



Australian Government

**Cotton Research and
Development Corporation**

DEED

between

Cotton Research and Development Corporation

and

[Insert name of Research Provider]

**For Research and Development, Postgraduate Scholarships,
Travel and Major Capital items to be undertaken in Support of the
Australian Cotton Industry**

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THIS DEED IS MADE ON THE.....DAY OF.....20....

PARTIES

Cotton Research and Development Corporation (ABN 71 054 238 316) of 2 Lloyd Street, Narrabri, NSW 2390, a corporation established by regulation 4 of the *Cotton Research and Development Corporation Regulations 1990* made pursuant to the *Primary Industries Research and Development Act 1989* (Cth) (**CRDC**)

and

[name of Research Provider] (ABN) of [ADDRESS] [Enabling Act or Other descriptor]
(**Research Provider**)

RECITALS

- A CRDC's objective is to enhance the contribution that research and development makes to the cotton industry for the Australian community.
- B To achieve this objective, the PIRD Act sets out a number of functions and powers of CRDC, including to:
- a. investigate and evaluate the cotton industry requirements for research and development and to prepare, review and revise an R&D plan (as that term is defined in the PIRD Act) on that basis in relation to the cotton industry;
 - b. *"disseminate and commercialise, and facilitate the dissemination, adoption and commercialisation of, the results of research and development in relation to the"* cotton industry;
 - c. *"make intellectual property and other applications, including joint applications, in relation to the results of research and development"*; and
 - d. *"deal with the results of research and development vested in, or made available to"* CRDC.
- C From time to time, CRDC may make funds available on the terms of this Deed:
- a. to the Research Provider for the conduct of one or more Projects by the Research Provider, including as a lead Research Provider;
 - b. to collaborating research providers, including the Research Provider;
 - c. to tertiary students, through the Research Provider, in the form of a Scholarship, to assist those students in the carrying out of research in aspects of cotton growing, processing or marketing;
 - d. to the Research Provider for the purposes of allowing its representatives to travel to seminars and conferences if that travel is not otherwise funded as part of a Project; and
 - e. for the acquisition of Major Capital Items.
- D From time to time, CRDC and Partner Organisations may:
- a. in collaboration under a Program Management Agreement; and
 - b. on the terms of a Head Funding Agreement if any,
- make funds available on the terms of this Deed to research providers for the conduct of one or more co-funded Projects.

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- E The parties agree that the terms set out in this Deed will apply to the provision of funds by CRDC to the Research Provider for:
- a. the conduct of each Project, including any Project under a Program;
 - b. each Scholarship;
 - c. travel undertaken by representatives of the Research Provider; and
 - d. the acquisition of Major Capital Items.

OPERATIVE PROVISIONS

PART 1 - DEFINITIONS AND INTERPRETATION

1 INTERPRETATION

Definitions

1.1 The following definitions apply in this Deed:

Adoption Pathway Proposal means the draft proposal for the Exploitation of Project Technology or Scholarship Technology;

Agreement means an agreement formed pursuant to clause 4.

Applicable Laws means any law, statute, ordinance, rule, regulation, order or determination of any court or governmental authority of any state or territory relating to this Deed or to the parties (including, without limitation, in relation to fraud or corruption).

Application means an application for funding.

Approval means a Project Approval, a Scholarship Approval, a Major Capital Item Approval or a Travel Approval.

Background Conditions means, in respect of Background IP, any restrictions or limitations in the use of, or Third Party ownership rights in respect of, the Background IP that relate to the use of the Background IP in accordance with this Deed that are:

- (a) specified in the relevant Approval; or
- (b) otherwise agreed in writing by CRDC.

Background IP means, in respect of an Agreement, IP that:

- (a) is in existence at the Commencement Date of the Agreement or is otherwise brought into existence other than as a result of the performance of the relevant Project or Scholarship; and
- (b) is contributed to or made available for and used in the conduct of the relevant Project or Scholarship,

and is:

- (a) specified in the relevant Approval; or
- (b) otherwise agreed in writing by CRDC.

Bribery means to directly or indirectly offer, promise to give or give any benefit (monetary or otherwise) to another person that is not legitimately due to that other person for the purpose of improperly influencing that person in the exercise of their duties or to act (or omit to act) in a way that differs from that official's proper duties, obligations and standards of conduct.

Business Day means, in relation to the doing of any act in a place, any day other than a Saturday, Sunday or public holiday in that place.

Capital Item means an item that has a life expectancy of more than one year and that was wholly or partially acquired with over \$1,000 (not including GST) of Funding and includes (but is not limited to):

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- (a) equipment, including laboratory and field equipment, for conducting the Project;
 - (b) information technology, including computers, software and peripherals;
 - (c) buildings; and
 - (d) vehicles.

Commencement Date means, unless the parties otherwise agree in writing:

- (a) in relation to this Deed, the date on which this Deed is executed by all parties and if executed on different dates, the date on which the last party executes this Deed; and
- (b) in relation to an Agreement, the date on which CRDC executes the relevant Approval or as otherwise specified in the relevant Approval.

Commercial Bribery means Bribery other than of a Public Official. This includes the Bribery of an employee or agent of a person in order to:

- (a) obtain or retain a business advantage from their employer or principal;
- (b) undermine that person's ability to act in the best interests of their employer or principal; or
- (c) cause that person to behave without good faith or in breach of trust towards their employer or principal.

Commercialisation Entity means an entity appointed by the parties to Commercialise Project Technology or Scholarship Technology.

Commercialise or **Commercialisation** means, in relation to IP or other property, to manufacture, sell, hire or otherwise commercially exploit a product or process, or to provide a service, using the IP or other property, or to license any person to do any of those things.

Completion Date means the completion date specified in the relevant Approval.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential; or
- (c) the other party knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed or an Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the other party as established by written evidence.

Conflict of Interest means any matter, circumstance, interest or activity which adversely impacts on the Research Provider's ability to perform its obligations set out in this Deed or an Agreement objectively, diligently and independently.

CRDC Agreement Code means the Project, Scholarship, Travel or Major Capital Item agreement code provided by CRDC.

CRDC Income means all income (excluding GST) arising from the proceeds of Exploitation of any CRDC Material.

CRDC Material means:

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- (a) any material, facilities, premises, equipment, documents, information, Data, software and organisms (living or dead), including any Background IP, provided by CRDC to the Research Provider for the purposes of this Deed or any Agreement;
 - (b) any Agreement or Approval; and
 - (c) anything which is copied or derived from the material referred to in paragraphs (a) and (b),

but does not include any Capital Items, Project Technology or Scholarship Technology.

Data includes all information stored on magnetic tapes, disks or in electronic or written form of any kind.

Deed means this Deed including the Schedules, attachments and any annexures, as amended from time to time.

Executive Director means the person holding, occupying or performing the duties of the office of Executive Director of CRDC and includes any other person designated in writing by the Executive Director to perform any function or exercise any of the powers of the Executive Director set out in this Deed or any Agreement.

Expert means a suitably qualified expert valuer agreed between the parties (or, failing agreement within 10 Business Days, appointed by the President of LESANZ Inc. or the President's nominee) who has no direct or indirect personal interest in the outcome of the determination they are required to make under this Deed.

Exploit and Exploitation means, in relation to IP or other property:

- (a) to Commercialise it; or
- (b) to otherwise:
 - (i) use it, demonstrate it or make it available to industry or any other Third Party; or
 - (ii) provide a service incorporating it, including the provision of research services,

or to license or otherwise entitle any Third Party to do any of those things or to offer to do any of those things.

Final Report means the report referred to in clause 44.

Financial Report means the report referred to in clauses 43 and 53.4.

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

Funding means the funding specified in the relevant Approval.

GST and **GST Law** have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Head Funding Agreement means any funding agreement between CRDC and another party pursuant to which CRDC receives funding for a Program or Project specified in a Program Management Agreement or Approval respectively.

Heads of Expenditure means the following categories of expenses:

- (a) salaries and on-costs; and
- (b) operating expenses, including travel expenses and Capital Items other than Major Capital Items.

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- (c) or such other categories approved by CRDC and agreed in writing by the parties.

Intellectual Property or IP means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, trade secrets, data, business and domain names and inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable and whether or not created in Australia or elsewhere, but does not include Moral Rights.

Internal Research means research and development conducted by a party for the purpose of performing its ordinary functions and carrying out its core business, but does not include research and development being carried out by a party, including with or for Third Parties, which constitutes Exploitation.

IP Register means the register referred to in clause 7.3.

Lead Research Provider has the meaning given to it in clause 4.16.

Loss means any loss, damage, liability, cost or expense (excluding consequential loss, loss of profit or opportunity and indirect loss, damage, liability, cost or expense), including legal expenses whether incurred or awarded.

Major Capital Item means a Capital Item that was wholly or partly acquired with over \$10,000 (not including GST) of Funding.

Major Capital Item Approval means an approval issued by CRDC under clause 4.1.4.

Methodology means the methods and procedures for carrying out a Project specified in the relevant Project Approval.

Milestones means the key delivery and decision points in the performance of a Project specified in the relevant Project Approval.

Moral Rights means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; and
- (c) a right of integrity of authorship,

as conferred by the *Copyright Act 1968*, and rights of a similar nature whether existing presently or which may in the future come into existence.

Outcome means the objective and anticipated outcomes of a Project or Scholarship as specified in the relevant Project or Scholarship Approval.

Partner Organisation means a person which has signed a Program Management Agreement issued by CRDC.

Personal Information has the meaning given to it in the *Privacy Act 1988*;

Personnel means, in respect of a party, its officers, employees, contractors, agents, students and researchers.

PIRD Act means the *Primary Industries Research and Development Act 1989*.

Program means an arrangement of collaborative research and development;

Program Management Agreement means an agreement entered into under clause 4.15.

Progress Reports means the reports referred to in clause 42.

Project means the research and development project specified in a Project Approval.

Project Administration Manager means, in respect of a Project, the person specified as the Project Administration Manager in the Project Approval or otherwise notified by CRDC to the Research Provider.

Project Administrator means, in respect of a Project, the person specified as the Project Administrator in the Project Approval, or otherwise notified by the Research Provider to CRDC.

Project Approval means an approval issued by CRDC under clause 4.1.

Project Income means, in respect of Project Technology, all income (excluding CRDC Income and GST) arising from the Exploitation of the Project Technology.

Project Team means, in respect of a Project, the Personnel specified in the Project Approval to be used by the Research Provider to conduct the Project, and includes any additional or replacement person employed or engaged pursuant to clause 48.

Project Technology means, in respect of a Project:

- (a) all material developed or created by the Research Provider in performing that Project or otherwise arising out of the Research Provider's conduct of that Project, including all discoveries, inventions, improvements, genetic material, biological material, engineering or other processes and innovations;
- (b) all reports (including all Reports) created by the Research Provider pursuant to this Deed or an Agreement;
- (c) any other documents, equipment, information and Data stored by any means brought into existence as part of, or for the purpose of carrying out, that Project; and
- (d) all IP subsisting in or in respect of the materials referred to in paragraphs (a) to (c).

Provider means:

- (a) in clause 7: a party which provides Background IP to the other party;
- (b) in clause 15: a party which provides Confidential Information to the other party; and
- (c) in clause 16: a party which provides Personal Information to the other party.

Public Official means:

- (a) an employee, official or contractor of a government body or state-owned enterprise;
- (b) a person performing the duties of an office or position created under a law of a country or by the custom or convention of a country;
- (c) a person in the service of a government body including a member of the military or the police force;
- (d) a politician, judge or any member of the executive, judiciary or legislature of a country;
- (e) an employee, contractor or person otherwise in the service of a public international organisation (including the United Nations); or
- (f) an individual who is or who holds himself or herself out to be an authorised intermediary of a person referred to in paragraphs (a) to (e).

Publish means to distribute, publish or present, or cause to be distributed or published, by any means and in any forum, including by presentation, press release, journal article, conference paper, research poster, monograph or internet posting of any type.

Recipient means:

- (a) in clause 10: a party which receives CRDC Income, Project Income or Scholarship Income;
- (b) in clause 15: a party which receives Confidential Information from the other party; and
- (c) in clause 16: a party which receives Personal Information from the other party.

Report means a Progress Report, a Financial Report or a Final Report or a report requested by CRDC in accordance with this Deed or an Agreement.

Research Provider Material means any material, facilities, premises, equipment, documents, information, Data, software and organisms (living or dead), including any Background IP, provided by the Research Provider to CRDC for the purposes of this Deed or any Agreement, and anything which is copied or derived from this material, but does not include any Capital Items, Project Technology or Scholarship Technology.

Research Provider Representative means the person specified as the Research Provider Representative in an Approval, or otherwise notified by the Research Provider to CRDC.

Research Provider Resources means any financial or other contributions to be provided by the Research Provider for a Project or Scholarship as set out in the relevant Approval.

Researchers' Handbook means the document published by CRDC entitled *Researchers' Handbook* and available on the CRDC website.

