

Research Agreement – «Project Number and Project Title»

Parties:

AgriFutures Australia	RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION trading as AgriFutures Australia ABN 25 203 754 319 of Building 007, Charles Sturt University, Tooma Way, Wagga Wagga NSW 2650, Australia Attention: «Full Name» Telephone: «Phone Number» Title: «Title» Email: «Email»
Research Organisation	«Company Name» ABN «ABN» of «Address». Administrative Contact: Attention: «Full Name» Telephone: «Phone Number» Title: «Title» Email: «Email»

DETAILS

Commencement Date	The Commencement Date of this Agreement is «Day, Date Month Year»
Project Name and Number	«Insert project name and number», as described more fully in the Proposal and in Item 2 of the Schedule (“ Project ”).
Project Objective	«Insert description of the objectives of the Project»
Project Period	«Day, Date Month Year» to «Day, Date Month Year», unless the agreement is terminated or the Project otherwise ceases at an earlier time, in which case the Project Period will end as of the date of termination or cessation.
Proposal	The research proposal provided by the Research Organisation to AgriFutures Australia dated «Day, Date Month Year»
Deliverables and Milestones	Deliverables: «insert high-level description of Deliverables». «DRAFTING NOTE: This may include reports, websites, apps, manuals», This includes reports and other deliverables to be provided by the Research Organisation and when required to be provided, progress reports, financial reports, final reports incorporating results, raw data from graphs and tables and any other final output material requested by AgriFutures Australia, as described more fully in Item 2 of the Schedule. Milestones: «insert where relevant», as described more fully in Item 2 of the Schedule. «DRAFTING NOTE: For less complex projects describe Deliverables and Milestones here and not also in the Schedule»,
Research Organisation	Research Organisation School or Faculty: «insert name»

 Date Approved: June 2023
 Next Review: June 2025

Personnel, Subcontractors and Students	<p>Principal Investigator Supervisor: «insert name» and position.</p> <p>Principal Investigator: «insert name» or such other person approved in writing by AgriFutures Australia.</p> <p>Key Personnel: The Principal Investigator, «insert names of key personnel» and any replacement of such personnel as appointed by the Research Organisation from time to time in accordance with clause 2.7(c).</p> <p>Subcontractors: «insert names of key subcontractors»</p> <p>Student involvement: YES/NO (delete inapplicable choice) If no, clause 8 (“Students”) is of no effect.</p> <p><If no students will be involved, delete this row> Student(s), comprising the following individuals enrolled at the Research Organisation during the Project Period: «insert name» </></p>
AgriFutures Funds	The contributions to be made by AgriFutures in relation to the Project (\$[insert total], exclusive of GST), to be paid in instalments as set out in Item 1 of the Schedule.
Research Organisation Funds	The contributions to be made by the Research Organisation in relation to the Project (\$[insert total], exclusive of GST), to be provided as set out in Item 1 of the Schedule.
Research Organisation In Kind Contributions	The Research Organisation Background Intellectual Property and the Research Organisation Assets as well as «Insert description of the other in kind, facilities, goods or services to be contributed by the Research Organisation to the Project and which have been taken into account in determining the Commercial Share Proportion, and are not otherwise covered by the preceding two definitions», for a total value of \$[insert], excluding GST, as set out in Item 5 of the Schedule.
Commercial Share Proportion	<p>AgriFutures Australia: «Insert proportion»%</p> <p>Research Organisation: «Insert proportion»%</p> <p>«this will be calculated based on the respective contribution of each party to the Project»</p>
Ethics/Biosafety approval required	<p>YES/NO (delete inapplicable choice)</p> <p>(a) Approval required by: «If Yes, insert the latest date by which approval must be obtained. If No, insert “Not Applicable”»</p>
Indigenous Cultural & Intellectual Property	<p>Indigenous Cultural Intellectual Property: YES/NO (delete inapplicable choice)</p> <p>If no, clause 5.4 (Indigenous Cultural Intellectual Property) is of no effect.</p> <p>If yes, ICIP will be used for the purpose of the Project and incorporated into the Project Material and Project IP as set out in Item 8 of the Schedule.</p>
Special Terms	<p>This agreement is subject to the following special terms:</p> <p>«Any terms specific to the research of the arrangement e.g. IPR rights. If no special terms, insert Not Applicable»</p>

Note: All capitalised terms in column one of the **Details** have the meaning provided in column two.

EXECUTED as an Agreement.

Signed for and on behalf of **RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION trading as AgriFutures Australia** ABN 25 203 754 319 by its authorised representative:

Signed for and on behalf of **«Insert Details»** ABN «ABN» by its authorised representative:

.....
Signature of Authorised Representative

.....
Signature of Authorised Representative

.....
Name of Authorised Representative
(BLOCK LETTERS)

.....
Name of Authorised Representative
(BLOCK LETTERS)

.....
Date

.....
Date

Note: By executing this Agreement each signatory represents that he or she is authorised to sign on behalf of their entity.

GENERAL TERMS

1 Project

1.1 Project

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

1.2 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.

2 Obligations of Research Organisation

2.1 Conduct of the Project

The Research Organisation must:

- (a) only apply the Funds and use the AgriFutures Australia Assets and Acquired Assets for the purposes of the Project and in accordance with the Proposal, the Budget and the Milestones;
- (b) use its best endeavours to meet all Milestones and complete the Project in accordance with the Milestones;
- (c) not vary the Project, the Proposal, the Budget or the Milestones without AgriFutures Australia's prior written consent; and
- (d) as reasonably required by AgriFutures Australia, attend meetings in connection with the Project, including with AgriFutures Australia industry committees and with AgriFutures Australia, both during the Project and at least a debrief meeting after the Project.

2.2 Contributions

The Research Organisation must, in accordance with the Budget and the Proposal, apply the following to the Project:

- (a) the Research Organisation Funds;
- (b) the Research Organisation Background Intellectual Property;
- (c) the Research Organisation Assets; and
- (d) the other Research Organisation In Kind Contributions.

2.3 Directions

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

2.4 Service Standards

- (a) The Research Organisation must comply with:
- (i) all relevant laws;
 - (ii) all applicable codes of conduct, industry standards or guidelines; and
 - (iii) all applicable rules, policies and guidelines of AgriFutures Australia or the Commonwealth as notified in advance by AgriFutures Australia,
- when performing its obligations or exercising its rights under this agreement.
- (b) The Research Organisation must ensure that all employees, agents, subcontractors and Students employed or engaged by it have the necessary experience, skill and ability to properly carry out the Project.
- (c) The Research Organisation must ensure that 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.

2.5 Ethics and biosafety approval

If the Project requires approval by an ethics or biosafety committee, the Research Organisation will:

- (a) use reasonable endeavours to obtain that approval by the date set out in the Details;
- (b) provide evidence to AgriFutures Australia that that approval has been obtained; and
- (c) comply with and conduct the Project in accordance with any conditions of any ethics or biosafety committee.

2.6 Regulatory compliance

Without limiting clause 2.4(a), in performing its obligations under this agreement, the Research Organisation agrees that it will comply with (as applicable):

- (a) licencing requirements under the Animal Welfare Acts;
- (b) the United Nations Declaration on the Rights of Indigenous Peoples (2007);
- (c) the United Nations Convention on Biological Diversity (1992) and the Nagoya Protocol on Access to Genetic Resources and the fair and equitable sharing of benefits arising from their utilization to the Convention on Biological Diversity (2010);
- (d) the requirements of the Australian Institute for Aboriginal and Torres Strait Islander Studies' Guidelines for Ethical Research in Australian Indigenous Studies (2012);
- (e) the requirements of the National Health and Medical Research Council in:
 - (i) the Australian Code for the Responsible Conduct of Research (2018);

- (ii) the Ethical Conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders (2018);
- (iii) the accompaniment to the Ethical Conduct Guidelines, Keeping Research on track II (2018); and
- (iv) the Australian Code for the Care and Use of Animals for Scientific Purposes (2013).

