addition to clause 17.3(a)) the Defaulting Party grants to the Terminating Party a world-wide, royalty-free, non-exclusive licence, including the right to sub-licence, to use the Project Outputs to the extent necessary to:
 - (i) conduct research work consistent with the Project Aims; and
 - (ii) disseminate or Commercialise the Project Outputs or the results of any further research.
- (c) If this agreement is terminated by GRDC under clause 17.2, then (in addition to clause 17.3(a)):
 - (i) GRDC may (but is not obliged to) reimburse the Research Organisation for any reasonable additional costs incurred and substantiated by the Research Organisation as a result of the early termination of the Project;

- (ii) each Party grants to the other Party a world-wide, royalty-free, non-exclusive licence, including a right to sub-licence, to use the Project Outputs to the extent necessary to:
 - (A) conduct research work consistent with the Project Aims; and
 - (B) continue any dissemination or Commercialisation of Project Outputs that has already commenced at the date of termination; and
- (iii) where a Party:
 - (A) uses Project Outputs to conduct further research work consistent with the Project Aims; and
 - (B) 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.
- (d) On expiry or termination of this agreement (for any reason), the Research Organisation must, unless instructed otherwise by GRDC in writing:
 - (i) Subject to clause 17.3(e), promptly deliver-up to GRDC all GRDC Background IP and all GRDC Confidential Information provided to the Research Organisation in connection with this agreement; and
 - (ii) make available (including by granting reasonable access to) all the Project Outputs and related information in order for GRDC to fully enjoy the ongoing benefit of its rights to those outputs as granted pursuant to this agreement.
- (e) If the Research Organisation is subject to State Records Legislation, the Research Organisation may retain one copy of GRDC Background IP and one copy of GRDC Confidential Information for the purposes of complying with the applicable State Records Legislation.

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 Item 8 of Schedule 1 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 GRDC (that may be varied from time to time at GRDC's discretion), the supplier either:
 - (i) issues to GRDC a tax invoice; or

- (ii) agrees to the issue by GRDC of a recipient created tax invoice (**RCTI**),
and provides any other documentation required by GRDC to claim any input tax credits claimable in relation to the supply.

19. GENERAL

19.1 Assignment

Subject to clauses 17 and 9 of this agreement, neither Party may assign its rights under this agreement without the prior written consent of the other Party.

19.2 Authorised Representatives

Each Party hereby authorises its representative(s) as specified in Item 20 of Schedule 1 to exercise that Parties' rights under this agreement. Either Party may change its nominated representative by notice in writing to the other at any time.

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

No 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

The following clauses will survive the termination or expiry of this agreement: clauses 2.2, 2.3, 4.5, 6, 7.2, 7.3, 7.4, 7.5, 8.3, 8.4, 9, 10.5, 17.3 and any other clause that by its nature is intended to survive termination or expiry.

19.8 Entire agreement

This agreement:

- (a) contains the entire agreement of the Parties; and
- (b) supersedes any and all prior representations, conduct and agreements.

19.9 Counterparts

- (a) This agreement may be executed in counterparts. Both executed counterparts constitute one document.
- (b) Executed counterparts of this agreement may be exchanged by facsimile, email or other means of Electronic Communication.

EXECUTION PAGE

EXECUTED BY THE PARTIES AS AN AGREEMENT ON [INSERT DATE]

SIGNED for and on behalf of the
**GRAINS RESEARCH AND DEVELOPMENT
CORPORATION**

by a duly authorised delegate, in the presence
of

Signature of witness

Signature of delegate

Name of witness (print)

Name of delegate (print)

SIGNED for and on behalf of
**[INSERT FULL LEGAL NAME OF
RESEARCH ORGANISATION]**

by its duly authorised representative* in the
presence of:

Signature of witness

Signature of authorised representative*

Name of witness (print)

Name of authorised representative (print)

Title of witness (print)

Title of authorised representative (print)

****By signing this agreement, the authorised representative represents and warrants that he/she is duly authorised to execute this document on behalf of the Research Organisation.***

Schedule 1

PROJECT DETAILS

Item	Topic	Details	
1.	GRDC Contract Code:	<<Contract Code>>	
2.	Project Name	<<Contract Name>>	
3.	Project Description	<<Contract Summary>>	
4.	Project Outcome	<<Contract Outcome>>	
5.	Project Outputs	<<Output Responses Details – table with Title & Description>>	
6.	Commencement Date	<<Contract Commencement Date>>	
7.	Completion Date	<<Contract Completion Date>>	
8.	Research Funds payable by GRDC (GST exclusive)	<<Contract GRDC funded cost category>>	
9.	GRDC Contributions	[specify any in-kind contributions to be provided by GRDC under this Agreement]	
10.	Research Organisation Contributions	<<Contract Non-GRDC funded cost category>>	
11.	Third Party Contributions	[Note: This includes Approved sub-contractor (see Item 16) contributions]	
12.	Owner/s of Project Outputs	GRDC [OTHER ENTITY OR INSERT "N/A"]	
13.	Holders of beneficial interest in Project Outputs	GRDC	[INSERT]%
		[OTHER ENTITY OR INSERT "N/A"]	[INSERT]%
		TOTAL	100%
14.	Capital Items	<<Contract Budgets where Cost Category is Capital – items in table>>	
15.	Research Organisation Personnel	<<Contract Personnel – table with name and role, FTE and % of time dedicated to the Project >>	