Schedule means a schedule to this Deed as varied from time to time in accordance with this Deed.

Scholarship means the scholarship specified in a Scholarship Approval.

Scholarship Approval means an approval issued by CRDC under clause 4.1.2.

Scholarship Income means, in respect of Scholarship Technology, all income (excluding CRDC Income and GST) arising from the Exploitation of the Scholarship Technology.

Scholarship Recipient means a student of:

- (a) the Research Provider; or
- (b) an educational institution which has arranged for the student to work for the Research Provider as part of the student's studies,

to whom Funding is to be paid for a Scholarship, as specified in a Scholarship Approval.

Scholarship Technology means, in respect of a Scholarship:

- (a) all material developed or created by the Research Provider or a Scholarship Recipient in carrying out a Scholarship, including all discoveries, inventions, improvements, genetic material, biological material, engineering or other processes and innovations;

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- (b) all reports (including all Reports) created by the Research Provider or Scholarship Recipient pursuant to this Deed or an Agreement;
 - (c) any other documents (including any Thesis), equipment, information and Data stored by any means brought into existence as part of, or for the purpose of carrying out, a Scholarship; and
 - (d) all IP subsisting in or in respect of the materials referred to in paragraphs (a) to (c).

Supervisor means the supervisor of a Scholarship Recipient as specified in the Scholarship Approval.

Tax Invoice has the same meaning as in the GST Law.

Technology Adoption Plan means a plan developed by a party for the Exploitation of Project Technology or Scholarship Technology and provided to the other party pursuant to clause 9.

Term means:

- (a) in respect of this Deed, the period referred to in clause 2.1; and
- (b) in respect of an Agreement, the period referred to in clause 2.2.

Thesis means any thesis written by a Scholarship Recipient in carrying out a Scholarship or a student in carrying out a Project.

Third Party means any entity or person that is not a party to this Deed or, in the case of an Agreement, to the Agreement, unless otherwise stated in this Deed or an Agreement.

Third Party Resources means any financial or other contributions to be provided by a Third Party in accordance with clause 6.1.

Travel means any travel specified in a Travel Approval.

Travel Approval means an approval issued by CRDC under clause 4.1.3.

Travel Recipient means the person specified in the Travel Approval as being the person to undertake the Travel.

Year means a period of 12 months.

Headings

1.2 Headings are for convenience only and do not affect interpretation.

Interpretation of words and expressions

1.3 A reference to:

- 1.3.1 legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- 1.3.2 a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- 1.3.3 a party to this Deed or a party to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- 1.3.4 any body is:

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- (a) if that body is replaced by another organisation, deemed to be a reference to that other organisation; and
 - (b) if that body ceases to exist, deemed to be a reference to the organisation which most nearly or substantially serves the same purposes or objects of that body;
 - 1.3.5 a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - 1.3.6 monetary units are references to units of Australian currency, unless otherwise stated; and
 - 1.3.7 any thing (including a right, obligation or concept) includes each part of it.
 - 1.4** A singular word includes the plural and vice versa.
 - 1.5** A word which suggests one gender includes each other gender.
 - 1.6** If a word is defined, another part of speech has a corresponding meaning.
 - 1.7** If an example is given of anything (including a right, obligation or concept), such as by saying it includes something, the example does not limit the scope of that thing.
 - 1.8** The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.

Inconsistency and Conflict

- 1.9** If any conflict arises between the terms set out in this Deed, any Agreements (including any Agreement listed in Schedule 7 to this Deed), and any Program Management Agreement, the following descending order of priority will apply:
 - 1.9.1 any terms set out in an executed Approval;
 - 1.9.2 the terms set out in this Deed;
 - 1.9.3 any terms set out in a Head Funding Agreement; and
 - 1.9.4 any terms set out in a Program Management Agreement,unless otherwise agreed in writing between the parties.

PART 2 - GENERAL TERMS AND CONDITIONS

2 TERM OF DEED AND AGREEMENTS

Term of Deed

- 2.1** This Deed will commence on the Commencement Date and, unless extended or terminated in accordance with this Deed, will continue in force for a period of five years after that date.

Term of Agreements

- 2.2** Each Agreement will commence on its Commencement Date and cease on its Completion Date unless terminated earlier in accordance with this Deed.
- 2.3** Despite termination of this Deed, and unless otherwise agreed by the parties in writing, each Agreement which has not been completed and which was entered into prior to the date of termination of this Deed will continue in force until the Agreement is completed or terminated.

3 TRANSITIONAL PROVISIONS

Transition from previous agreements or arrangements

- 3.1** Subject to clause 3.2, the parties agree that the terms of any previous agreements or arrangements in place in relation to research projects, scholarships, travel and major capital items underway as at the Commencement Date of this Deed will continue to apply to the relevant project, scholarship, travel or major capital item.
- 3.2** The agreements listed in Schedule 7 to this Deed will be considered to be Agreements and subject to the terms of this Deed. To the extent of any inconsistency between the terms of an agreement referred to in this clause 3.2 and the terms of this Deed, the terms of this Deed will prevail. Any other terms of an agreement referred to in this clause 3.2 will continue in force.

4 FORMATION OF AGREEMENTS

Approvals and Agreements

- 4.1** If CRDC determines to provide Funding to the Research Provider:
- 4.1.1** in relation to a Project, CRDC will issue a Project Approval for the conduct of a Project by the Research Provider;
 - 4.1.2** for a Scholarship, CRDC will issue to the Research Provider a Scholarship Approval;
 - 4.1.3** for any Travel, CRDC will issue to the Research Provider a Travel Approval; and
 - 4.1.4** for the acquisition of any Major Capital Items, CRDC will issue to the Research Provider a Major Capital Item Approval,
- in the form set out in Schedule 1 as amended in CRDC's reasonable discretion from time to time.
- 4.2** An Agreement is formed when the Research Provider returns a signed Project Approval, Scholarship Approval, Travel Approval or Major Capital Item Approval to CRDC and CRDC executes the Approval.

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- 4.3** The Research Provider must ensure that:
- 4.3.1 all members of its Project Team and any Scholarship Recipient and Supervisor sign an acknowledgement in the form set out in Schedule 3 (as amended in CRDC's reasonable discretion from time to time) and it provides those acknowledgements to CRDC with the signed Approval; and
 - 4.3.2 any subsequent member of its Project Team or other Scholarship Recipient or Supervisor after the date of execution of an Approval, promptly signs an acknowledgement in the form set out in Schedule 3 (as amended in CRDC's reasonable discretion from time to time) and any such acknowledgement is provided promptly to CRDC.
- 4.4** CRDC must provide a copy of each Agreement formed in accordance with clause 4.2 to the Research Provider.
- 4.5** Without limiting clause 4.2, the parties will accept a scanned copy of a signed document as evidence that that document has been signed for the purposes of clause 4.2.
- 4.6** Subject to clause 1.9, the parties agree that each Agreement will consist of:
- 4.6.1 Parts 1 and 2 of this Deed;
 - 4.6.2 any terms contained in the relevant Approval; and
 - 4.6.3 the relevant additional Part of this Deed, being:
 - (a) for a Project Agreement, the terms in Part 3;
 - (b) for a Scholarship Agreement, the terms in Part 4;
 - (c) for a Travel Agreement, the terms in Part 5; and
 - (d) for a Major Capital Item Agreement, the terms in Part 6.

Project Approvals

- 4.7** A Project Approval must include in the Approval or in the documents listed on and attached to the Approval:
- 4.7.1 details of the Outcomes for the Project;
 - 4.7.2 details of Milestones for the Project;
 - 4.7.3 details of any other research providers involved in a Project;
 - 4.7.4 details of any Partner Organisations;
 - 4.7.5 details of any Program Management Agreement;
 - 4.7.6 whether the Approval is subject to the terms of a Head Funding Agreement;
 - 4.7.7 details of the tasks, work and Methodologies to be performed by the Research Provider in relation to the Project;
 - 4.7.8 the amount of the funding to be provided;
 - 4.7.9 CRDC Material and the applicable timings for provision of it;
 - 4.7.10 Research Provider Material and Research Provider Resources and the applicable timings for provision of them;
 - 4.7.11 all Background Conditions;
 - 4.7.12 any Third Party Resources;

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- 4.7.13 Project Technology proposed to be created;
 - 4.7.14 IP ownership provisions;
 - 4.7.15 the Project Team for the Project;
 - 4.7.16 the timing for the conduct and completion of the Project;
 - 4.7.17 the Research Provider's Project reporting obligations; and
 - 4.7.18 details of any additional terms.

Scholarship Approvals

4.8 A Scholarship Approval must include in the Approval or in the documents listed on and attached to the Approval:

- 4.8.1 details of the Outcomes for the Scholarship;
- 4.8.2 details of the Scholarship Recipient;
- 4.8.3 the amount of funding to be provided;
- 4.8.4 Research Provider Material and Research Provider Resources and the applicable timings for provision of them;
- 4.8.5 Scholarship Technology proposed to be created;
- 4.8.6 IP ownership provisions;
- 4.8.7 the Research Provider's Scholarship reporting obligations; and
- 4.8.8 details of any additional terms.

Travel Approvals

4.9 A Travel Approval must include in the Approval or in the documents listed on and attached to the Approval:

- 4.9.1 the name of each person who will undertake the Travel;
- 4.9.2 the Travel itinerary;
- 4.9.3 the reason for the Travel and how it will benefit the Australian cotton industry;
- 4.9.4 the estimated total Travel costs;
- 4.9.5 any Third Party Resources;
- 4.9.6 the amount of the funding to be provided;
- 4.9.7 Research Provider Resources and the applicable timings for provision of them;
- 4.9.8 the Research Provider's Travel reporting obligations; and
- 4.9.9 details of any additional terms.

Major Capital Item Approvals

4.10 A Major Capital Item Approval must include in the Approval or in the documents listed on and attached to the Approval:

- 4.10.1 a description of the Major Capital Item;
- 4.10.2 the reason for acquiring the Major Capital Item, what its primary use and secondary uses will be, and how this will benefit the Australian cotton industry;

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- 4.10.3 the estimated total costs of the Major Capital Item and the estimated useful life of the item to the Research Provider;
 - 4.10.4 the reasonable depreciation rate and depreciation method to be applied by the Research Provider;
 - 4.10.5 any Third Party Resources;
 - 4.10.6 the amount of the funding to be provided;
 - 4.10.7 Research Provider Resources and the applicable timings for provision of them;
 - 4.10.8 the Term of the Agreement, which will include the period for which the Major Capital Item will be available for use primarily for research benefiting the Australian cotton industry;
 - 4.10.9 if CRDC or the Research Provider owns the Major Capital Item during the Term of the Agreement;
 - 4.10.10 the Research Provider's Capital Item reporting obligations; and
 - 4.10.11 details of any additional terms.

CRDC not bound to provide Funding

- 4.11 The Research Provider acknowledges that it is one of a number of research providers which may be requested by CRDC to conduct research in relation to the Australian cotton industry.
- 4.12 CRDC is not obliged to provide Funding to the Research Provider pursuant to this Deed in relation to project, scholarship, travel or major capital items and may at any time, at its sole discretion, provide funding to other research providers, organisations or individuals in relation to Australian cotton industry research and development or related activities.

Collaborating research providers

- 4.13 If an Approval specifies that there will be a Third Party research provider in addition to or in collaboration with the Research Provider involved in respect of a Program or Project, the Research Provider:
 - 4.13.1 must cooperate with the Third Party research provider; and
 - 4.13.2 must take all reasonable steps to enable the Third Party research provider to comply with their obligations under their agreements with CRDC that relate to the Program or Project.

Head Funding Agreement

- 4.14 If an executed Approval specifies that a Head Funding Agreement applies, to the extent the terms of the Head Funding Agreement are relevant to the Agreement, the Research Provider:
 - 4.14.1 acknowledges that CRDC is bound by, and provides the Funding under that Approval subject to, the terms of the Head Funding Agreement;
 - 4.14.2 must, notwithstanding clause 1.9, except where the terms of the Head Funding Agreement are less onerous than the terms of this Deed and the executed Approval, comply with the terms of the Head Funding Agreement that apply to that Agreement, as though it bears the obligations of CRDC directly; and

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- 4.14.3 must take all reasonable steps to enable CRDC to comply with its obligations under the Head Funding Agreement.

Program Management Agreement terms

- 4.15 The Research Provider agrees to negotiate in good faith with CRDC to agree the terms of a Program Management Agreement with respect to the management of any Program to which the Research Provider is a party and of which CRDC is the manager (**Program Management Agreement**). Schedule 8 is a template Program Management Agreement that the parties may use, but are not obliged to use.

Research Provider as Subcontractor

- 4.16 If the Research Provider is subcontracted to provide services, or otherwise agrees to provide services, to a Third Party research provider (**Lead Research Provider**) which has signed a deed on identical terms to those contained in this Deed (**Subcontracted Services**), the Research Provider agrees that:
- 4.16.1 the terms of this Deed will apply to the Research Provider's performance of the Subcontracted Services; and
- 4.16.2 the terms of any approval that CRDC issues to the Lead Research Provider in respect of the Subcontracted Services will apply to the Research Provider's performance of the Subcontracted Services.