2.7 Personnel

- (a) The Research Organisation must cause the Principal Investigator to manage and supervise the day to day work on the Project.
- (b) 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.
- (c) The Project will be carried out by the Key Personnel. If, for any reason, any of the Key Personnel become unavailable, the Research Organisation will promptly notify AgriFutures Australia and use reasonable endeavours to secure a replacement acceptable to AgriFutures Australia. If the Research Organisation is not able to secure replacement Key Personnel within 30 days of the notification in accordance with this clause, AgriFutures Australia may, by written notice to the Research Organisation, terminate this agreement on 30 days' notice and clause 9.2(c) will apply.
- (d) The Research Organisation must not, without the prior written consent of AgriFutures Australia, engage agents, subcontractors or Students to assist the Research Organisation in carrying out its obligations under this agreement other than those already named in the Details. Where the Research Organisation engages agents, subcontractors or Students:
 - (i) the Research Organisation is liable for all acts and omissions of the agent, subcontractor or Student and remains liable for the Research Organisation's obligations under this agreement;
 - (ii) unless otherwise agreed by AgriFutures Australia, the terms of engagement must contain terms requiring the agents, subcontractors or Students to assign to AgriFutures Australia all Intellectual Property created under the engagement relating to the Project (excluding copyright in a Student's thesis); and
 - (iii) the Research Organisation may sublicense its rights to use the Deliverables, Background Intellectual Property, Project Intellectual Property and Project Material to the Research Organisation's agents, subcontractors and students engaged to work on the Project for the purposes of the Project.

2.8 WHS

- (a) The Research Organisation must ensure that it, and any persons and any subcontractor which it engages to perform work under this agreement, will comply with all WHS Legislation and AgriFutures Australia's work health and safety policies and procedures (including any policies on the AgriFutures Australia website) and maintain all necessary licences, permits, registrations or other authorisations (however described) required by WHS Legislation. This includes ensuring:
 - (i) a safe working environment;

- (ii) safe systems of work;
- (iii) safe equipment;
- (iv) such information, policies, training and supervision as are reasonably necessary to ensure the safety of those persons from injury and other risks to health; and
- (v) monitoring of the health and welfare of those persons to the extent relevant for the prevention of work related injuries.

2.9 Assets

- (a) The Research Organisation must, with the Funds, and in accordance with the Budget, purchase the Acquired Assets specified in the Budget to be purchased by it.
- (b) The Research Organisation may, with the prior written approval of AgriFutures Australia, use Funds to purchase Acquired Assets required for carrying out the Project in addition to those specified in the Budget.
- (c) The Research Organisation must use the Acquired Assets for the purposes of the Project only and in accordance with the Proposal, the Budget and the Milestones.
- (d) The Research Organisation is responsible for the safekeeping and maintenance of, and all other costs and liabilities associated with, the Acquired Assets.
- (e) The Research Organisation must not encumber or Dispose of any Acquired Asset.
- (f) On the termination of this agreement, unless otherwise agreed between the parties in writing, AgriFutures Australia will notify the Research Organisation of its election of one or more of the following options in relation to AgriFutures Australia Assets and Acquired Assets, and the Research Organisation must act as directed by AgriFutures Australia:
 - (i) to transfer to the Research Organisation and at the Research Organisation's cost, ownership of some or all of the AgriFutures Australia Assets or Acquired Assets ("**Transferred Assets**"), provided that:
 - a. the Research Organisation will use reasonable endeavours to make the Transferred Assets available to AgriFutures Australia for its future use at no cost upon AgriFutures Australia's written request; and
 - b. if the Research Organisation makes the Transferred Assets available to AgriFutures Australia as part of a project, those Transferred Assets will not be treated as Research Organisation In Kind Contributions for the purpose of that project;
 - (ii) to dispose of the AgriFutures Australia Assets or Acquired Assets at the Research Organisation's cost; or
 - (iii) to return to AgriFutures Australia all AgriFutures Australia Assets and Acquired Assets at no cost to AgriFutures Australia.

2.10 Records

The Research Organisation must in accordance with all applicable Australian Accounting Standards, keep true, up to date and complete books of account and other records that:

- (a) record the receipt of AgriFutures Australia 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;
- (b) support the provision and application of the Research Organisation Funds, the Research Organisation Background Intellectual Property, the Research Organisation Assets and other Research Organisation In Kind Contributions; and
- (c) otherwise support the Research Organisation's compliance with its obligations under this agreement.

2.11 Reporting

- (a) The Research Organisation must:
 - (i) keep AgriFutures Australia informed about the progress of the Project, including promptly notifying AgriFutures Australia of the development of any Project Intellectual Property or Project Material which might be Commercialised;
 - (ii) by the dates referred to and otherwise in accordance with the Schedule, provide AgriFutures Australia with progress reports and a final report on the conduct and results of the Project;
 - (iii) if applicable, by the dates referred to and otherwise in accordance with the Schedule, provide AgriFutures Australia with a financial report setting out the provision and application of the Funds;
 - (iv) ensure that all Reports are in the form and contain the information specified in the AgriFutures Australia reporting template provided by AgriFutures Australia to the Research Organisation or otherwise notified by AgriFutures Australia to the Research Organisation;
 - (v) without limiting paragraph (ii) and (iii) above, ensure that all Reports are of a high standard acceptable to AgriFutures Australia on reasonable grounds, including being proofread and edited to a high standard using Australian English language and in accordance with the AgriFutures style guide; and
 - (vi) provide all other information in connection with the Project or this agreement that AgriFutures Australia may reasonably require.
- (b) The Research Organisation:
 - (i) acknowledges that AgriFutures Australia may abridge, make formatting changes, publish extracts, re-design, convert to alternative formats or make similar alterations to any Report (excluding financial reports) as it considers reasonably appropriate;
 - (ii) acknowledges that, notwithstanding any other provision of this agreement, AgriFutures Australia may as it considers appropriate copy, reproduce, publish, exploit or otherwise

use or disclose any Report that's not a financial report, including deciding not to publish, exploit or otherwise use or disclose it; and

- (iii) must not copy, reproduce, publish, exploit or otherwise use or disclose any Report without the prior written consent of AgriFutures Australia.

2.12 Audit or examination

AgriFutures Australia may on 7 days' written notice to the Research Organisation audit or examine the Research Organisation's books of account and other records relevant to the Project to:

- (a) determine the correctness of any 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 2.10 or 2.11, to obtain information required to be provided under those clauses.

2.13 Retention

The Research Organisation must retain the Research Organisation's books of account and other records required for the purposes of clauses 2.10 and 2.12 for at least 7 years after the end of the Project Period.

2.14 Conflict of interest

The Research Organisation warrants that its staff and personnel involved in this Project has no conflict of interest in the performance of the Project as at the date of this agreement. Immediately upon becoming aware of the existence or possibility of a conflict of interest affecting the Research Organisation, the Research Organisation must advise AgriFutures Australia in writing. The parties will then discuss in good faith a resolution of any issues arising from this notification.

2.15 Anti-Bribery laws

The Research Organisation must comply with all applicable laws, rules and regulations relating to anti-bribery during the Project Period, including Chapter 4, Division 70 of the Criminal Code Act 1995 (Cth) (Australia). The Research Organisation agrees that it will not corruptly make any offer, payment, promise of gifts or money or any other thing of value to any government official or employee, political party or political candidate ("**Government Official**") for the purpose of influencing any act or decision of such Government Official, inducing such Government Official to act in violation of their lawful duty or securing any improper advantage in relation to the Project or this agreement.