Item	Topic	Details		
16.	Approved subcontractors	<<Contract Subcontractors – table with name and role>>		
17.	Commercialisation Party	[INSERT NAME] or [INSERT N/A IF NOT DETERMINED OR NOT NEEDED]		
18.	Alternate Insurance Requirements	[INSERT ALTERNATE INSURANCE REQUIREMENTS FROM THOSE SPECIFIED IN CLAUSE 11, IF APPLICABLE]		
19.	Address for Notices	GRDC	Name: Post: Facsimile: Email:	
		Research Organisation	Name: <<Organisation Primary Contact>> Post: <<Organisation Primary Contact Address>> Email: <<Organisation Primary Contact Email>> Facsimile: <<Organisation Primary Fax>>	
20.	Authorised Representative(s)	GRDC	<<Contract Owner>>	
		Research Organisation	<<Applicant Name>>	
21.	Milestones			
	Number	Description	Due Date	Amount payable (GST exclusive)
	<<Milestone Number>>	<<Milestone Description>>		<<Milestone Total Amount>>
	<<Milestone Number>>	<<Milestone Description>>		<<Milestone Total Amount>>
	<<Milestone Number>>	<<Milestone Description>>		<<Milestone Total Amount>>
22.	Special Conditions	[INSERT, IF ANY – MUST BE APPROVED BY GRDC LEGAL]		

Schedule 2

IP REGISTER

GRDC Project Number:	[INSERT]		
Prepared by:	[INSERT NAME OF PERSON WHO PREPARED THIS IP REGISTER]	Dated:	[INSERT]
Approved by:	[INSERT NAME OF RESEARCH ORGANISATION PERSON WHO APPROVED THIS IP REGISTER]	Dated:	[INSERT]

Background IP – Research Organisation				
No	Owner/s	Description	Date made available to Project	Restrictions on use for dissemination or Commercialisation of Project Outputs

Background IP – GRDC				
No	Owner/s	Description	Date made available to Project	Restrictions on use for dissemination or Commercialisation of Project Outputs

Third Party IP				
No	Owner/s	Description	Date made available to Project and name of Party making it available	Restrictions on use for dissemination or Commercialisation of Project Outputs

Project Outputs				
No	Description	Date created and reported	BIP / TIP incorporated	Restrictions on use for dissemination or Commercialisation of Project Outputs

Project Outputs provided to a third party						
No	Third party recipient	Description of Project Outputs	Type of transfer eg licence, material transfer or assignment	Purpose of transfer eg internal research	Date prior approval granted by GRDC and RO for transfer	Date of transfer

Schedule 3

COMMERCIALISATION TERMS

Note: This Schedule 3 shall come into effect in accordance with clause 9.4(e).

1. Background Information	<p>GRDC and Research Organisation co-invested in the Project and are co-owners of the relevant Project Outputs.</p> <p>The Parties have agreed for [insert GRDC or RO] to be the Commercialisation Party for the relevant Project Outputs.</p> <p>The Parties have agreed for [insert GRDC or RO] to be the IP Manager for the relevant Project IP.</p> <p>[Insert the party that is not the Commercialisation Party] is the Licensor and agrees to license its IP rights in the relevant Project Outputs to the Commercialisation Party for the purpose of Commercialisation.</p>	
2. Licence	<p>Licensor grants the Commercialisation Party an exclusive licence (including the right to sub-licence) in respect of its share in the relevant Project IP for the purposes of Commercialisation in accordance with the Commercialisation Objectives and the relevant Commercialisation Agreement. For the avoidance of doubt, the Licensor consents to the Commercialisation Party exercising its co-ownership share in the relevant Project IP for the same purpose.</p> <p>Licensor retains the right to use the Project IP for internal research and development as contemplated by clause 9.9 of the agreement.</p> <p>The Licensor authorises the Commercialisation Party to:</p> <ul style="list-style-type: none"> • Engage in Commercialisation activities • Collect royalty payments • Incur Commercialisation costs • Distribute Net Commercialisation Income between the Parties 	
3. Income	All royalties, licence fees, income or other payments received by the Commercialisation Party from the Commercialisation of the relevant Project Outputs.	
4. Income Period	1 July to 30 June or part thereof	
5. % Share of Net Commercialisation Income	GRDC	[INSERT]%
	[INSERT OTHER PARTY]	[INSERT]%
	Total	100%
<i>Note that this is the same as the beneficial interest in Project Outputs specified in Schedule 1 unless otherwise agreed</i>		
6. Record keeping and income distribution	<p>The Commercialisation Party must be able to substantiate and must maintain records and books of account for all Income and Commercialisation costs.</p> <p>After each Income Period the Commercialisation Party must account for all Income received during that Income Period and deduct any Commercialisation costs (incurred in that Income Period or the</p>	

	<p>previous Income Period if not already deducted from Income from the previous period) but only to the extent that the Income equals or exceeds the Commercialisation costs.</p> <p>The Commercialisation Party must notify the Licensor of the amount payable by the Commercialisation Party to the Licensor being its % Share of the Net Commercialisation Income.</p> <p>The Licensor must issue a tax invoice to the Commercialisation Party for any such amount due and owing to it.</p>
7. Patent Prosecution, Maintenance & Infringement	<p>The IP Manager shall be responsible for:</p> <ul style="list-style-type: none"> • IP registration and maintenance; and • IP infringement matters. <p>The reasonable costs incurred by the IP Manager are to be shared by the Parties in the Agreed Shares.</p>
8. Reporting	<p>The Commercialisation Party must provide a report to the Licensor within 4 months after the Income Period summarising the following matters in relation to that Income Period:</p> <ul style="list-style-type: none"> • All Income received and Commercialisation costs incurred • Commercialisation activities undertaken <p>The IP Manager must provide a report to the other Party after each Income Period on:</p> <ul style="list-style-type: none"> • Filing and progress of any registration of IP • Any IP infringement matters • Costs incurred with the above
9. Warranties	<p>The Commercialisation Party warrants to the best of its knowledge that it has the ability to perform the Commercialisation activities contemplated by the Commercialisation Agreement.</p>