Right to vary schedules

- 4.17 Without limiting any other clause in this Deed, CRDC may make reasonable amendments to the forms contained in Schedules 1 to 8 from time to time on written notice to the Research Provider.

5 FUNDING AND RESOURCES

- 5.1 Subject to this Deed and the applicable Agreement, CRDC must:
- 5.1.1 pay to the Research Provider the Funding; and
- 5.1.2 provide CRDC Material,
specified in an Agreement.
- 5.2 The Research Provider must provide or obtain at no cost to CRDC:
- 5.2.1 all Research Provider Material and Research Provider Resources specified in an Agreement; and
- 5.2.2 all other resources necessary to perform an Agreement for a Project, Scholarship, Travel or Major Capital Item, including additional funding, all necessary facilities, services, premises, personnel, livestock, organisms (whether living or dead), IP, technology, Third Party assistance and any other resources required by the Research Provider to fulfil its obligations set out in the Agreement.
- 5.3 All payments of the Funding by CRDC to the Research Provider pursuant to an Agreement are subject to:
- 5.3.1 receipt of a properly rendered Tax Invoice for the relevant instalment of the Funding;

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- 5.3.2 in the case of a Project or Scholarship, satisfactory progress of the Project or Scholarship in accordance with the relevant Agreement, as determined by CRDC acting reasonably;
- 5.3.3 in the case of Travel, the Travel Recipient undertaking the Travel;
- 5.3.4 in the case of a Major Capital Item, the purchase of the Major Capital Item by the Research Provider and a copy of the receipt being sent to CRDC;
- 5.3.5 delivery by the Research Provider, and acceptance by CRDC acting reasonably, of any reports which are required to be delivered in accordance with this Deed or the Agreement; and
- 5.3.6 Ministerial approval in relation to the Funding.
- 5.4** CRDC may, without derogating from any other right it may have, including to terminate in accordance with clause 20 or 21:
- 5.4.1 defer payment of an instalment or part of an instalment of the Funding in relation to an Agreement if:
- (a) the Research Provider fails to comply with the requirements set out in clause 5.3; or
 - (b) CRDC does not have sufficient funds at the time an instalment is due; or
 - (c) contributions have not been received from a Partner Organisation; and
- 5.4.2 suspend payment of Funding in relation to an Agreement if the Research Provider fails to comply with this Deed or the Agreement, and the breach is capable of remedy, until such breach is remedied to the reasonable satisfaction of CRDC.
- 5.5** Any deferment or suspension pursuant to clause 5.4 does not constitute a breach of this Deed or an Agreement by CRDC nor causes any liability to arise in relation to any loss, damage, liability, cost or expense suffered by the Research Provider.
- 5.6** If CRDC defers payment of an instalment of Funding pursuant to clause 5.4.1(b), the Research Provider may:
- 5.6.1 and must if required by CRDC, suspend work under the Agreement for which payment of Funding has been deferred; and
- 5.6.2 terminate the Agreement for which payment of Funding has been deferred, for convenience pursuant to clauses 20.1, 20.2 and 20.3 (as if the Research Provider were CRDC for the purpose of those clauses) by providing CRDC at least 20 Business Days' notice and provided that, if at any time during the period of notice CRDC is able to continue the deferred Funding, the Research Provider must withdraw the notice of termination.
- 5.7** Unless the parties otherwise agree in writing, in relation to any Funding for a Project or Scholarship unused in a Year (**Surplus Funding**):
- 5.7.1 subject to clauses 5.7.2, 5.7.3 and 5.7.4, Surplus Funding which exists at the end of a Financial Year which is identified in a Financial Report may be carried over for use by the Research Provider in the next Financial Year;
- 5.7.2 the Research Provider must obtain CRDC's written consent to proceeding in accordance with clause 5.7.1 if the Surplus Funding is more than 20% of the Funding for that Financial Year;

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- 5.7.3 CRDC acting reasonably may reduce or defer Funding payable for the Project if it considers there is an excess of Surplus Funding; and
- 5.7.4 if any Surplus Funding exists, as identified in the Financial Report of a Project or Scholarship or, if terminated earlier, the date of termination of an Agreement, the Research Provider must refund to CRDC any such Surplus Funding within 60 Business Days after the end of a financial year, or the Completion Date or the date of termination, whichever is the earlier.
- 5.8 If any Funding provided for acquisition of a Major Capital Item is not used by the Research Provider for the acquisition, the Research Provider must refund to CRDC the amount of any unspent Funding within 20 Business Days after the earliest of the date of acquisition of the Major Capital Item, the Completion Date and the date of termination of the Agreement.
- 5.9 CRDC will not be liable to pay Funding to the Research Provider for any work undertaken or expenditure incurred by the Research Provider pursuant to this Deed or any Agreement, unless this Deed and the relevant Agreement have been signed by all parties.

6 THIRD PARTY RESOURCES

- 6.1 The Third Party Resources to be obtained by the Research Provider in relation to the conduct of an Agreement:
- 6.1.1 must be set out in the relevant Approval; or
- 6.1.2 otherwise may only be obtained by the Research Provider with the prior written approval of CRDC.
- 6.2 CRDC will, through execution of the Approval or a subsequent variation to an Agreement, agree to the terms on which the Third Party will provide the Third Party Resources to the Research Provider.
- 6.3 If the Third Party Resources are unavailable or reduced by any amount, or the Research Provider becomes aware of a potential unavailability or reduction, the Research Provider must:
- 6.3.1 notify CRDC in writing within 15 Business Days after becoming aware of the matter, including the reasons and the anticipated impact on the Agreement; and
- 6.3.2 within 60 Business Days after becoming aware of the reduction or potential reduction, take all reasonable steps to secure alternative funding, or contributions from Third Parties, that is or are acceptable to CRDC, in CRDC's reasonable opinion. In the event that the Research Provider cannot secure alternative funding or contributions from Third Parties, the Parties agree to negotiate in good faith to reduce the scope of, or otherwise terminate, the relevant Agreement.
- 6.4 If the Research Provider becomes aware of a potential increase in the Third Party Resources, the Research Provider must notify CRDC in writing within 15 Business Days after becoming aware of the matter of:
- 6.4.1 the reasons for the proposed increase;
- 6.4.2 the anticipated impact of the proposed increase on the Agreement; and

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- 6.4.3 the introduction of any IP or impact on any rights in any Project Technology or Scholarship Technology, including any changes that may be required to the IP Register,

and must request CRDC's approval to the proposed increase.

- 6.5 The Research Provider must not accept any increase or decrease in the Third Party Resources set out in an Agreement without CRDC's prior written approval.

7 MATERIAL

Acknowledgments

- 7.1 The Research Provider acknowledges CRDC's ownership or control by licence of CRDC Material.
- 7.2 CRDC acknowledges the Research Provider's ownership or control by licence of Research Provider Material.

IP Register

- 7.3 The Research Provider must provide to CRDC for each Project or Scholarship an IP Register listing IP information relevant to the Project or Scholarship in the form set out in Schedule 2.
- 7.4 The Research Provider must:
- 7.4.1 regularly review and update the IP Register as necessary to reflect all changes from time to time in the IP used in respect of the Project or Scholarship;
 - 7.4.2 provide to CRDC an updated version of the IP Register identifying the changes from the previous version of the document provided by the Research Provider to CRDC within 20 Business Days after any change; and
 - 7.4.3 provide to CRDC a current version of the IP Register within 20 Business Days after request from CRDC.

Use of CRDC Material and Research Provider Material

- 7.5 The Research Provider must:
- 7.5.1 ensure that CRDC Material in its care, custody or control is used, copied, supplied or reproduced only for the purposes of the Agreement for which it was provided;
 - 7.5.2 ensure that CRDC Material is maintained in good order and repair and must meet all costs of any repairs or replacement for loss or damage caused or contributed by the Research Provider or its Personnel;
 - 7.5.3 keep CRDC Material safe; and
 - 7.5.4 use CRDC Material strictly in accordance with any conditions notified to it by CRDC.
- 7.6 On the termination of any Agreement, each party must:
- 7.6.1 return to the other party within 15 Business Days any CRDC Material or Research Provider Material relevant to the Agreement in its care, custody or control provided that:
 - (a) each party may retain a copy of such CRDC Material or Research Provider Material as is required for it to derive the benefit of the

Project Technology or Scholarship Technology as contemplated by this Deed or the Agreement; and

(b) each party may retain a copy reasonably necessary for it to comply with any legal obligation; and

7.6.2 otherwise comply with any reasonable direction provided by the other party for the return or disposal of any such CRDC Material or Research Provider Material.

Background IP

7.7 Background IP must be:

7.7.1 specified in the relevant Approval; or

7.7.2 otherwise approved by CRDC under clause 7.8.2.

7.8 The Research Provider must:

7.8.1 notify CRDC of full details of all Background IP that it proposes to contribute to or make available for use in connection with the Project or Scholarship that is not specified in the relevant Approval, and all applicable Background Conditions; and

7.8.2 obtain CRDC's written approval before contributing it to or making it available for use in connection with the Project or Scholarship.

7.9 Each party grants to the other party a non-exclusive, non-transferable, royalty-free licence of its Background IP to use, reproduce and adapt the Background IP in accordance with this Deed for the purpose of undertaking a Project or Scholarship.

7.10 If a party becomes aware of any change to Background Conditions:

7.10.1 it must notify the other party of the change within 10 Business Days after becoming aware of the change; and

7.10.2 the change must be recorded in the IP Register within 20 Business Days of that notice.

Use of Background IP

7.11 A Provider provides Background IP on the following bases:

7.11.1 the Background IP is provided to, and must be used by, the other party subject to any Background Conditions;

7.11.2 as between the other party and the Provider, the Provider retains the right to control the Background IP and, if relevant, it remains the Provider's property;

7.11.3 the Provider is free to continue to use and deal with Background IP outside the Project or Scholarship as long as it can still be used by the other party and any Commercialisation Entity for the purposes for which it was provided, including Commercialisation; and

7.11.4 if the Provider transfers ownership of the Background IP to a Third Party, the transfer must be subject to a licence being granted by that Third Party to the parties to any affected Agreement in the same terms as the licence granted by the Provider under this Deed.

Use of Background IP by Commercialisation Entity

7.12 Each Provider of Background IP must give the Commercialisation Entity, subject to the Background Conditions, the option to negotiate with it terms for a non-exclusive licence

of its Background IP that may be necessary or desirable for Commercialisation of any Project Technology or Scholarship Technology.

7.13 The terms of the licence referred to in clause 7.12 are those, if any, contained in the relevant Background Conditions and those agreed or determined under clause 7.14.

7.14 Any of the terms of the licence referred in clause 7.12 that are not contained in the relevant Background Conditions must be on reasonable commercial terms being terms no less favourable than those that the Provider would offer to any Third Party in an arms' length commercial dealing (**Reasonable Terms**);

7.15 If the terms of the licence referred to in clause 7.12 cannot be agreed within 20 Business Days or within any longer timetable for negotiation of such licence as agreed by the parties, the parties must refer the matter to mediation or conciliation. In the event that:

7.15.1 the Parties are not able to agree the details of mediation or conciliation within 30 Business Days (or such other period as agreed by the parties in writing);
or

7.15.2 the dispute has not been resolved within 30 Business Days (or such other period as agreed by the parties in writing) after the appointment of the mediator or conciliator,

the terms of the licence referred to in clause 7.14 will be the Reasonable Terms determined by an Expert.

7.16 Each party warrants to the other that, to the best of its knowledge at the date its Background IP is contributed or made available, after having made reasonable inquiries and subject to any Background Conditions:

7.16.1 it has the right to control, is the owner of, or is otherwise entitled to provide, the Background IP; and

7.16.2 the Background IP may be used in accordance with this Deed.

8 PROJECT TECHNOLOGY AND SCHOLARSHIP TECHNOLOGY

Ownership of Project Technology

8.1 The Research Provider must ensure that all Project Technology (excluding copyright in Reports and copyright that remains with students under this Deed) is owned and dealt with in accordance with the applicable executed Project Approval.

8.2 Where Project Technology is owned by both parties, it will be owned as tenants in common in accordance with the executed Project Approval.

8.3 If a contribution is made by a Third Party as specified in the Project Approval and the Third Party is to take a share of ownership of Project Technology:

8.3.1 the Third Party will be deemed to be included as a party for the purpose of this clause 8;

8.3.2 the Research Provider must ensure that the Third Party complies with the obligations set out in this clause 8; and

8.3.3 the Third Party will otherwise derive its rights and obligations in respect of the Project as though it were a sub-contractor to the Research Provider and the Research Provider will be responsible for entering into an appropriate agreement (reflecting the terms of the applicable Agreement) with the Third

Party so as to ensure that the Research Provider is able to comply with its obligations, and enjoy any rights, arising out of the applicable Agreement.