2.16 Business Ethics Laws

The Research Organisation represents and warrants to AgriFutures Australia that it will comply with the Business Ethics Laws during the Project Period in relation to the Project or this agreement.

2.17 Warranties

The Research Organisation warrants that:

- (a) it has the power and authority to enter into, execute and perform its obligations under this agreement;

- (b) this agreement and its performance do not contravene its constituent documents or any law, or any of its obligations or undertakings by which it is bound, or cause a limitation on its powers of its corporate officers to be exceeded; and
- (c) it will obtain all necessary approvals, consents and authorisations for the purpose of carrying out the Project.

2.18 Insurance

- (a) The Research Organisation must, unless otherwise agreed in writing by AgriFutures Australia, at all times maintain:
 - (i) adequate workers' compensation insurance as required by law for its employees;
 - (ii) professional indemnity insurance in the amount of \$5 million for each claim for the Project Period and at least 3 years after its end; and
 - (iii) public liability insurance in the amount of \$10 million for each claim.
- (b) The Research Organisation must, on request by AgriFutures Australia, produce evidence of the currency of the insurance policies referred to in clause 2.18(a).
- (c) Clause 2.18(a) 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 AgriFutures Australia Contributions

3.1 Provision

- (a) Subject to the Research Organisation complying with the terms of this agreement and the Research Organisation first obtaining any approvals required under clause 2.5, AgriFutures Australia must, in accordance with the Budget and the Milestones, provide to the Research Organisation:
 - (i) the AgriFutures Australia Funds; and
 - (ii) the AgriFutures Australia Assets,for the sole purpose of the Project.
- (b) The parties may agree in writing any earlier dates or times for payment of the AgriFutures Australia Funds to the Research Organisation than the dates or times specified in the Budget and the Milestones.
- (c) The AgriFutures Australia Funds are exclusive of GST.
- (d) The parties agree that payment of the final instalment of the AgriFutures Australia Funds by AgriFutures Australia in accordance with Item 1 of the Schedule is conditional on:
 - (i) AgriFutures receiving the Report specified in clause 6.2(b); and
 - (ii) the final Report being of the standard prescribed by clause 2.11(a)(v) and (vi).

3.2 What AgriFutures Australia Funds can be used for

The Research Organisation must only use the AgriFutures Australia Funds for the purposes of undertaking the Project in accordance with this agreement.

3.3 No obligation to provide additional funding

The Research Organisation is under no obligation to provide any funding in addition to the AgriFutures Australia Funds, including to meet any expenditure incurred by the Research Organisation in excess of the AgriFutures Australia Funds.

3.4 Research Organisation to provide invoice

The Research Organisation must provide a correctly rendered invoice to AgriFutures Australia for the AgriFutures Australia Funds. The invoice must be a tax invoice and be in a form approved by AgriFutures Australia which sets out:

- (a) the agreement number and project title;
- (b) the amount of AgriFutures Australia Funds to be paid by the AgriFutures Australia together with any substantiating material required; and
- (c) such other information as AgriFutures Australia requires.

3.5 Due date for payment

AgriFutures Australia must pay the AgriFutures Australia Funds to the Research Organisation within 30 days after the later of:

- (a) the due date for payment of the AgriFutures Australia Funds as set out in Item 1 of the Schedule; or
- (b) the submission of a correctly rendered invoice in accordance with clause 3.4.

3.6 Suspension

Without limiting AgriFutures Australia's rights under clause 9.1:

- (a) AgriFutures Australia may suspend payment of any of the AgriFutures Australia Funds or provision of any AgriFutures Australia Assets if the Research Organisation:
 - (i) does not achieve a Milestone which was to be completed by the due date for the payment to a standard acceptable to AgriFutures Australia on reasonable grounds;
 - (ii) does not provide Reports in accordance with clause 2.11;
 - (iii) does not ensure that the Principal Investigator and other Key Personnel (or replacement persons approved by AgriFutures Australia) carry out the Project; or
 - (iv) is in breach of any other of its material obligations under this agreement,upon written notice to the Research Organisation, until the matter is rectified to the reasonable satisfaction of AgriFutures Australia; and

- (b) following receipt of the notice under clause 3.6(a), if the Research Organisation has not rectified the matter to the reasonable satisfaction of AgriFutures Australia within a reasonable period of time, AgriFutures Australia may, upon further written notice to the Research Organisation, permanently withhold the payment of any of the AgriFutures Australia Funds or provision of any AgriFutures Australia Assets to the Research Organisation.

4 Variation Process

- (a) If during a Project, either party reasonably believes that it needs to vary the Project because of issues that have arisen, that party must give the other party a written notice as soon as reasonably practicable, setting out particulars of the proposed change to the Project, any resulting changes to the Budget and reasons why the party believes that the variation is necessary ("**Variation Request**"). Variation Requests relating to the delay of a particular Milestone must be communicated at least 14 days before the Milestone Due Date.
- (b) AgriFutures Australia and the Research Organisation must within a reasonable time frame of service of a Variation Request commence good faith negotiations as to any variation to the Project on the basis that the nature of the research work to be carried out under this agreement means that it may be necessary or desirable from time to time to amend the Project in order to achieve the Project Objective. The parties acknowledge that AgriFutures Australia has the right to amend the Milestones and the Payment Invoicing Dates in Item 1 of the Schedule following any Variation Request. The Research Organisation must, to the extent reasonably practicable, continue to perform its obligations in relation to the Project as it existed prior to the Variation Request, unless and until the parties agree to vary the Project. Any such agreement must be in writing signed by the parties.

5 Background Intellectual Property

5.1 Provision

During the Project Period each party must make available for the Project the Background Intellectual Property to be provided by it.

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 in Item 3 of the Schedule, 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 Licence

Subject to the terms of this agreement, each party has a non-exclusive royalty-free licence to use the other party's Background Intellectual Property for the purposes of the Project.

5.4 Indigenous Cultural Intellectual Property (ICIP)

This clause 5.4 applies if YES is selected in the Details for Indigenous Cultural Intellectual Property.

- (a) When working with the First Nations community under the Project, the Research Organisation will:
 - (i) ensure that in accordance with best practice, appropriate consultation for each stage of the Project is undertaken with the participating communities involved at the commencement of the Project and throughout the life of the Project to ensure appropriate engagement;
 - (ii) identify ICIP incorporated into the Reports, Project Intellectual Property and Project Material, and the particular Australian Aboriginal and Torres Strait Islander community or communities and territory or territories who are, or might be regarded as, the relevant custodians of the particular ICIP;
 - (iii) identify any cultural protocols attaching to the ICIP;
 - (iv) consult with and seek consent for use from the relevant custodians of the ICIP in relation to the Reports, Project Intellectual Property and Project Material, with a view to ensuring that any such consent extends to the grant of licenses to each of the Research Organisation and AgriFutures Australia for purposes consistent with the Project; and
 - (v) ensure that any consent is appropriately recorded (including by way of the agreements set out in paragraph (b) below).
- (b) The Research Organisation acknowledges that it must enter into all necessary agreements in accordance with best practice relating to the use of ICIP for the purpose of the Project on terms acceptable to AgriFutures Australia and provide executed copies of these agreements to AgriFutures Australia for its records on request.
- (c) The parties acknowledge the ICIP rights of the custodians of that knowledge and agree that ownership of any ICIP will remain with the relevant custodians. To the extent of any conflict between this clause 5.4 and any other provision of this agreement (including in relation to Intellectual Property ownership), the terms of this clause 5.4 will prevail.
- (d) The Parties agree:
 - (i) to take all reasonable steps to ensure ICIP rights are respected and upheld in relation to the Project and in the collection, use and dissemination of the Reports, Project Intellectual Property and Project Material;
 - (ii) to act in accordance with and respect any cultural protocols which may apply to the ICIP or the relevant custodians in addition to those regulatory codes and guidelines identified in clause 2.6 (including when on country);

- (iii) not to use ICIP for any purpose other in accordance with the consent provided by the relevant custodians of that ICIP for the Project; and
- (iv) attribute any relevant custodians of ICIP incorporated in the Reports, Project Intellectual Property and Project Material unless otherwise advised by the custodians.