- 8.4** The Research Provider warrants that, to the best of its knowledge after making reasonable enquiries, except as set out in the IP Register no other person owns or will own a share of the Project Technology.

Ownership of Scholarship Technology

- 8.5** The Research Provider must ensure that all Scholarship Technology (excluding copyright in Reports and copyright that remains with students under this Deed) is owned and dealt with in accordance with the applicable executed Scholarship Approval.
- 8.6** Where Scholarship Technology is owned by more than one party, it will be owned as tenants in common.
- 8.7** The Research Provider warrants that, to the best of its knowledge after making reasonable enquiries, except as set out in the IP Register no other person owns or will own a share of the Scholarship Technology.

Educational use and Internal Research

- 8.8** CRDC grants to the Research Provider a world-wide, non-exclusive, royalty-free licence to use Project Technology and Scholarship Technology for education purposes with its students provided that it does not:
- 8.8.1 disclose Confidential Information;
 - 8.8.2 prejudice the protection of the Project Technology or Scholarship Technology; and
 - 8.8.3 prejudice the Commercialisation of the Project Technology or Scholarship Technology.
- 8.9** Each party grants to the other party a world-wide, non-exclusive, royalty-free licence to use Project Technology and Scholarship Technology for Internal Research.

Notification of development

- 8.10** If Project Technology or Scholarship Technology is developed which is protectable, commercially valuable or otherwise significant, the Research Provider must promptly update the IP Register and notify CRDC (and include all such notifications in the next Progress Report and the Final Report).

Notification of intended disposal

- 8.11** If Project Technology or Scholarship Technology is jointly owned by the parties, a party must not dispose of, transfer, encumber, assign, license the use of or otherwise deal with its interest in the Project Technology or Scholarship Technology without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 8.12** If a party is the sole owner of Project Technology or Scholarship Technology:
- 8.12.1 it must notify the other party if it intends to dispose of, transfer, encumber, assign, license the use of or otherwise deal with its interest in the Project Technology or Scholarship Technology to a Third Party in a manner which has not already been agreed in writing by the parties;
 - 8.12.2 the other party will have the right of first refusal to purchase or license the other party's interest in the Project Technology or Scholarship Technology; and

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- 8.12.3 if the parties cannot agree on the terms of the purchase or licence within 3 months of notification under clause 8.12.1, the offering party may dispose of, transfer, encumber, assign, license the use of or otherwise deal with its interest in the Project Technology to a Third Party but must not do so on any more favourable terms than those offered to the other party.

Protection of rights

- 8.13** If an infringement or potential infringement of Project Technology or Scholarship Technology by a Third Party is identified, in the first instance the parties will attempt to agree on a course of action to be undertaken (if any) jointly by the parties, at their shared cost, to address the infringement or potential infringement.
- 8.14** If the parties are unable within 20 Business Days to agree on a joint course of action:
- 8.14.1 one of the parties (Declining Party) may, in its absolute discretion, permit the other party (Acting Party) to take legal or other action against the Third Party in the joint names of the parties subject to the Acting Party giving the Declining Party an indemnity in an agreed form; or
- 8.14.2 the Acting Party may take legal or other action against the Third Party in its own name alone.
- 8.15** Any action by the Acting Party pursuant to clause 8.14 will be at its expense in all respects, and it will have the sole control of the form and conduct of the action and may settle, compromise or discontinue the action as it thinks fit, and will be entitled to retain from any damages recovered the costs and expenses of the Acting Party in taking the action (including expenses arising out of the indemnity referred to in clause 8.14.1). The remainder of damages recovered are to be treated as Project Income. The Declining Party must (at the expense of the Acting Party in all respects) provide all assistance reasonably required by the Acting Party in the conduct of the proceedings.

Compilation

- 8.16** The Research Provider must ensure that all Project Technology and Scholarship Technology:
- 8.16.1 is neatly and legibly compiled and adequately documented and contains sufficient evidence (including laboratory notes) required to support all conclusions, findings and opinions;
- 8.16.2 is provided in the format specified in the relevant executed Approval, or if none is specified, in the format specified by CRDC; and
- 8.16.3 is provided in the form and manner reasonably requested by the Project Administration Manager.

Reports

- 8.17** CRDC will own the copyright in all Reports, but not the Project Technology or Scholarship Technology disclosed in the Reports unless specified in the applicable Agreement.

9 EXPLOITATION OF PROJECT TECHNOLOGY AND SCHOLARSHIP TECHNOLOGY

Primary Aim

- 9.1** The parties:
- 9.1.1 acknowledge that the primary aim of this Deed and any Agreement is to provide benefit to the Australian cotton industry and the community in general;
 - 9.1.2 acknowledge that the maximisation of commercial returns is a secondary aim, which the parties agree will not be pursued to the detriment of the primary aim; and
 - 9.1.3 undertake to work together, in good faith, to further the adoption, dissemination and Exploitation of Project Technology and Scholarship Technology which maximise the benefit for the Australian cotton industry.

Adoption Pathway Proposal

- 9.2** The Research Provider must provide an Adoption Pathway Proposal for the Project Technology or Scholarship Technology with its Application.
- 9.3** The Research Provider acknowledges that CRDC will have regard to the Adoption Pathway Proposal in deciding whether to Fund the Project or Scholarship.
- 9.4** The Adoption Pathway Proposal must address the benefits, costs and risks of Exploiting Project Technology and Scholarship Technology, including:
- 9.4.1 by dissemination through the public domain;
 - 9.4.2 by dissemination through the Australian cotton industry;
 - 9.4.3 by restricting the use to allow further research only; or
 - 9.4.4 by Commercialisation.
- 9.5** The Research Provider must update the Adoption Pathway Proposal, with any significant changes, with each Progress Report and when the IP Register is updated.
- 9.6** Changes to the Adoption Pathway Proposal must be approved by CRDC, acting reasonably.

Technology Adoption Plan

- 9.7** In its regular review of the Adoption Pathway Proposal in accordance with clause 9.5, the Research Provider must consider whether Publication may not result in an efficient and effective adoption of Project Technology or Scholarship Technology and as soon as reasonably possible discuss with CRDC if either party should consider preparing a Technology Adoption Plan.
- 9.8** A party must provide a Technology Adoption Plan prior to Exploitation of Project Technology or Scholarship Technology to a professional standard that will assist the other party in making informed decisions in accordance with clause 9.12.2;
- 9.9** The party preparing the Technology Adoption Plan may determine the format of the plan.
- 9.10** The parties may agree in writing to vary the Technology Adoption Plan, including a variation to Commercialisation costs or registration costs.

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- 9.11** The Technology Adoption Plan must provide details of:
- 9.11.1 the potential methods to achieve adoption of Project Technology or Scholarship Technology;
 - 9.11.2 a recommendation of a preferred method of Exploitation;
 - 9.11.3 a timeline for Exploitation of Project Technology or Scholarship Technology; and
 - 9.11.4 if Commercialisation is recommended:
 - (a) a summary of the general approach to be adopted with respect to the Commercialisation;
 - (b) specification of the Commercialisation objectives and strategies;
 - (c) specification of the target markets, including by geographic location and size;
 - (d) an outline of how the Commercialisation is proposed to be undertaken;
 - (e) if a Commercialisation Entity will be sought, the selection method and process for the parties to approve the Commercialisation Entity;
 - (f) specification of the general grounds on which the performance of the Commercialisation Entity will be measured and approved by the parties;
 - (g) specification of Commercialisation costs and any registration costs pursuant to clause 9.16, that are anticipated, when those costs are likely to be incurred, which party will pay for them in the first instance and how the costs will ultimately be shared;
 - (h) specification of the anticipated returns from the Commercialisation, including forecast gross royalty, Commercialisation expenses, basis for sharing royalties between that proportion attributable to the Intellectual Property and that attributable to subsequent investment, and any other relevant factors;
 - (i) what the party believes to be the benefits, costs and risks of the Technology Adoption Plan for the Australian cotton industry and provide details of risk management strategies; and
 - (j) why the party considers that the Technology Adoption Plan:
 - (i) is not detrimental or prejudicial to the Australian cotton industry; and
 - (ii) is otherwise in the interests of the Australian cotton industry and Australian communities in general.
- 9.12** A party may Exploit any Project Technology or Scholarship Technology solely owned by it, or jointly owned by the parties, subject to the other party's approval in accordance with the following process:
- 9.12.1 the party wishing to Exploit Project Technology or Scholarship Technology must provide to the other party its proposed Technology Adoption Plan not less than 60 Business Days prior to the intended commencement of any Exploitation of Project Technology or Scholarship Technology; and

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- 9.12.2 the other party will endeavour to respond within 40 Business Days stating whether or not it approves the proposed Technology Adoption Plan and must not unreasonably withhold its approval.

Assignment of ownership if no Exploitation

9.13 If:

9.13.1 the Research Provider:

- (a) owns or jointly owns any Project Technology or Scholarship Technology; and
- (b) has not submitted a Technology Adoption Plan to CRDC in respect of the Project Technology or Scholarship Technology within two years of completion of the relevant Project or Scholarship or termination of the relevant Agreement or such longer period as the parties agree;

or

9.13.2 the Research Provider advises CRDC that it does not intend to undertake Exploitation of the Project Technology or Scholarship Technology,

CRDC may by notice to the Research Provider require the Research Provider to transfer ownership of the Project Technology or Scholarship Technology to CRDC in order to enable CRDC to undertake Exploitation of the Project Technology or Scholarship Technology.

9.14 If CRDC gives a notice to the Research Provider pursuant to clause 9.13:

9.14.1 the Research Provider must promptly do all things necessary to transfer the ownership of the Project Technology or Scholarship Technology to CRDC, including executing all necessary documents and obtaining all necessary licences from Third Parties to:

- (a) transfer to CRDC the Research Provider's interest in the Project Technology or Scholarship Technology;
- (b) grant (or obtain the grant) to CRDC an irrevocable, perpetual, world-wide, non-exclusive licence (including the right to sub-license) to use, reproduce, adapt and Exploit any Background IP contained in the Project Technology or Scholarship Technology; and
- (c) use its best endeavours to procure the licence referred to in clause 9.14.1(b) on royalty-free terms or, if this is not achievable, on the best available commercial terms;

9.14.2 the Research Provider must, at CRDC's cost, provide reasonable assistance to CRDC to assist it to implement its Technology Adoption Plan for the Project Technology or Scholarship Technology;

9.14.3 CRDC, acting reasonably, must consider any application by the Research Provider for recognition of any Background IP created by the Research Provider; and

9.14.4 CRDC must pay to the Research Provider its share of any Project Income derived by CRDC from the Exploitation of the Project Technology or Scholarship Technology (less any amount paid by CRDC for Exploitation or pursuant to clause 9.14.2).

Registration

9.15 Either party may seek and obtain any registration of Project Technology or Scholarship Technology solely owned by it without notifying the other party if it does not wish to have the costs of registration taken into consideration in the calculation of any shared Commercialisation costs.

9.16 If either party wishes on reasonable grounds to seek registration of Project Technology or Scholarship Technology:

9.16.1 solely owned by it and it wishes to have the costs of registration taken into consideration in the calculation of any shared Commercialisation costs; or

9.16.2 in which the ownership is shared with the other party,

it must notify the other party of the details of the proposed registration strategy not less than 60 Business Days prior to the intended date of registration, including details of:

9.16.3 the type of registration;

9.16.4 the countries in which registration is to be sought;

9.16.5 who will be the owner of the registered Project Technology or Scholarship Technology;

9.16.6 the anticipated costs and benefits of the registration and how those costs and benefits will be allocated between the parties; and

9.16.7 the Technology Adoption Plan for the relevant Project Technology or Scholarship Technology;

and obtain the other party's written approval before proceeding. The other party must, acting reasonably, endeavour to provide its approval or rejection of the proposed strategy within 20 Business Days of receipt of the notification and, if it rejects the strategy, must provide reasons for doing so.

10 PROJECT INCOME AND SCHOLARSHIP INCOME

10.1 The respective shares of the parties and any Third Parties to Project Income or Scholarship Income will be their respective shares set out in the executed Approval (or such other shares as may be agreed in writing by the parties during the Term) subject to:

10.1.1 alterations to those shares to take account of the value of any Background IP provided by either party for the Project or Scholarship as agreed between the parties (or if the parties cannot agree on the value they must refer the matter to mediation or conciliation). In the event that the parties cannot agree the details of mediation or conciliation within 30 Business Days or the dispute has not been resolved within 30 Business Days (or such other period as agreed by the parties in writing) after the appointment of the mediator or conciliator, the value will be determined by an Expert;

10.1.2 payment of the costs directly associated with the Commercialisation and protection of the Project Technology or Scholarship Technology, provided that those costs do not exceed those specified in the applicable Technology Adoption Plan in accordance with clause 9.11.4(g) or approved under clause 9.16; and

10.1.3 alterations to those shares to take account of other terms as may be agreed by the parties.

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- 10.2** If a party receives any Project Income, Scholarship Income or CRDC Income (**Income**) in relation to a Project or Scholarship, the Recipient must:
- 10.2.1 within 20 Business Days of receiving the Income, notify the other party that the Recipient holds such Income;
 - 10.2.2 not use, dispose of, transfer, encumber, assign or otherwise deal with the Income without the prior written approval of the other party, except where the Recipient is a government agency or education institution;
 - 10.2.3 promptly pay to CRDC all CRDC Income; and
 - 10.2.4 promptly pay to the other party that party's share of the Project Income or Scholarship Income in accordance with clause 10.1.
- 10.3** The Research Provider acknowledges that CRDC is solely entitled to, and the Research Provider is not entitled to, any CRDC Income.
- 10.4** The party receiving any Project Income or Scholarship Income must pay to the other party any applicable GST in respect of the payment of that party's share of such Project Income or Scholarship Income. The GST payment must be made at the same time as the payment of that other party's share of the relevant Project Income or Scholarship Income.
- 10.5** If any GST is payable by a party in accordance with clause 10.4, the other party must provide to the first party a Tax Invoice in respect of that payment.

11 GOVERNMENT TAXES, LEVIES AND CHARGES

- 11.1** All Funding is inclusive of all levies and taxes other than GST.
- 11.2** Subject to this clause 11.2, the amounts payable to the Research Provider pursuant to an Agreement (**Original Amount Payable**) do not include GST on any taxable supplies as determined pursuant to the GST Law (unless otherwise specified).
- 11.3** If a supply by the Research Provider pursuant to this Deed or an Agreement is a taxable supply pursuant to the GST Law, the Research Provider may increase the Original Amount Payable by CRDC (not including any GST which has been specified) by the amount of GST which will become payable on that part of the Original Amount Payable which relates to a taxable supply as if that part of the Original Amount Payable is the value of the supply for the purposes of the GST Law.
- 11.4** If a taxable supply is made by the Research Provider pursuant to this Deed or an Agreement, the Research Provider must provide to CRDC a Tax Invoice for the relevant supply in accordance with clause 5.3.1.
- 11.5** Any outgoing cost, expense or cost paid or payable by the Research Provider which may be reimbursed by CRDC must first be reduced by the amount of any input tax credit entitlement before being claimed from CRDC.
- 11.6** If a payment by a party (**Responsible Party**) to satisfy a claim by the other party (**Claiming Party**) pursuant to or in connection with this Deed or an Agreement gives rise to a liability to pay any GST in respect of a taxable supply, the Responsible Party must pay, and indemnify the Claiming Party against, the amount of that GST.
- 11.7** The amount recoverable by the Claiming Party in respect of any claim pursuant to or in connection with this Deed or an Agreement includes the amount of GST payable on the cost or expense in relation to which the claim is made, but will exclude the amount of

any input tax credit or other credit to which the Claiming Party, as the taxable supplier, is entitled in respect of the cost or expense recovered.

- 11.8** The parties each warrant that they are registered in accordance with the GST Law and that each party will notify the other if it ceases to be registered for the purpose of the GST Law or if there is a change in its ABN.

12 DEED AND AGREEMENT ADMINISTRATION

Administration

- 12.1** Each party must at all times during the Term of this Deed and each Agreement ensure that it has nominated suitably qualified persons as required for the proper administration of the performance of this Deed and each Agreement. The individuals responsible on behalf of the parties for the administration of this Deed and each Agreement will be:

12.1.1 for CRDC, the Project Administration Manager; and

12.1.2 for the Research Provider:

(a) for formal and contractual matters, the Research Provider Representative; and

(b) for issues related to day to day performance of each Project, the Project Administrator.

- 12.2** The Research Provider Representative and the Project Administrator must liaise with, and report to, the Project Administration Manager as reasonably required by the Project Administration Manager during the Term of this Deed and each Agreement.

- 12.3** The Research Provider must comply with any reasonable direction given by the Project Administration Manager on behalf of CRDC within the general scope of administration of this Deed or an Agreement.

- 12.4** Any direction which CRDC may make, give or issue pursuant to the provisions of this Deed or an Agreement, if made, given or issued in accordance with clause 12.1.2 to the Research Provider Representative or the Project Administrator in respect of an Agreement, will be deemed to be made, given or issued to the Research Provider.

- 12.5** The Project Administration Manager and the Research Provider Representative have the authority to receive and sign formal notices and written communications in respect of this Deed and each Agreement.

- 12.6** Notwithstanding any other term of this Deed or an Agreement:

12.6.1 the Project Administration Manager; and

12.6.2 unless CRDC has been otherwise notified in writing by the signatory to this Deed for the Research Provider, the Research Provider Representative,

do not have the authority to amend the terms of this Deed or an Agreement.

13 AUDITS AND ACCESS TO RESEARCH PROVIDER'S PREMISES AND RECORDS

- 13.1** Without limiting any specific reporting requirements specified in Parts 3, 4, 5 and 6 of this Deed, in an Agreement or in the terms specified in respect of the management of the Program if applicable the Research Provider must at all times maintain proper

accounts and records in relation to each Project, Scholarship, Travel and Major Capital Item, including as specified in the relevant executed Approval.

13.2 The Research Provider must participate co-operatively in audits of this Deed or any Agreement at the frequency, and in relation to the matters, specified by CRDC, including on an ad hoc basis if reasonably requested by CRDC, for the purpose of:

- 13.2.1 ensuring that this Deed or the Agreement is being properly performed and administered;
- 13.2.2 assessing the conduct of a Project or Scholarship;
- 13.2.3 auditing a Project, Scholarship, Travel or Major Capital Item;
- 13.2.4 inspecting any records and Data required to be retained in relation to this Deed or the Agreement; and
- 13.2.5 undertaking any other evaluation of a Project, Scholarship, Travel or Major Capital Item.

13.3 CRDC may appoint an independent person to assist in the audits.

13.4 For the purpose of this clause 13, the Research Provider must grant, at all reasonable times after receiving at least 15 Business Days' notice, to:

- 13.4.1 CRDC, including the Project Administration Manager and any other persons authorised in writing by the Executive Director;
- 13.4.2 CRDC's auditors; and
- 13.4.3 the Australian Auditor-General or a delegate of the Auditor-General for the purposes of performing the Auditor-General's statutory functions,

reasonable access to the Research Provider's premises, records, accounts and other financial material or material relevant to this Deed or any Agreement wherever stored, in the custody, possession or control of the Research Provider or its Personnel for inspection and copying, and CRDC will ensure that the records, accounts and material are kept confidential to the same extent as Confidential Information under clause 15.

13.5 In the exercise of its rights granted by this clause 13, CRDC will:

- 13.5.1 comply with the Research Provider's reasonable directions in relation to any access, biosecurity, security and occupational health and safety issues; and
- 13.5.2 in the case of an audit of a Project or Scholarship, use reasonable endeavours not to interfere with the Research Provider's conduct of the Project or Scholarship in any material respect.

13.6 In the case of documents or records stored on a medium other than in writing, the Research Provider must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to CRDC.

13.7 Each party must bear its own costs of any audits, except that if:

- 13.7.1 CRDC conducts additional audits of the performance of any one Agreement in any Financial Year during the Term; and
- 13.7.2 no material non-compliances by the Research Provider with its obligations pursuant to the Agreement are revealed by an additional audit,

CRDC will pay the reasonable, substantiated costs of the Research Provider for its participation in that additional audit. For the purposes of this clause 13.7, a **material**

non-compliance is a breach of this Deed or an Agreement or any financial error representing more than 5% of the Funding for the Year audited.

13.8 The requirement for, and participation in, audits does not in any way reduce the Research Provider's responsibility to perform its obligations in accordance with this Deed or any Agreement.

13.9 This clause 13 applies for the Term and for a period of 7 years from the date of the termination of this Deed or any Agreement as the case may be.

14 PUBLICATION

14.1 The Research Provider must not Publish any of the Project Technology or Scholarship Technology during the Term or for a period of 1 year following completion of the relevant Project or Scholarship or termination of the relevant Agreement (or any longer period agreed under clause 9.13.1(b)) except with the written consent of CRDC unless:

- 14.1.1 the Project has been completed and the Final Report has been submitted to CRDC and approved by CRDC;
- 14.1.2 CRDC and the Research Provider have agreed in writing that there is no Commercialisable Project Technology or Scholarship Technology;
- 14.1.3 there are no restrictions on publication in a Head Funding Agreement or Program Management Agreement relevant to the Project or Scholarship; and
- 14.1.4 CRDC has approved the release of the Project Technology or Scholarship Technology into the public domain.

14.2 CRDC's written approval to any request for Publication made by the Research Provider pursuant to clause 14.1 must not be unreasonably withheld and may only be withheld on the grounds specified in clause 14.5. CRDC must use its best endeavours to provide its consent (or otherwise) within 10 Business Days of the receipt of the Research Provider's request in accordance with clause 14.3.

14.3 Any request made to CRDC for consent to Publish details of the Project Technology or Scholarship Technology must contain:

- 14.3.1 a copy of the material containing the Project Technology or Scholarship Technology in the form in which it is proposed to be Published; and
- 14.3.2 details of how, where and when the material provided in accordance with clause 14.3.1 is proposed to be Published.

14.4 The Research Provider must:

- 14.4.1 acknowledge CRDC as a funding source on the relevant Publication in the form set out in Schedule 6;
- 14.4.2 where appropriate, include a disclaimer in the form set out in Schedule 6 ;
- 14.4.3 subject to this clause 14 and clauses 15 and 16, make any changes to the way the Project Technology or Scholarship Technology is proposed to be Published as reasonably requested by CRDC; and
- 14.4.4 provide to CRDC one electronic copy of the proposed Publication in high resolution, colour PDF format.

14.5 CRDC may withhold its consent to the proposed Publication of any material by the Research Provider where such Publication:

- 14.5.1 contains Confidential Information or Personal Information;

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- 14.5.2 may prejudice the protection of the Project Technology or Scholarship Technology;
- 14.5.3 may prejudice the Commercialisation of the Project Technology or Scholarship Technology;
- 14.5.4 publication is restricted by a Head Funding Agreement or a Program Management Agreement;
- 14.5.5 has not been subject to peer review and, in CRDC's reasonable opinion, requires peer review; or
- 14.5.6 following peer review, CRDC considers on reasonable grounds that the proposed Publication is not considered acceptable for publication in a recognised journal.
- 14.6** If CRDC withholds its consent to Publication pursuant to clause 14.5, the Research Provider may submit a revised proposal for Publication in accordance with clause 14.3 or (if applicable) refer the matter to the Program Management Committee or refer the matter to dispute resolution pursuant to clause 25.
- 14.7** Subject to clause 14.9, CRDC reserves the right to publicise and report on the award of Funding to the Research Provider and details of Projects, Scholarships, Travel, Major Capital Items, Project Technology and Scholarship Technology in its absolute discretion in media releases, in general announcements, in its Annual Report and Annual Operating Plan and on its website.
- 14.8** The Research Provider reserves the right to publicise and report on the award of Funding on its website.
- 14.9** CRDC must obtain the Research Provider's prior written consent to the Publication of Project Technology or Scholarship Technology that is jointly owned or solely owned by the Research Provider in accordance with the processes set down in clauses 14.3 and 14.5 (with references to CRDC replaced with references to the Research Provider and references to the Research Provider replaced with references to CRDC). That consent must not be unreasonably withheld. If the Research Provider withholds its consent to Publication, CRDC may submit a revised proposal for Publication.
- 14.10** Nothing in this clause 14 is intended to, or may be interpreted to, prevent CRDC or the Research Provider from discharging its statutory obligations.

15 DISCLOSURE AND USE OF INFORMATION

Confidential Information

- 15.1** Subject to this clause 15, each Recipient must, in relation to a Provider's Confidential Information:
- 15.1.1 keep it confidential;
- 15.1.2 use it only as permitted by this Deed or an Agreement and subject to any other reasonable conditions notified by the Provider at the time of disclosure including any Background Conditions;
- 15.1.3 not disclose it to any person other than to the Recipient's Personnel:
- (a) who have a need to know (and only to the extent that each such person has a need to know); and
- (b) who, if requested by the Provider, have signed a Deed of Confidentiality which in the case of a Project, is (if CRDC is the

Provider) in the form set out in Schedule 4, and (if the Research Provider is the Provider) in the form set out in Schedule 5 or such other form as the parties agree in writing and, to the extent possible, the Recipient must arrange for all such undertakings to be given promptly and prior to the commencement of the Project;

- 15.1.4 not copy it or any part of it that is in a material form other than as strictly necessary and must mark any such copy as "Confidential";
- 15.1.5 promptly comply with any request by the Provider to return or destroy any or all copies of the Confidential Information; and
- 15.1.6 immediately notify the Provider if the Recipient becomes aware of any unauthorised copying, use or disclosure of the Confidential Information in any form.