6 Project Intellectual Property and Project Material

6.1 Ownership rights

- (a) Project Intellectual Property and Project Material is jointly owned by AgriFutures Australia and the Research Organisation in accordance with the terms of this clause 6. Each party which creates Project Intellectual Property and Project Material assigns to the other party a joint interest in all right, title and interest in Project Intellectual Property and Project Material.
- (b) AgriFutures Australia owns the copyright in all Reports and the Research Organisation assigns them to AgriFutures Australia as and when they are created.
- (c) All Intellectual Property rights in any Improvement created by either party will, on creation, be jointly owned by AgriFutures Australia and the Research Organisation and treated as Project Intellectual Property on the same terms as this clause 6. Each party which creates Improvements assigns to the other party a joint interest in all right, title and interest in its Improvements.

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 include the details of this Project Intellectual Property and Project Material in each Report provided to AgriFutures Australia; and
- (b) within 3 months after the end of the Project Period, provide AgriFutures Australia with a written report regarding the Project Intellectual Property and Project Material in sufficient detail to enable AgriFutures Australia to determine the nature of the Project Intellectual Property and Project Material and its potential use.

6.3 Licences

- (a) 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 and for the purposes of education, research and development only. Project Intellectual Property and Project Material may not be used by a party for any other purpose except with the prior written agreement of the other party.
- (b) Subject to this agreement, the Research Organisation has a non-exclusive royalty-free right to use Reports for the purposes of education, research and development only. Reports may not be used by the Research Organisation for any other purpose except with the prior written agreement of AgriFutures Australia.
- (c) Where the Project requires use of Third Party Intellectual Property, the Research Organisation:
 - (i) should identify that Third Party Intellectual Property in Item 3 of the Schedule;

- (ii) if any additional Third Party Intellectual Property is required after the Project has commenced, must notify AgriFutures Australia in writing with appropriate details and obtain its consent to the inclusion of that Third Party Intellectual Property in the Project;
- (iii) is responsible for obtaining all necessary licences to use that Third Party Intellectual Property for the purposes of the Project;
- (iv) to the extent that Third Party Intellectual Property is included in any Reports, must obtain a royalty free, non-exclusive licence for AgriFutures Australia to use that Third Party Intellectual Property for the purpose of the Reports and any other non-commercial ancillary purposes as reasonably requested by AgriFutures Australia; and
- (v) must ensure that it has access to any Third Party Intellectual Property on reasonable commercial terms to the extent necessary to support any Commercialisation.

6.4 Commercially valuable Project Intellectual Property or Project Material

- (a) If a party considers at any time, including after the end of the Project Period, on reasonable grounds that any Project Intellectual Property or Project Material may be Commercialised, it must notify the other party in writing accordingly, identifying the Project Intellectual Property or Project Material and detailing how it might be Commercialised.
- (b) On receipt of a notice under clause 6.4(a), 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:
 - (i) the ability of the parties to obtain protection for the Project Intellectual Property or Project Material; or
 - (ii) Commercialisation by the parties of the Project Intellectual Property or Project Material.
- (c) The parties must after receipt of a notice under clause 6.4(a) in good faith seek to agree:
 - (i) appropriate protection for the Project Intellectual Property or Project Material;
 - (ii) a plan for Commercialisation of the Project Intellectual Property or Project Material which is subject to AgriFutures Australia's final approval ("**Commercialisation Plan**"); and
 - (iii) any variation of the Commercial Share Proportions (if appropriate).
- (d) Unless otherwise agreed, the Commercialising Party is to be responsible for Commercialisation and dissemination according to the Commercialisation Plan.
- (e) The Commercialising Party is entitled to retain the Commercialisation Charge and otherwise agrees to share the Commercial Net Income with the other party in the Commercial Share Proportions on the terms of this agreement.
- (f) The parties acknowledge that the costs of any protection for the Project Intellectual Property and Project Material agreed under clause 6.4(c) will be funded by the Commercialising Party, however those costs will be deducted from any income from Commercialisation in order to calculate the Commercial Net Income.

- (g) If the parties are unable within 1 month after receipt of a notice under clause 6.4(a) to agree appropriate protection for Project Intellectual Property or Project Material under clause 6.4(c)(i), a party may at its cost arrange appropriate protection and is entitled to recover its costs of doing so from the proceeds of Commercialisation before the net proceeds of Commercialisation are shared by the parties in their respective Commercial Share Proportions.
- (h) Where Commercialisation of Project Intellectual Property or Project Material requires access to a party's Background Intellectual Property, the party must license the Background Intellectual Property for the purposes of that Commercialisation on a royalty-free basis (as Background Intellectual Property has been taken into account in the calculation of the Commercial Share Proportions) on terms agreed between the parties or, failing agreement within 2 months after receipt of a notice under clause 6.4(a), on reasonable arm's length terms determined by an Expert.
- (i) The Commercialising Party is required to provide the following to the other party every 6 months from the date that the Commercialising Party proceeds with the Commercialisation:
 - (i) a Commercialisation update report, along with any substantiating material reasonably requested by the other party; and
 - (ii) if there is a Commercialisation agreement with royalties, a royalty statement that has been certified either by a senior executive of the Commercialising Party or by an independent auditor which sets out the total Commercial Net Income and the Commercial Share Proportions due to each party for the previous 6 months.
- (j) If there is a Commercialisation, the parties acknowledge that records and audit obligations in clauses 2.10 and 2.12 will extend to that Commercialisation in the same way as they apply to the Project.
- (k) If the Commercialising Party does not pay the other party's share of the Commercial Net Income in accordance with the due dates specified in the Commercialisation Plan, the other party may charge the Commercialising Party interest on any late payments at the Reserve Bank Interbank Overnight Cash Rate + 2%, calculated daily and compounding monthly, until all overdue amounts are paid.
- (l) In relation to Commercialisation, each party:
 - (i) agrees to act in close consultation with each other and co-operate in good faith and in a manner that facilitates the development of Commercialisation opportunities; and
 - (ii) acknowledges that a party may independently proceed with a Commercialisation opportunity if it provides a written notice to the other party in accordance with clause 6.4(a), and the other party does not provide a response within 3 months of receipt of that notice, provided that it then complies with clause 6.4(e), (i) and (j).

6.5 Compliance with Commercialisation Plan

- (a) If the original Commercialising Party ("**Original Commercialising Party**"):
 - (i) materially deviates from the Commercialisation Plan without the other party's approval; or

- (ii) fails to act in accordance with the Commercialisation Plan; or
- (iii) fails to meet any milestones, minimum performance levels, forecasts or projections contained in the Commercialisation Plan,

then within 30 days of the other party becoming aware of the Original Commercialising Party's alleged conduct under subclause (i), (ii) or (iii), the other party may serve a written notice on the Original Commercialising Party requiring the Original Commercialising Party to provide, within 30 days of the Original Commercialising Party receiving the other party's notice, a detailed written explanation of:

- (iv) the conduct under subclause (i), (ii) or (iii) and the reasons for that conduct; and
 - (v) the Original Commercialising Party's proposed actions to remedy that conduct within a reasonable period (not to exceed 6 months).
- (b) If, following the notice described in clause 6.5(a):
- (i) The Original Commercialising Party fails to provide the written explanation relating to the conduct within 30 days of receiving the other party's notice described in clause 6.5(a); or
 - (ii) following the Original Commercialising Party providing the explanation in accordance with clause 6.5(a)(iv) and (v) and the other party and the Original Commercialising Party undertaking good faith negotiations to determine the actions to be undertaken by the Original Commercialising Party to remedy the conduct, the other party acting reasonably, does not accept the proposed explanation or actions as sufficient or adequate to remedy the conduct; or
 - (iii) following the Original Commercialising Party providing the explanation in accordance with this subclause and it being accepted or agreed with modifications by the other party, the Original Commercialising Party does not implement the proposed actions to remedy the conduct within the agreed period or at all,

then the other party may step into the role of "Commercialising Party" in the place of the Original Commercialising Party by giving 45 days' written notice to the Original Commercialising Party.