15.2 A Recipient may disclose the Provider's Confidential Information:

- 15.2.1 to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient;
- 15.2.2 if required in connection with legal proceedings;
- 15.2.3 for public accountability reasons, including any reporting requirements of the Recipient or a request for information by a responsible Minister, or a Parliamentary committee; or
- 15.2.4 to obtain a review or expert opinion from a Third Party who has signed a Deed of Confidentiality in the form set out in Schedule 4 or Schedule 5 (as applicable).

15.3 In the case of disclosure pursuant to clause 15.2.1 or 15.2.2, the Recipient must give the Provider immediate notice of any requirement to disclose.

15.4 A Recipient may disclose the Provider's Confidential Information to its legal advisers in order to obtain advice in relation to its rights in respect of this Deed or an Agreement, but only to the extent necessary for that purpose.

16 PRIVACY

16.1 Each party must, with respect to all material made available or provided by or on behalf of a Provider which comprises or contains Personal Information:

- 16.1.1 comply with the provisions of the *Privacy Act 1988 (Privacy Act)*, as if it were an agency bound by the Privacy Act, concerning the collection, security, access, data quality, relevance, use and disclosure of Personal Information;
- 16.1.2 co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- 16.1.3 ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the other party has obligations pursuant to the Privacy Act is made aware of the provisions referred to in clause 16.1.1 and, if requested by the Provider, signs a Deed of Confidentiality in the form of Schedule 4 or Schedule 5 (as applicable);
- 16.1.4 take all reasonable measures to ensure that such information is protected against Loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised Personnel of the Recipient have access to it;

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- 16.1.5 not disclose such information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Provider;
- 16.1.6 notify the Provider promptly if the Recipient becomes aware of a breach of any obligation concerning security, use and disclosure of that Personal Information; and
- 16.1.7 notify the Provider promptly of, and co-operate with the Provider in the resolution of, any complaint alleging an interference with privacy.
- 16.2** Each party indemnifies the other (**Indemnified Party**) in respect of any Loss suffered or incurred by the Indemnified Party arising out of or in connection with a breach of a party's obligations set out in this clause 16 or any misuse of information or disclosure in breach of an obligation in the Privacy Act, except to the extent that the Loss is directly caused by a negligent or unlawful act or omission of the Indemnified Party or any of its Personnel.
- 16.3** The parties' obligations in this clause 16 are in addition to, and do not restrict, any obligations they may have pursuant to:
- 16.3.1 the Privacy Act; or
- 16.3.2 any:
- (a) privacy codes; or
- (b) privacy principles contained in, authorised by or registered under any law,
- including any such privacy codes or principles that would apply to either party but for the application of the other provisions of this clause 16.

17 INDEMNITIES

Indemnity

- 17.1** The Research Provider indemnifies CRDC and its Personnel (**those indemnified**) from and against all Loss whatsoever incurred or suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified to the extent that such Loss was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Research Provider or its Personnel in performing and carrying out its obligations set out in this Deed or an Agreement, including breach of this Deed or an Agreement.
- 17.2** The Research Provider must pay to CRDC the amount of all Losses indemnified in this Deed or any Agreement, whether or not CRDC has paid or satisfied them, provided such Losses are substantiated to the reasonable satisfaction of the Research Provider.
- 17.3** CRDC may enforce the indemnity in clause 17.1 in favour of those indemnified for the benefit of each of such persons in the name of CRDC or of such persons.
- 17.4** The Research Provider's liability to indemnify CRDC set out in clause 17.1 will be reduced proportionally to the extent that a wilfully wrongful, unlawful or negligent act or omission of CRDC or its Personnel caused the Loss.

18 INSURANCE

- 18.1** The Research Provider must, at its own expense, effect and maintain with a reputable insurance company from the Commencement Date until the termination of this Deed

(except in the case of professional indemnity insurance, which must also be maintained until seven years after the termination of this Deed) in amounts commensurate with those amounts that a responsible entity would put in place to cover the risks associated with the Projects and Scholarships which are being conducted for each of the following categories of insurance:

- 18.1.1 public liability and product liability insurance;
- 18.1.2 workers' compensation insurance as required by statute and if that statutory insurance does not include cover for the employer's liability at common law, appropriate employer's liability insurance; and
- 18.1.3 professional indemnity insurance.

18.2 The taking out of the insurance policies referred to in clause 18.1 does not relieve the Research Provider of any obligation or liability, including in respect of the infringement of IP, which it has due to any other provision of this Deed or any Agreement.

18.3 The Research Provider must, if requested by CRDC, provide evidence without delay that is acceptable to CRDC of the insurances referred to in clause 18.1 (including copies or policy wordings) and their currency.

18.4 This clause 18 does not apply where the Research Provider is a department or statutory body of the Commonwealth of Australia or an Australian state or territory and self-insures.

19 WARRANTIES

19.1 The Research Provider warrants that as at the Commencement Date of this Deed and on signing each Approval:

- 19.1.1 to the best of its knowledge after having made reasonable enquiries, all information provided by the Research Provider to CRDC in connection with this Deed and each Agreement (as applicable) is complete, up-to-date, accurate and not misleading in any material respect;
- 19.1.2 in respect of any Project, before the Commencement Date the Research Provider has disclosed in writing the full details of:
 - (a) the amounts and sources of all resources to be used to carry out the Project; and
 - (b) any other person or entity who has or will have an interest in the Project Technology or Project Income to the extent that it is known at the time by the Research Provider;
- 19.1.3 to the best of its knowledge after having made reasonable enquiry:
 - (a) in respect of a Project: the Project Team, Project Administrator, Research Provider Material and the Research Provider Resources will be available for the Project, and the Research Provider has the right to use all assets and IP rights to carry out the Project as specified in the relevant Project Approval;
 - (b) in respect of a Scholarship: the Scholarship Recipient will be available for the Scholarship as specified in the relevant Scholarship Approval;

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- (c) in respect of Travel: the Travel Recipient will be available to undertake the Travel as specified in the relevant Travel Approval; and
 - (d) the Research Provider has not breached any confidentiality obligations in relation to any information provided to and used by CRDC in relation to this Deed or any Agreement; and
 - 19.1.4 the person executing this Deed or any Approval on behalf of the Research Provider is duly authorised to do so.
 - 19.2** The Research Provider must notify CRDC immediately in the event of any change to any of the information or details referred to in clause 19.1.
 - 19.3** Where a Project or Scholarship predominantly involves scientific enquiry or experimentation, CRDC acknowledges that:
 - 19.3.1 the Project or Scholarship is speculative and the outcomes and ability to produce expected or commercially useful results are not guaranteed;
 - 19.3.2 the Project Technology and Scholarship Technology are experimental in nature; and
 - 19.3.3 the Research Provider makes no representation and gives no warranty that the Project Technology or Scholarship Technology is fit for any purpose (including Commercialisation).
 - 20 TERMINATION ON NOTICE BY CRDC**
 - 20.1** CRDC may, after consultation with the Research Provider and by providing to the Research Provider at least 20 Business Days' notice of the effective date of termination (**Termination Date**), terminate any Agreement if:
 - 20.1.1 CRDC considers, on reasonable grounds, that any research, work or other activities the subject of any Funding under the Agreement are not, or have ceased to be, relevant to CRDC's objectives or functions in relation to the research and development needs of the Australian cotton industry; or
 - 20.1.2 for any other reason as determined by CRDC in its absolute discretion.
 - 20.2** Termination under clause 20.1 takes effect on the Termination Date.
 - 20.3** Upon receipt of a notice of termination under clause 20.1, the Research Provider must:
 - 20.3.1 stop work as specified in the notice and comply with any other reasonable directions included in the notice;
 - 20.3.2 comply with all applicable obligations in this Deed and the Agreement, to the extent that such obligations arise during and apply to the period prior to the Termination Date; and
 - 20.3.3 take all reasonable steps to minimise or avoid any Loss resulting from that termination.
 - 20.4** If an Agreement is terminated by CRDC in accordance with clause 20.1, CRDC will be liable only for any reasonable costs in respect of unavoidable Loss sustained or incurred by the Research Provider (subject to clause 20.3.3) and directly attributable to the termination of the Agreement, provided that such costs:
 - 20.4.1 are fully substantiated to the reasonable satisfaction of CRDC;

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- 20.4.2 may include Student stipends where the Research Provider or Student are not able to acquire another source of funding;
- 20.4.3 do not include any amounts payable by the Research Provider to contractors or suppliers with which or whom the Research Provider has not put in place a right of termination reflecting this clause 20; and
- 20.4.4 do not include any redundancy or other termination payments to Project Team members.
- 20.5** The costs recoverable by the Research Provider pursuant to clause 20.4 must not exceed the total outstanding Funding otherwise payable in respect of the terminated Agreement.
- 20.6** If an Agreement is terminated in accordance with clause 20.1:
- 20.6.1 the Research Provider may continue the Project or Scholarship at its own discretion and cost (provided it can do so without CRDC Material); and
- 20.6.2 unless otherwise agreed in writing by the parties, ownership of Project Technology and Scholarship Technology will be in accordance with the executed Project Approval or Scholarship Approval; and
- 20.6.3 CRDC will be entitled to share in:
- (a) any Project Income or Scholarship Income generated by the Research Provider from Commercialisation of the Project Technology or Scholarship Technology, with CRDC's share of such Project Income or Scholarship Income being equal to the proportion of CRDC's total contribution to the relevant Project or Scholarship; and
 - (b) other income generated by the Research Provider from Commercialisation of IP derived from or embodying or incorporating the Project Technology or Scholarship Technology (**Developed Intellectual Property**), with CRDC's share of such income to be agreed by the parties having reference to, amongst other things, the contribution of the Project Technology or Scholarship Technology to the Developed Intellectual Property and the Research Provider's and CRDC's further costs (if any) incurred in developing the Developed Intellectual Property. Failing agreement within 20 Business Days, the parties must refer the matter to mediation or conciliation. In the event that the parties cannot agree the details of mediation or conciliation within 30 Business Days or the dispute has not been resolved within 30 Business Days (or such other period as agreed by the parties in writing) after the appointment of the mediator or conciliator, CRDC's share of income will be determined by an Expert; and
- 20.6.4 the Research Provider is entitled, subject to any reasonable conditions imposed by CRDC, to access to CRDC Material and CRDC's Confidential Information to the extent necessary to enable any Student to complete their Thesis.
- 20.7** For the purposes of clause 20.6.3, the proportion of CRDC's contributions will be assessed with reference to Financial Reports and, after termination of an Agreement, the cash and in-kind contributions made by any party to the Developed Intellectual Property. In-kind contributions will be valued on a basis to be agreed by the Research

Provider and CRDC and, if they are not able to agree on a mechanism, resolved pursuant to clause 20.6.3(b).

21 TERMINATION FOR DEFAULT BY THE RESEARCH PROVIDER

21.1 Without prejudice to its rights at common law, CRDC may, by notice to the Research Provider which specifies the Termination Date, terminate this Deed or any Agreement, if the Research Provider:

- 21.1.1 becomes insolvent;
- 21.1.2 makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- 21.1.3 goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;
- 21.1.4 suffers any execution against its assets having adverse effect on its ability to perform this Deed or any Agreement;
- 21.1.5 fails to:
 - (a) complete, to the reasonable satisfaction of CRDC, the relevant Project or Scholarship within 60 Business Days after the Completion Date;
 - (b) remove, avoid or otherwise deal with to the reasonable satisfaction of CRDC, a Conflict of Interest within the period required by CRDC, acting reasonably;
 - (c) comply with this Deed or any Agreement, in circumstances where the failure is capable of remedy and the Research Provider does not:
 - (i) commence to remedy the failure within 10 Business Days of being given notice by CRDC requiring the Research Provider to remedy the failure; or
 - (ii) remedy the failure within 20 Business Days of being given that notice (or such longer period as may be specified in the notice); or
 - (d) comply with this Deed or any Agreement, in circumstances when the failure is not capable of remedy; or
- 21.1.6 assigns its rights otherwise than in accordance with this Deed or any Agreement.

21.2 If, before termination of this Deed or any Agreement pursuant to clause 21.1, CRDC has made any payment in advance to the Research Provider, such amount of that advance payment as is attributable to any period following the Termination Date must be repaid by the Research Provider to CRDC on or as soon as possible following the Termination Date and, if not repaid, is recoverable by CRDC from the Research Provider as a debt.

21.3 If this Deed or any Agreement is terminated pursuant to this clause 21:

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- 21.3.1 subject to this Deed or any Agreement (as the case may be), the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - 21.3.2 CRDC 's rights to recover damages are not affected;
 - 21.3.3 CRDC may appoint a Third Party to complete the Project;
 - 21.3.4 subject to clause 21.3.5, the Research Provider must disclose to CRDC and any Third Party engaged by CRDC to complete a Project, all information and documents in relation to that Project, except the Research Provider's Confidential Information; and
 - 21.3.5 subject to any reasonable conditions imposed by the Research Provider, CRDC and any Third Party engaged by CRDC to complete the Project, are entitled to use:
 - (a) the Research Provider's Background IP; and
 - (b) any IP arising in relation to the Project, including any Project Technology and Scholarship Technology,to complete the Project.