- (c) In addition to complying with any outstanding obligations under clause 6.4(i), the Original Commercialising Party agrees to share all information and progress in relation to the Commercialisation with the other party and otherwise do all things necessary to facilitate the transition described in clause 6.5(b).

6.6 Expert determination

In making a determination under clause 6.4:

- (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

- (a) 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. The Research Organisation consents to the Disposal by AgriFutures Australia of an interest in Project Intellectual Property and Project Material to any party that provides funding to AgriFutures Australia for the Project.
- (b) Each party that Disposes of an interest in Project Intellectual Property or Project Material must ensure that the recipient complies with the terms of this agreement relating to Project Intellectual Property and Project Material as if it was a party to it.

6.8 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; and
- (c) subject only to provision of consents under clause 6.3(b), AgriFutures Australia will be entitled to use the Reports without the consent of any other person.

7 Confidentiality, privacy and communications

7.1 Limited use and disclosure

Each party must:

- (a) maintain the secrecy of the Confidential Information and each other party's Confidential Information;
- (b) not use the Confidential Information or any other party's Confidential Information except as required for or permitted by this agreement; and
- (c) not disclose the Confidential Information or any other party's Confidential Information to any other person other than each employee, agent, subcontractor and Student employed or engaged by it and who need to know it in order to perform that party's obligations under this agreement.

7.2 Personnel

- (a) Each party must use its best endeavours to ensure that:
 - (i) each employee, agent, subcontractor 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

- (ii) any of the employees, agents, subcontractors and Students who cease to be employed or engaged by the party continue to be bound by such obligations of confidentiality.
- (b) Each party may only disclose Confidential Information of the other party to those persons requiring access for the purpose of the Project.

7.3 Disclosure to third parties

A party may disclose Confidential Information of another party to a third party requiring access for the purpose of the Project if:

- (a) that party has obtained the other party's prior written approval, which approval will not be unreasonably withheld if the party has procured from the person to whom it will be disclosed a suitable confidentiality undertaking; or
- (b) disclosure is required or compelled by an order of a court or by a law; or
- (c) necessary for the conduct of any legal proceedings arising in relation to this agreement.

7.4 Protection of Personal Information

- (a) Each party agrees to:
 - (i) comply with the Australian Privacy Principles set out in the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use, disclosure or other handling of Personal Information in relation to information used or collected under or in connection with this agreement; and
 - (ii) promptly notify the other party of any complaint that it receives concerning the Personal Information under this agreement and cooperate and comply with any reasonable directions, guidelines, demands or inquiries made by that party or the Australian Information Commissioner in relation to the management and handling of Personal Information by that party or breaches or alleged breaches of privacy and provide the party or the Australian Information Commissioner with access for the purpose of monitoring a party's compliance with this clause 7.4;
- (b) The Research Organisation agrees to:
 - (i) not transfer Personal Information held in connection with this agreement outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of AgriFutures Australia;
 - (ii) where the Research Organisation collects Personal Information for or on behalf of AgriFutures Australia:
 - a. only use and disclose that information for the purpose for which it is collected; and
 - b. not publish, disseminate or otherwise use the Personal Information in any other way; and
 - (iii) in relation to any Personal Information provided to the Research Organisation by AgriFutures Australia under this Agreement:

- a. only store, use, disclose or otherwise handle the information for the specific purposes for which it was provided to the Research Organisation under this agreement;
- b. co-operate with any reasonable request or direction of AgriFutures Australia which relates to the protection of the information; and
- c. comply with clause 7.4(a)(ii) in relation to that information.

7.5 Consents

In relation to any Personal Information that the Research Organisation provides to AgriFutures Australia under this agreement, the Research Organisation warrants that it has:

- (a) before providing the Personal Information to AgriFutures Australia, notified all individuals to whom the Personal Information relates that it will be disclosing their Personal Information to AgriFutures Australia for the purposes of this agreement and obtained any required consent to such disclosure; and
- (b) provided the individuals with a link to the privacy policy of AgriFutures Australia at <https://www.agrifutures.com.au/privacy-statement/>.

7.6 Use of Data

Without limiting AgriFutures Australia's other rights under this agreement, the Research Organisation acknowledges that depersonalised aggregated data collected as part, or in the course, of the Project and which is incapable of being used to identify, or ascertain the identity of, any person may be:

- (a) used by AgriFutures Australia for planning, research and development, or marketing purposes, including as part of AgriFutures Australia's digital platforms such as grow^{AG}; and
- (b) provided by AgriFutures Australia to third parties for the purposes of projects undertaken by AgriFutures Australia.

7.7 Communications

- (a) The Research Organisation must:
 - (i) not publish or disseminate Reports without the prior written consent of AgriFutures Australia;
 - (ii) not publish or disseminate other information relating to the Project or its results, whether in writing or by audio-visual, oral presentation or any other means ("**Communication**"), without the prior written consent of AgriFutures Australia, such consent not to be unreasonably withheld; and
 - (iii) ensure that any Communication acknowledges the contribution to and support of the Project by AgriFutures Australia in a manner acceptable to AgriFutures Australia and contains a disclaimer of liability acceptable to AgriFutures Australia.
- (b) The Research Organisation must request in writing that AgriFutures Australia consent to the Communication ("**Request**"), and, within 7 days after receipt of the Request, AgriFutures Australia must notify the Research Organisation that:

- (i) it consents to the Communication;
 - (ii) it consents to the Communication with specified amendments and provide reasons; or
 - (iii) it does not consent to the Communication and provide reasons.
- (c) AgriFutures will only consent to the publication of Reports or Communications if:
- (i) the Reports or Communications are of a reasonably acceptable standard of written English and otherwise comply with clause 2.11; and
 - (ii) appropriate acknowledgement of AgriFutures Australia has been made under clause 7.7(a)(iii).
- (d) If AgriFutures Australia provides a notice under clause 7.7(b)(ii) or 7.7(b)(iii), if requested by the Research Organisation the parties must in good faith seek to agree a basis on which AgriFutures Australia would consent to the Communication.
- (e) If AgriFutures Australia does not consent to the Communication, the Research Organisation must not publish or disseminate the Communication.
- (f) Without limiting clause 7.7(b)(iii), AgriFutures Australia may withhold its consent if it considers on reasonable grounds that the Communication may:
- (i) disclose AgriFutures Australia's Confidential Information;
 - (ii) prejudice a right to protect or Commercialise Intellectual Property; or
 - (iii) prejudice the best interests of AgriFutures Australia or an Australian rural industry.

7.8 Brand Use

- (a) Except to the extent required by law or with the prior written consent of the other party, a party must not use the other party's name, logo or trademarks to make a public statement about this agreement or in a manner that suggests any sponsorship, approval or endorsement of the other party's operations, business, products, services or activities. The use of such name shall be subject to any conditions attaching to any consent given by the other party and such consent may be withdrawn on reasonable notice at the discretion of that party.
- (b) Notwithstanding clause 7.8(a), a party may mention the other party in:
- (i) annual or other periodical reports prepared by that party as part its reporting obligations in the normal course of its operations; or
 - (ii) any information required by law, governmental regulation or order to be disclosed to any governmental entity; or
 - (iii) acknowledgements in scientific publication as required by any peer reviewed publications. In any such statement, the relationship of the parties shall be accurately and appropriately described.