22 TERMINATION FOR DEFAULT BY CRDC

- 22.1** Without prejudice to its rights at common law, the Research Provider may, by notice to CRDC which specifies the Termination Date, terminate this Deed or any Agreement if CRDC:
 - 22.1.1 ceases to exist or to carry on business; or
 - 22.1.2 fails to:
 - (a) comply with this Deed or any Agreement, in circumstances where the failure is capable of remedy and CRDC does not:
 - (i) commence to remedy the failure within 10 Business Days of being given notice by the Research Provider requiring CRDC to remedy the failure; or
 - (ii) remedy the failure within 20 Business Days of being given that notice (or such longer period as may be specified in the notice); or
 - (b) comply with this Deed or any Agreement, in circumstances when the failure is not capable of remedy.
- 22.2** The Research Provider may not terminate for a failure by CRDC to pay any disputed amount of money.
- 22.3** If, prior to termination of this Deed or any Agreement pursuant to clause 22.1, a Funding payment has fallen due, such amount of that Funding payment as is attributable to the period up to the Termination Date is payable to the Research Provider by CRDC and, if not paid, is recoverable by the Research Provider from CRDC as a debt.
- 22.4** If this Deed or any Agreement is terminated by the Research Provider pursuant to this clause 22:

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- 22.4.1 subject to this Deed or any Agreement (as the case may be), the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- 22.4.2 the Research Provider's rights to recover damages are not affected;
- 22.4.3 the Research Provider may itself complete the Project or Scholarship;
- 22.4.4 subject to clause 22.4.6, CRDC must disclose to the Research Provider all information and documents in relation to that Project or Scholarship, except CRDC's Confidential Information;
- 22.4.5 subject to any reasonable conditions imposed by CRDC, the Research Provider is entitled to use:
- (a) CRDC's Background IP; and
 - (b) any IP arising in relation to the Project, including any Project Technology and Scholarship Technology,
- to complete the Project or Scholarship; and
- 22.4.6 the Research Provider is entitled, subject to any reasonable conditions imposed by CRDC, to access to CRDC Material and CRDC's Confidential Information to the extent necessary to enable any Student to complete their Thesis.

23 NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 23.1 Neither party may represent itself, and must ensure that its employees do not represent themselves, as being an employee, partner or agent of the other party.
- 23.2 The Research Provider will not by virtue of this Deed or any Agreement be, or for any purpose be deemed to be, an employee, partner or agent of CRDC.

24 CONFLICT OF INTEREST

- 24.1 The Research Provider warrants to the best of its knowledge after having made proper enquiry that, at the date of signing this Deed, no Conflict of Interest exists or is likely to arise.
- 24.2 The Research Provider must use its best endeavours to ensure that a situation does not arise which may result in a Conflict of Interest. The Research Provider must not engage in any activity, subject to clause 24.3 that may result in a Conflict of Interest arising or continuing.
- 24.3 If a Conflict of Interest, a risk of Conflict of Interest or a perceived Conflict of Interest arises, the Research Provider must notify CRDC promptly of the relevant circumstances and must follow all reasonable directions made by CRDC about the method for handling the Conflict of Interest, risk of Conflict of Interest or perceived Conflict of Interest.

25 RESOLUTION OF DISPUTES

- 25.1 The parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Deed or any Agreement.
- 25.2 A party may give the other party a notice of dispute (**Dispute Notice**) in connection with this Deed or any Agreement. Following the giving of a Dispute Notice, the dispute

must initially be referred to the Project Administration Manager and the Research Provider Representative, who must use reasonable efforts to resolve the dispute within 10 Business Days of the giving of the Dispute Notice.

25.3 If the parties have not been able to resolve the dispute in accordance with clause 25.2, the parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.

25.4 In the event that the dispute has not been resolved within 30 Business Days (or such other period as agreed by the parties in writing) after the parties have attempted to resolve the dispute pursuant to clause 25.3, or the appointment of the mediator or conciliator in accordance with clause 25.3, either party may, if it wishes, commence legal proceedings.

25.5 Nothing in this clause 25 prevents either party from seeking urgent injunctive relief.

26 EXPERT DETERMINATION

26.1 CRDC and the Research Provider must cooperate with and assist the Expert, and must provide to that Expert all information the Expert may reasonably request to enable the Expert to determine the matter requiring determination.

26.2 CRDC and the Research Provider may each provide to the Expert all information, in written form, and in verbal form, as that party decides.

26.3 In making a determination under this Deed or an Agreement:

26.3.1 the Expert must have regard to the provisions of this Deed and any relevant Agreement and such other matters as the Expert reasonably considers are appropriate, including:

- (a) the state of development of the relevant parcel of Project Technology or Scholarship Technology;
- (b) the state of development of the relevant parcel of Background IP;
- (c) all the IP that is the subject of an agreement by which the relevant parcel of the Project Technology or Scholarship Technology is Commercialised, and the relative contributions that the relevant parcel of Project Technology or Scholarship Technology, and any other IP makes to the whole of the IP that is the subject of that agreement;
- (d) the contribution of the Project Technology or Scholarship Technology to the Developed Intellectual Property and the Research Provider's and CRDC's further costs (if any) incurred in developing the Developed Intellectual Property; and
- (e) the submissions made to the Expert by CRDC and the Research Provider.

26.3.2 the Expert must act impartially and free of bias;

26.3.3 the Expert acts as an expert and not as an arbitrator;

26.3.4 the Expert's decision is, in the absence of manifest error, final and binding on the parties; and

26.3.5 the costs of the Expert are to be borne by one or more of the parties as determined by the Expert.

27 EXCUSABLE DELAY

27.1 A party (**Non-Performing Party**) will not be liable for any default or delay in performance of its obligations in this Deed or any Agreement if, and to the extent that, the default or delay is caused, directly or indirectly, by an excusable delay event. For the purposes of this clause 27, an excusable delay event (**Excusable Delay Event**) means any:

- 27.1.1 fire, flood, earthquake, elements of nature or act of God;
- 27.1.2 riot, civil disorder, rebellion or revolution;
- 27.1.3 delay in passing any relevant legislation, including appropriation bills;
- 27.1.4 biosecurity incursion; or
- 27.1.5 other similar cause beyond the reasonable control of the Non-Performing Party, but in each case only if, and to the extent that, the Non-Performing Party is without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the Non-Performing Party at its expense through the use of alternate sources, work around plans or other means,

and does not include any industrial action which is specific to the party or any acts of contractors.

27.2 When an Excusable Delay Event has occurred, the Non-Performing Party will be excused from further performance of the obligations affected for as long as the circumstances prevail provided the Non-Performing Party continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay. Any party so delayed in its performance must promptly notify the other party to whom performance is due, specify in a reasonable level of detail the circumstances causing such delay and keep the other party informed of all relevant developments.

27.3 Without limiting the Non-Performing Party's obligations under clause 27.2, the Non-Performing Party must meet with the other Party within 60 Business Days of the Non-Performing Party notifying the other Party of the Excusable Delay Event to discuss:

- 27.3.1 the impact of the Excusable Delay Event on the relevant Project (including on Project costs); and
- 27.3.2 options for continuing or amending the relevant Project.

27.4 The Non-Performing Party is excused from performing its obligations by operation of clause 27.2 for a period of 60 Business Days. After 60 Business Days the other party may terminate this Deed or the relevant Agreement by notice to the Non-Performing Party without limiting any other rights it may have.

27.5 If a party terminates this Deed or any Agreement pursuant to clause 27.4, that party is not liable to pay the Non-Performing Party any termination costs or otherwise compensate it in respect of the termination.

28 SEVERABILITY

28.1 Each provision of this Deed or of an Agreement will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or

part. If any provisions or part of such provision is void or otherwise unenforceable for any reason, that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.

29 GOVERNING LAW

- 29.1** This Deed and each Agreement will be governed by the laws for the time being in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

30 NOTICES

- 30.1** Any notice, request or other communication to be given or served under this Deed or an Agreement must be in writing and addressed as follows:
- 30.1.1 if given to CRDC, addressed and forwarded to CRDC, for the attention of the Project Administration Manager at the address indicated in the relevant Agreement or as otherwise notified by the Project Administration Manager; or
 - 30.1.2 if given by CRDC, signed by the Project Administration Manager or Executive Director, and forwarded to the Research Provider Representative at the address indicated in the relevant Agreement or as otherwise notified by the Research Provider.
- 30.2** Any such notice, request or other communication must be delivered by hand or sent by prepaid post to the address of the party to which it is sent or by email to the email address notified in clause 30.1.
- 30.3** A notice or other communication sent to a party will be taken to be delivered:
- 30.3.1 if sent by pre-paid post, when it would be received by the party in the normal course of post;
 - 30.3.2 if delivered by hand, at the time of delivery; or
 - 30.3.3 if sent by e-mail, on receipt of a read notification which the sender will request on sending the email.

31 ENTIRE AGREEMENT

- 31.1** This Deed constitutes the entire agreement between the parties in respect of its subject matter and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to that subject matter.
- 31.2** Each Agreement, incorporating relevant parts of this Deed, constitutes the entire agreement between the parties in respect of the applicable Project, Scholarship, Travel or Major Capital Item and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of the Agreement.

32 AMENDMENT

- 32.1** In addition to the obligations imposed by clause 45, no agreement or understanding varying or extending this Deed or any Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 32.2** CRDC will not be liable for any additional work undertaken or expenditure incurred by the Research Provider pursuant to a variation to this Deed or any Agreement, unless such variation has been effected in accordance with this Deed and the additional expenditure has been agreed to in writing by CRDC.

33 ASSIGNMENT AND NOVATION

- 33.1** The Research Provider must not assign, novate or otherwise transfer its rights in this Deed or an Agreement without the prior consent in writing of CRDC.
- 33.2** The Research Provider must not consult with any other person or body for the purpose of entering into an agreement which will require assignment or novation of this Deed or any Agreement without first consulting CRDC.
- 33.3** CRDC's rights and obligations in this Deed and any Agreement may be assigned or novated at any time to a Third Party nominated by CRDC. CRDC or the Third Party must, as soon as practicable after the assignment or novation, provide notice to the Research Provider of the assignment or novation.
- 33.4** In the event that CRDC ceases to exist, this Deed and any Agreement will be subject to the provisions of the PIRD Act or any other legislation which governs transitional arrangements on the termination of CRDC.

34 WAIVER

- 34.1** A waiver by a party in respect of a breach by the other party of a provision of this Deed or of an Agreement will not be deemed to be a waiver in respect of any other breach, and the failure of a party to enforce at any time any of the provisions of this Deed or an Agreement will in no way be interpreted as a waiver of such provision.

35 COMPLIANCE WITH LAWS

- 35.1** The Research Provider must ensure that the work or activities done pursuant to this Deed, and each Agreement, complies with the laws from time to time in force in the State or Territory in which the work or activities are to be carried out, including any codes of conduct and guidelines.
- 35.2** Each party must comply with all Applicable Laws and ensure that its employees and agents comply with all Applicable Laws.

Anti-bribery

- 35.3** A party must not at any time engage in Bribery in any country, including without limitation Bribery of Public Officials or Commercial Bribery.

36 GIVING EFFECT TO THIS DEED AND ANY AGREEMENT

- 36.1** Each party must do anything (including execute any document), and must ensure that its Personnel do anything (including execute any document), that the other party may reasonably require to give full effect to this Deed and any Agreement.

37 LEGAL ADVICE

37.1 The Research Provider acknowledges that in relation to this Deed, it has received legal advice or has had the opportunity of obtaining legal advice.

38 COSTS AND EXPENSES AND RIGHT OF SET OFF

38.1 Each party must pay its own expenses incurred in negotiating and preparing this Deed and each Agreement and any related documentation.

38.2 If CRDC is entitled to recover a debt from the Research Provider, it may set that amount off against any other amount that it is obliged to pay to the Research Provider.

39 COUNTERPARTS

39.1 This Deed and any Agreement may be executed in counterparts in a manner agreed between the parties.

PART 3 - PROJECT TERMS AND CONDITIONS

40 CONDUCT OF THE PROJECT

40.1 The Research Provider must conduct the Project:

- 40.1.1 at the times and in the manner specified in the executed Project Approval;
- 40.1.2 at a high professional standard and in accordance with accepted scientific, ethical, business and financial principles and standards;
- 40.1.3 in accordance with the Methodology for the purpose of endeavouring to achieve the Outcomes of the Project; and
- 40.1.4 otherwise in accordance with the terms of this Deed which apply to the Agreement.