8 Students

- (a) The Research Organisation will give AgriFutures Australia the opportunity to approve the involvement and role in each Project of any Students whose work on the Project and where use of the Project Intellectual Property will contribute to the preparation of their Student Thesis, by providing AgriFutures Australia with reasonable details of the proposed involvement and role of each relevant Student.
- (b) Within 14 days of receiving details from the Research Organisation under paragraph 8(a), AgriFutures Australia must either:
 - (i) approve the proposed involvement and role of the Student; or
 - (ii) enter into good faith discussions with the Research Organisation to agree terms on which the Student may be involved in the Project, which must:
 - a. include restrictions equivalent to those set out in clause 7.7; and
 - b. provide for examination of his or her student thesis to be undertaken by examiners bound by obligations of confidentiality if elected by AgriFutures Australia and for the publication of any student thesis to be deferred for 6 months to enable the protection of any Project Intellectual Property.
- (c) The Research Organisation agrees to ensure that the Students are supervised by appropriate Research Organisation staff and subject to any of the Research Organisation's internal policies applicable to the Students.
- (d) The parties agree that ownership of the copyright in any thesis approved authored by a Student remains with that Student.

9 Term and Termination

9.1 Default

- (a) If a party ("**Defaulting Party**"):
 - (i) fails, within 1 month after receipt of written notice from the other party, to remedy any breach of a term of this agreement which is capable of remedy;
 - (ii) breaches a material term of this agreement which is not capable of remedy; or
 - (iii) persistently breaches a material term of this agreement.the other party may, by written notice to the Defaulting Party, terminate this agreement.
- (b) If this agreement is terminated under clause 9.1(a):
 - (i) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
 - (ii) termination is without prejudice to any other rights of the other party against the Defaulting Party;

- (iii) if the Defaulting Party is AgriFutures Australia, it must pay the Research Organisation the costs committed by the Research Organisation in accordance with the Budget in the period up to the date of termination and any non-cancellable costs reasonably incurred by the Research Organisation directly attributable to the early termination of the Project which may include staff redundancy costs, contract payout costs and early termination payments, provided that the total costs do not exceed the remaining AgriFutures Australia Funds not already expended by the Research Organisation;
- (iv) any licences of the Defaulting Party's Background Intellectual Property remain in force; and
- (v) 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 AgriFutures Australia, copyright in Reports.

9.2 Notice

- (a) If AgriFutures Australia considers on reasonable grounds that:
 - (i) the Project is no longer relevant to AgriFutures Australia's objects or functions;
 - (ii) the Project Intellectual Property, Project Material or Reports anticipated by AgriFutures Australia 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;
 - (iii) the Project will or may not produce Project Intellectual Property, Project Material or Reports anticipated by AgriFutures Australia from the Project at the time of entering into this agreement; or
 - (iv) due to insufficient funds from the Commonwealth, industry levies or contributions from third parties, AgriFutures Australia will be unable to perform its obligations under this agreement,

AgriFutures Australia may, by 3 months' written notice to the Research Organisation, terminate this agreement.

- (b) If the Research Organisation forms an opinion on reasonable grounds that:
 - (i) the Project will no longer achieve the Project Objective; or
 - (ii) the Project is no longer able to be carried out due to technical issues that have arisen, or for any other reason,

the Research Organisation will provide written notice to AgriFutures Australia setting out particulars of that opinion and its recommendation to terminate this agreement. If AgriFutures Australia provides its consent, the Research Organisation may, by 3 months' written notice to AgriFutures Australia, terminate this agreement.

- (c) If this agreement is terminated under clauses 2.7(c), 9.2(a), 9.2(b) or 10(b)(iii):

- (i) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
 - (ii) on providing notice of termination the Research Organisation must cease entering into commitments to expend AgriFutures Australia Funds or use AgriFutures Australia Assets;
 - (iii) 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;
 - (iv) subject to clause 9.2(d), AgriFutures Australia's obligation to contribute AgriFutures Australia Funds and AgriFutures Australia Assets ceases;
 - (v) any licences of a party's Background Intellectual Property remain in force;
 - (vi) each party retains the interest which it has as at the date of termination in Project Intellectual Property and Project Material; and
 - (vii) AgriFutures Australia retains its copyright in Reports.
- (d) Subject to clause 9.2(c)(iii), if this agreement is terminated by AgriFutures Australia under clause 9.2(a), AgriFutures Australia will pay the Research Organisation the costs committed by the Research Organisation in accordance with the Budget in the period up to the date of termination and any non-cancellable costs reasonably incurred by the Research Organisation directly attributable to the early termination of the Project which may include staff redundancy costs, contract payout costs and early termination payments, provided that the total costs do not exceed the remaining AgriFutures Australia Funds not already expended by the Research Organisation.

9.3 Stop / Go decision

- (a) AgriFutures Australia may terminate or suspend the Project by notice to the Research Organisation if a "Stop" decision is made by AgriFutures Australia or AgriFutures Australia and the Research Organisation. The Research Organisation may only be involved in a "Stop" decision where the Research Organisation provides Research Organisation Funds to the Project as set out in Item 2 of the Schedule.
- (b) If a "Stop / Go" decision point is referred to in Item 2 of the Schedule, the Research Organisation:
 - (i) must not proceed with the Project after that point until AgriFutures Australia notifies it that AgriFutures has made a "Go" decision to proceed with the Project after that point; and
 - (ii) acknowledges that it is not entitled to payment for any goods or services provided in breach of 9.3(a).
- (c) Unless otherwise agreed between the parties, all Stop / Go decisions must be made by 30 days after the Milestone Due Date.

9.4 Uncommitted AgriFutures Australia Funds

On termination of this agreement or following the end of the Project Period, unless otherwise agreed in writing by AgriFutures Australia, if any AgriFutures Australia Funds paid to the Research Organisation remain uncommitted by the Research Organisation, the Research Organisation must promptly repay those AgriFutures Australia Funds to AgriFutures Australia.

9.5 Post termination obligations

Subject to any record keeping obligations required by law, on termination of this agreement under clauses 2.7(c), 9.1, 9.2 or 10, the Research Organisation must immediately on request from AgriFutures Australia:

- (a) immediately deliver to AgriFutures Australia all documents and other materials containing, recording or referring to AgriFutures Australia's Confidential Information which are in its possession, power or control;
- (b) delete any Confidential Information that has been entered into a computer, database or other electronic means of data or information storage by the Research Organisation;
- (c) procure that all employees, agents, subcontractors and Students employed or engaged by it comply with paragraphs (i) and (ii) above;
- (d) provide AgriFutures Australia with electronic and hard copies of all Project Material; and
- (e) provide AgriFutures Australia with all copies of the Reports.

10 Force Majeure Event

- (a) 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:
 - (i) reasonable particulars of the Force Majeure; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform the obligation.
- (b) If clause 10(a) applies:
 - (i) the obligation will be suspended during the Force Majeure;
 - (ii) the Affected Party must use all possible diligence to work around, 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
 - (iii) a party may, by written notice to the other party, terminate this agreement if the Force Majeure continues for 3 continuous months.

11 GST

11.1 Supplies

If a supply under this agreement is subject to GST and GST has not been accounted for in determining the consideration payable for the supply, the supplying party may recover from the receiving party an amount on account of GST. That amount is:

- (a) equal to the value of the supply calculated in accordance with GST law multiplied by the prevailing GST rate; and
- (b) payable at the same time as the recipient is required to pay for the related supply.

11.2 In-kind contributions

If GST is payable on an in-kind contribution by a party:

- (a) a recipient created tax invoice (“**RCTI**”) will be issued to that party for the GST inclusive value of the in-kind contribution within 28 days of the supply being made;
- (b) the party responsible for issuing the RCTI warrants that it complies with the necessary legal requirements for issue of RCTIs; and
- (c) the party making the in-kind contribution agrees not to issue an invoice for its in-kind contributions.

12 Disputes

Any dispute relating to this agreement (“**Dispute**”) must, prior to either party initiating litigation (other than for equitable or interlocutory relief), be dealt with as follows:




- (a) the affected party will notify the other party with details of the Dispute (“**Dispute Notice**”) and, within 7 days of receiving the Dispute Notice, both parties will meet and attempt to resolve the Dispute;
- (b) if unresolved within 30 days of the Dispute Notice, the Dispute will be escalated to the Principal Investigator Supervisor and AgriFutures Australia’s General Manager who will meet and attempt to resolve the Dispute;
- (c) if still unresolved within a further 14 days of being escalated, either party may refer the Dispute to mediation;
- (d) if the parties cannot agree on a mediator within a further 14 days, the Dispute will be referred by the parties to the President, Australian Commercial Disputes Centre, Sydney to nominate a suitably qualified mediator and the parties will accept that nomination;
- (e) the parties will cooperate to enable the mediator to mediate the Dispute within 30 days of the mediator’s appointment; and
- (f) the fees of the mediator will be paid by the parties in equal proportions.

13 Notices

13.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the person set out or referred to in the Details or, if the recipient has notified otherwise, then marked for attention in the last way notified.

13.2 A notice, consent or approval under this agreement is treated as having been given and received:

Method of Notice	When is Notice received?
 HAND (HAND DELIVERY)	On date of delivery.
 MAIL (POST) Sent by post to the Recipients Address	(a) if sent from and to a place within Australia by regular post, at 9:00 am on the fourth Business Day after the date of posting; (b) if sent from a place within Australia to a place outside Australia by airmail, at 9.00 am on the tenth Business Day after the date of posting.
 EMAIL Sent to recipient's email address	If sender's email system does not receive a delivery failure notification, the date the email is sent.

14 General

14.1 Terms and entire agreement

This agreement consists of these General Terms, the Details, the Special Terms, the Schedule and any annexures expressly incorporated and it constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

14.2 Variation and waiver

A provision of this agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties to be bound. A failure or delay in exercise of a right arising from a breach of this agreement does not constitute a waiver of that right.

14.3 Further assurances

Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this agreement, including assisting to facilitate any application to register Intellectual Property rights, confirming any rights granted in relation to the Intellectual Property rights, and assisting with any GST requirements.

14.4 No 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.

14.5 Assignment

The parties may only assign a right under this agreement with the other party's prior written consent.

14.6 Remedies cumulative

The rights, powers and remedies provided in this agreement are in addition to and not exclusive of the rights, powers and remedies given by law independently of this agreement.

14.7 Governing law

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

14.8 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

14.9 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.

14.10 General interpretation

Unless the contrary intention appears, in this agreement:

- (a) references to statutes, regulations, policies, rules or code include references to those statutes, regulations, policies, rules or codes as amended, updated or replaced from time to time;
- (b) references to the singular includes the plural and vice versa;
- (c) references to person or individuals include a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (d) reference to a party means a party to this agreement and includes the party's executors, administrators, successors and permitted assigns;
- (e) an agreement, warranty, representation or obligation which binds or benefits two or more persons under this agreement binds or benefits those persons severally and not jointly or jointly and severally;
- (f) the words "include" and "including" are not used as, nor are they to be interpreted as, words of limitation;
- (g) headings are for convenience only and do not affect interpretation.

- (h) references to dollars is to Australian dollars, unless otherwise stated;
- (i) a provision of this agreement will not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement; and
- (j) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

15 Definitions

In addition to the definitions in the Details, the following words have these meanings in this agreement:

Acquired Assets means all assets specified in the Budget to be purchased by the Research Organisation with AgriFutures Australia Funds.

Administrative Contact has the meaning given to it in the Details.

AgriFutures Australia Assets means all assets specified in Item 6 of the Schedule to be provided by AgriFutures Australia.

AgriFutures Australia Funds means all funds specified in Item 1 of the Schedule to be provided by AgriFutures Australia.

Animal Welfare Acts means any legislation related to animal welfare in scientific research, including:

- (a) the Animal Research Act 1985 (NSW);
- (b) the Animal Welfare Act 1992 (ACT);
- (c) the Prevention of Cruelty to Animals Act 1986 (Vic);
- (d) the Animal Care and Protection Act 2001 (Qld);
- (e) the Animal Welfare Act 1985 (SA);
- (f) the Animal Welfare Act 2002 (WA);
- (g) the Animal Welfare Act 1993 (Tas); and
- (h) the Animal Welfare Act 1999 (NT) (as applicable).

Background Intellectual Property means all Intellectual Property to be made available by the party to the Project specified in Item 3 of the Schedule.

Budget means the budget set out in Item 4 of the Schedule.

Business Day means Monday to Friday other than a public holiday in Wagga Wagga.

Business Ethics Laws means the laws applicable to the Research Organisation in relation to:

- (i) fundamental human rights and in particular the prohibition of: (A) using child labour and any form of forced or compulsory labour, including the *Modern Slavery Act 2018* (Cth); and (B) organising or supporting any form of discrimination amongst its employees or towards its suppliers and subcontractors;
- (j) labour, immigration and prohibition of illegal work; and
- (k) anti-money laundering.

Commercial Net Income means all income derived by the Commercialising Party from the Commercialisation of the Project Intellectual Property net of the Commercialisation Charge and any costs of protecting the Project Intellectual Property.

Commercial Share Proportion means the proportion of the Commercial Net Income that each party is entitled to receive in accordance with the Details.

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 Project Intellectual Property, or to grant patent or similar rights in the Intellectual Property, or to license any person to do any of those things.

Commercialisation Charge means the 10% commercialisation administration charge retained by the Commercialisation Party from any income derived by the Commercialising Party from the Commercialisation of the Project Intellectual Property.

Commercialising Party means AgriFutures Australia unless otherwise agreed between the parties.

Communication has the meaning given to it in clause 7.7(a)(ii).

Confidential Information means all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form of the parties, that is exchanged between the parties or provided by or obtained from any of the parties for the purposes of this agreement or the Project before, on or after the effective date of this agreement relating to the operations, business, research and technology of the disclosing party, excluding information which is:

- (a) publicly available or subsequently becomes publicly available other than in a breach of this agreement;
- (b) lawfully known to the other party on a non-confidential basis before being disclosed by the party that owned the confidential information; or
- (c) rightly acquired from a third party who is not in breach of an agreement to keep such information confidential.

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

Expert means a suitably qualified expert valuer appointed by agreement between the parties, or in the absence of such agreement, by the President-Elect of the Licensing Executives Society Australia and New Zealand, who has no direct or indirect personal interest in the outcome of the determination he is required to make under clause 6.4 (“Commercially valuable Project Intellectual Property or Project Material”).

Funds means AgriFutures Australia Funds and Research Organisation Funds.

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 or restrictions of governments or governmental agencies, flood, epidemics, storm, power shortages or failures or inability to obtain sufficient labour, raw materials, fuel or utilities.

GST means in relation to Australia, GST as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended (GST Act) or any replacement or other relevant legislation and regulations.

Improvement means any development, modification, adaptation or improvement of the Project Intellectual Property which if separately exploited would infringe the Project Intellectual Property, as well as new plant varieties developed in the three years after the Project Period which are improvements upon or otherwise derive from the jointly owned Project Intellectual Property.

Indigenous Cultural and Intellectual Property or ICIP means Australian Aboriginal and Torres Strait Islander peoples' rights to their heritage. Heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Aboriginal or Torres Strait Islander group or its territory. The heritage of Aboriginal or Torres Strait Islander peoples is a living one and includes objects, knowledge and literary and artistic works which may be created in the future based on that heritage. Heritage includes:

- (a) literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
- (b) scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);
- (c) all items of movable cultural property;
- (d) human remains and tissues;
- (e) immovable cultural property (including sacred and historically significant sites and burial grounds); and
- (f) documentation of Aboriginal and Torres Strait Islander peoples' heritage, including in archives, film, photographs, videotape or audiotape and all forms of media.

Intellectual Property means all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, Confidential Information, trade secrets and eligible layout rights and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Key Personnel has the meaning given to it in the Details.

Milestone means a milestone specified in Item 2 of the Schedule.

Milestone Due Date means the due date of a Milestone specified in Item 2 of the Schedule (as varied).

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

Principal Investigator has the meaning given to it in the Details.

Project means the project described in Item 2 of the Schedule.

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 and the copyright in a Student's thesis.

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

Reports means reports, whether in writing or any other form, to be provided by the Research Organisation to AgriFutures Australia under clause 2.11 (including progress, final and financial reports) and drafts of those reports and includes all text, photographs, illustrations and other content of those reports, as specified in Item 2 of the Schedule.

Research Organisation Assets means all assets specified in the Budget to be provided by the Research Organisation, purchased by the Research Organisation with Research Organisation Funds and Acquired Assets, as specified in Item 5 of the Schedule.

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

Student means any student of the Research Organisation engaged in the Project as outlined in the Details.

Third Party Intellectual Property means Intellectual Property owned by a third party other than AgriFutures Australia or the Research Organisation that is used in undertaking the Project, as specified in Item 3 of the Schedule.

WHS Legislation means the Work Health and Safety Act 2011 and any State or Territory legislation relating to occupational or work health and safety and includes all regulations, codes or guidelines, whether made under that legislation or otherwise, which apply to the parties in performing this agreement or conducting the Project and any other activities contemplated by this agreement.

SCHEDULE

Item 1: AgriFutures Australia Funds and Research Organisation Funds

Financial Contributions	Amount (GST excl.)			
	2020-21 (\$)	2021-22 (\$)	2022-23 (\$)	Total (\$)
AgriFutures Australia	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»
Research Organisation	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»
«XXXXX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»
TOTAL:	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»

Non-Financial Contributions				
Contributor	Amount (GST excl.)			
	2020-21 (\$)	2021-22 (\$)	2022-23 (\$)	Total (\$)
AgriFutures Australia	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»
Research Organisation	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»
«XXXXX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»
TOTAL:	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»	\$«XXXX.XX»

AgriFutures Australia Funds

The AgriFutures Australia Funds will become due and payable in advance from the effective date of this agreement and invoiced as indicated in the schedule below.

Payment Invoicing Dates	AgriFutures Funds due (ex. GST)
«Day, Date Month Year»	\$
«Day, Date Month Year»	\$
«Day, Date Month Year»	\$

TOTAL	\$ [insert total Research Organisation Funds]
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Approved expenses: [insert e.g. any assets that need to be purchased to undertake the activities]

[AgriFutures to consider having any incentive-based payments with regard to KPIs]

Research Organisation Funds

Payment Invoicing Dates	Research Organisation Funds due (ex. GST)
«Day, Date Month Year»	\$
«Day, Date Month Year»	\$
«Day, Date Month Year» [consider if final payment of Research Organisation Funds should be tied to approval of the Final Report]	\$
TOTAL	\$ [insert total Research Organisation Funds]

Item 2: Project

Project Summary	«Insert Project Summary»
Project Method	«Project Method»
Project Team	«Project Team Information»

Milestones

[Insert Project Milestones, including the provision of related Deliverables. An example Milestone is set out below.]

Note: If there is a Stop / Go decision point at the end of a Milestone, you should state this in the Milestone Column below and include the criteria or information required for the Stop / Go decision and the timeframe in which the Stop / Go decision must be made should be set out in the relevant Milestone.

Milestone Name	Task	Performance Indicator	Due Date
[Exchange of Contract]	[Contract signed and returned to AgriFutures Australia along with a valid Australian Tax invoice (emailed to finance@agrifutures.com.au with Milestone name and Task) and the following: 1. [insert] 2. [insert]	[Contract executed Invoice received [insert] received]	[insert]
[Progress Report] [Stop / Go decision point?]	[Submit Progress Report detailing progress against the following tasks: 1. [insert] 2. [insert] [The content of Progress Report must include: 1. the progress of the Project; 2. reporting on the provision of the Research Organisation Background Intellectual Property, the Research Organisation Assets and other Research Organisation In Kind Contributions; and 3. Project Intellectual Property and 4. Project Material in sufficient detail to enable AgriFutures Australia to determine the nature of the Project Intellectual Property and Project Material and its potential use.]	[Progress Report submitted into the AgriFutures Project Management System describing achievement against Milestone tasks.]	[insert]
[Year [1] Financial Report] [consider making this an annual milestone]	[Submit annual financial report outlining the provision and application of the Research Organisation Funds.]	[Financial Report submitted into the AgriFutures Australia Project Management System]	[insert]
[Final Report] [Stop / Go decision point?]	[Submit the final project report, edited and ready for final review, using the AgriFutures Australia final report template, summarising: 1. [insert]	[The following items submitted into the AgriFutures Australia Project Management System:	[insert]

Milestone Name	Task	Performance Indicator	Due Date
	<p>2. [insert]</p> <p>The content of the Final Report must include:</p> <ol style="list-style-type: none"> the conclusions of the Project; reporting on the provision of the Research Organisation Background Intellectual Property, the Research Organisation Assets and other Research Organisation In Kind Contributions; Project Intellectual Property and Project Material in sufficient detail to enable AgriFutures Australia to determine the nature of the Project Intellectual Property and Project Material and its potential use; Provision of 2-3 photos for use with extension outputs; 1-2 page plain English project summary (using the AgriFutures Australia template); and [insert] 	<ul style="list-style-type: none"> Final Report Plain English project summary 2-3 photos] 	
[Final Financial Statement]	[Submit Final Financial Statement outlining the use of funds throughout the project. Figures are to be submitted directly into the Final Financial Statement page in the AgriFutures Australia Project Management System.]	[Final Financial Statement submitted into the AgriFutures Australia Project Management System]	[insert] *90 days after Final Report payment has been made

Deliverables

[Specifically describe the Deliverables, including the contents of Progress Reports, Financial Report and the Final Report. The Deliverables should be SMART – Specific, Measurable, Achievable, Realistic and Timely]

Item 3: Intellectual Property

AgriFutures Australia Background Intellectual Property	[Describe as specifically as possible]
Research Organisation Background Intellectual Property	[Describe as specifically as possible. If none, insert “Not applicable”]
Third Party Intellectual Property	[Describe as specifically as possible. If none, insert “Not applicable”]

Item 4: Budget

Budget	Amount
Salaries & On Costs	\$
Operating Costs	\$
Communications and Extension	\$
Travel	\$
Capital Items / Acquired Assets	\$
«XXXXX»	\$
«XXXXX»	\$
TOTAL	\$

Item 5: Research Organisation Assets and In-Kind Contributions

[Describe any Research Organisation Assets and other In-Kind Contributions other than their Background Intellectual Property (which is covered in Item 3) and their value in further detail. For example (1) Salaries (2) Access to property (3) provision of genetic material (e.g. bees for breeding program) etc]

Contribution Description	Value (ex. GST)
	\$
TOTAL	\$ [insert total Research Organisation In-Kind Contributions]

Item 6: AgriFutures Australia Assets

[Describe any assets owned by AgriFutures Australia which will be provided to the Research Organisation for the purposes of the Project. If none, insert "Not applicable"]