40.2 In conducting the Project, the Research Provider must:

- 40.2.1 comply with any reasonable direction of CRDC, provided that that direction is not inconsistent with the provisions of this Deed or the Agreement;
- 40.2.2 comply with all deadlines as specified in this Deed, the applicable Agreement or any Head Funding Agreement or such other deadlines as are agreed in writing by the parties;
- 40.2.3 respond promptly in writing to any reasonable queries from CRDC in relation to the Project;
- 40.2.4 promptly notify CRDC if an act or omission of the Research Provider or its Personnel causes, or any of them experiences, a problem or delay that has or is likely to have a material impact on the Research Provider's ability to complete the Project; and
- 40.2.5 comply with all laws applicable to the Project.

40.3 Without limiting clause 40.2.1, a direction is reasonable if it is necessary for CRDC to comply with an obligation under a Head Funding Agreement.

41 HEADS OF EXPENDITURE

41.1 The Research Provider must apply the Funding for the purpose of the Project only and exclusively in respect of:

- (a) the Heads of Expenditure; and
- (b) the types of expenditure within the Heads of Expenditure that CRDC has agreed to Fund in accordance with the budget in the Application,

or as otherwise agreed in writing by the parties.

41.2 The Research Provider may transfer Funding between the Heads of Expenditure for the Project, as follows:

- 41.2.1 other than to or from Capital Items:
 - (a) if less than 10% in any one Year, without the prior written approval of CRDC; and
 - (b) if 10% or more (in any one Year or on a cumulative basis), only with the prior written approval of CRDC; and

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- 41.2.2 to or from Capital Items, only with the prior written approval of CRDC, or as otherwise agreed in writing by the parties.
- 41.3** The Research Provider may transfer Funding between types of expenditure within a Head of Expenditure for the Project provided that:
- 41.3.1 CRDC's percentage of Funding for each type of expenditure does not increase; and
- 41.3.2 CRDC's percentage of Funding within the Head of Expenditure does not increase,
- or as otherwise agreed in writing by the parties.
- 41.4** Any transfer referred to in clause 41.2 or 41.3, including the amount and reason for such transfer, must be included in the next Progress Report, Financial Report and in the Final Report.
- 41.5** For the avoidance of doubt, this clause 41 does not permit any application or transfer of Funding in respect of any Capital Item that would result in it becoming a Major Capital Item.

42 PROGRESS REPORTS

- 42.1** The Research Provider must provide to CRDC Progress Reports, which must include the information specified in the Researchers' Handbook, or as otherwise notified by CRDC, acting reasonably, to the Research Provider. The Progress Reports must be accompanied by any proposed changes to the Technology Adoption Plan or the Adoption Pathway Proposal. Those proposed changes will not take effect to amend the Technology Adoption Plan or the Adoption Pathway Proposal unless approved in writing by CRDC.
- 42.2** If the relevant Progress Report includes any Confidential Information, the Research Provider may submit the Confidential Information in an additional Progress Report which is marked "Confidential".

43 FINANCIAL REPORTS

- 43.1** Unless the parties otherwise agree in writing, the Research Provider must provide to CRDC a Financial Report for each Project after the end of each Financial Year and at the end of the Project by the dates specified in the executed Approval, and if no dates are specified in the executed Approval not more than 60 Business Days after the end of each Financial Year, including the end of the Project.
- 43.2** Unless the parties otherwise agree in writing, the Financial Report must be in the format advised in writing by CRDC and must include details, in relation to the Project, of:
- 43.2.1 all receipts and income;
- 43.2.2 all expenditure and outgoings derived or incurred;
- 43.2.3 any transfers between Heads of Expenditure or types of expenditure within a Head of Expenditure; and
- 43.2.4 any Surplus Funding.
- 43.3** All Financial Reports must be:

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- 43.3.1 certified as correct by a qualified accountant, who is not involved in the carrying out of the Project, or other person approved in writing by CRDC, at no cost to CRDC; and
 - 43.3.2 otherwise acceptable to CRDC, in CRDC's reasonable opinion.

44 FINAL REPORT

Receipt of Final Report

- 44.1 The Research Provider must provide to CRDC one (1) electronic copy, and on request by CRDC one (1) hard copy, of the Final Report for each Project by the date specified in the executed Approval but not more than 60 Business Days after the Completion Date in a format and to a standard acceptable to CRDC, in CRDC's reasonable opinion.
- 44.2 The Final Report must include the information specified by CRDC and notified to the Research Provider

Revised Final Report

- 44.3 If the Final Report is not of a standard acceptable to CRDC, acting reasonably, CRDC may provide notice to the Research Provider:
 - 44.3.1 that the Final Report is not of an acceptable standard;
 - 44.3.2 the reasons for which CRDC has formed the view that the Final Report is not of an acceptable standard and which the Research Provider must address or remedy; and
 - 44.3.3 that CRDC requires it to be resubmitted within 20 Business Days of the date of the notice.
- 44.4 CRDC is entitled to withhold the final payment due to the Research Provider under an Agreement until it has accepted the Final Report.
- 44.5 If CRDC does not accept the Final Report it is not obliged to make any further payments of Funding to the Research Provider.
- 44.6 If CRDC has not accepted a revised Final Report within 30 Business Days (or a further extension agreed in writing by CRDC) of the date of sending a notice requiring it to be resubmitted, it may send a notice terminating the Agreement pursuant to clause 21.
- 44.7 CRDC may disseminate and publish the Final Report and any other results of the Project unless the Research Provider establishes to the reasonable satisfaction of CRDC that the Final Report contains Confidential Information, in which case:
 - 44.7.1 the Research Provider must identify the parts of the Final Report containing the relevant Confidential Information;
 - 44.7.2 if CRDC accepts the Research Provider's determination of which parts of the Final Report are Confidential Information, the Research Provider must provide a second version of the Final Report, marked "For Public Release", which does not contain that Confidential Information; and
 - 44.7.3 clause 15 will apply in relation to the parts of the first version of the Final Report that contain that Confidential Information.

45 VARIATION OF THE PROJECT

- 45.1** Without limiting clause 31.2, the Research Provider must not vary the Outcomes of the Project without the prior written consent of CRDC and only after providing CRDC with full details of the relevant variation, including the reasons for the variation and the likely effects of the variation on any aspect of the Project or the Agreement.
- 45.2** CRDC may vary the Project, after consultation with the Research Provider and following 20 Business Days' written notice, if CRDC considers (in its reasonable opinion) that any part of the Project is not or has ceased to be relevant to CRDC's objectives or functions or otherwise ceases to be of value.

46 ACCOUNTS AND RECORDS

- 46.1** The Research Provider must at all times maintain proper accounts in relation to each Project. Such accounts must:
- 46.1.1 be complete and be maintained up-to-date;
 - 46.1.2 be kept in a manner that permits them to be conveniently and properly audited;
 - 46.1.3 be drawn in accordance with any applicable Australian accounting standards;
 - 46.1.4 enable the extraction of all information relevant to the Agreement; and
 - 46.1.5 be kept for at least seven Financial Years after the termination of this Deed or any Agreement.

47 CAPITAL ITEMS

- 47.1** In relation to any Capital Item acquired as part of a Project, the Research Provider must comply with clause 57.

48 PROJECT TEAM

- 48.1** The Research Provider must ensure that the members of the Project Team detailed in each executed Project Approval undertake work in respect of the Project in accordance with the terms of the relevant Agreement.
- 48.2** If any members of the Project Team are unable to undertake work in respect of the Project, the Research Provider must promptly notify the Project Administration Manager in writing. The Research Provider must, if so requested in writing by CRDC, provide replacement Personnel acceptable to CRDC, in CRDC's reasonable opinion, at the earliest opportunity.
- 48.3** CRDC may, after consultation with the Research Provider and on reasonable grounds, request in writing that the Research Provider remove Personnel in the Project Team from work in respect of the Project. The Research Provider must promptly arrange for the removal of such Personnel from work in respect of the Project and their replacement with Personnel acceptable to CRDC, in CRDC's reasonable opinion. CRDC may only exercise its rights under this clause 48.3 to request removal of Personnel where it considers on reasonable grounds that:
- 48.3.1 there has been or is likely to be serious misconduct, incompetence or negligence on the part of the Personnel;

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- 48.3.2 the Personnel's involvement in the Project Team has given or is likely to give rise to:
- (a) work health and safety risks;
 - (b) reputational risks for any of the parties;
 - (c) a Conflict of Interest;
 - (d) a breach of confidentiality; or
 - (e) an infringement of Intellectual Property; or
- 48.3.3 the Personnel's involvement in the Project Team has given or is likely to give rise to a liability for any of the parties that is not contemplated by this Deed or the relevant Agreements.
- 48.4** If the Research Provider is unable to provide acceptable replacement Personnel, CRDC may terminate the relevant Agreement in accordance with the provisions of clause 21.
- 49 STUDENTS**
- 49.1** The parties acknowledge that, subject to this clause 49, students of the Research Provider or other educational institution (**Student**) may be involved in the Project.
- 49.2** Unless otherwise agreed in writing by CRDC, the Research Provider must provide to CRDC a deed of IP assignment in the favour of CRDC or the Research Provider, or both Parties, executed by the Student, in relation to all IP created by the Student in their participation in the Project other than the copyright in the Student's Thesis.
- 49.3** If the Research Provider proposes that a Student conduct or be involved in the Project, it must provide details of the proposed research the Student will undertake and obtain approval from CRDC for the Student's participation in the Project.
- 49.4** If approval is given for Student involvement in the Project, the parties agree that the Student may publish the results of their research work subject to the IP rights of the parties to this Deed or of any Third Parties:
- 49.4.1 after one year following completion of the relevant Project or termination of the relevant Agreement (or any longer period agreed under clause 9.13.1(b); or
 - 49.4.2 such earlier time as may be agreed with the parties; and
 - 49.4.3 the copyright in the Student's Thesis will remain with the Student.
- 49.5** The Research Provider must use its best endeavours to ensure that:
- 49.5.1 the Student will do everything reasonably necessary to assist the Research Provider to meet its obligations in relation to the Project; and
 - 49.5.2 the Student observes the confidentiality requirements set out in this Deed and which apply to the Project, however, nothing in this Deed or any Agreement will require the Student to continue enrolment in a course conducted by the Research Provider or other educational institution.
- 49.6** Nothing in this Deed or any Agreement will prevent the Student and the Research Provider from giving the Student's Thesis to examiners for assessment. CRDC may request that the Research Provider arrange for an examiner to enter into an agreement to protect any Confidential Information.

50 SUBCONTRACTING

- 50.1** The Research Provider must not, without the prior written approval of CRDC, subcontract the performance of any part of a Project. In giving written approval, CRDC may, acting reasonably, impose such terms as it thinks fit.
- 50.2** The Research Provider remains fully responsible for conducting each Project notwithstanding that the Research Provider has subcontracted the performance of any part of that work.
- 50.3** Following consultation with the Research Provider, CRDC may, acting reasonably, withdraw, or may impose further conditions on, its approval of a subcontractor, by written notice to the Research Provider.
- 50.4** On receipt of a notice issued in accordance with clause 50.3 the Research Provider must, at its own cost promptly, either:
- 50.4.1 cease using the subcontractor for which approval has been withdrawn and if required by CRDC, arrange an alternative subcontractor reasonably acceptable to CRDC; or
 - 50.4.2 ensure the subcontractor complies with any further conditions imposed by CRDC.
- 50.5** The Research Provider must ensure that any subcontract it enters into for the performance of any part of the Project, contains terms that are no less onerous than the relevant terms of any relevant Agreement.
- 50.6** The Research Provider may use, but is not obliged to use, the Schedule 9 Subcontract template.

51 EMPLOYER OBLIGATIONS

- 51.1** Any Personnel of the Research Provider conducting a Project on behalf of the Research Provider remain at all times an employee, student, independent contractor, honorary appointee or agent (as applicable) of the Research Provider.
- 51.2** The Research Provider must at all times and at its own expense comply with the provisions of any relevant legislation and make all payments and contributions in respect of statutory obligations including but not limited to income tax, workers' compensation, superannuation, affirmative action, privacy, confidentiality, work health and safety, annual leave, parental leave, long service leave, and any award, order, determination or agreement of a competent industrial tribunal in respect of its Personnel.
- 51.3** If, despite the provisions of this Deed, or any Project Agreement, CRDC is held at any time to be the employer or principal of any of the Research Provider's Personnel or becomes liable to pay any amounts in respect of such person, the Research Provider indemnifies CRDC for any payment which CRDC is required to make (including payments under the *Superannuation Guarantee (Administration) Act 1992*, payroll tax, other taxes, and any penalties and legal costs on an indemnity basis) and any Losses incurred (including the tax effect of the loss of any tax deductions).

52 COMPLIANCE WITH CRDC POLICIES

- 52.1** The Research Provider must, when conducting a Project, use its reasonable endeavours to comply with those CRDC policies of which it has been notified by CRDC.

PART 4 - SCHOLARSHIP FUNDING

53 RESEARCH PROVIDER'S OBLIGATIONS

53.1 Subject to the Research Provider's rules and regulations, the Research Provider must:

- 53.1.1 use its best endeavours to enrol the Scholarship Recipient to undertake the course of study specified in the Application for the purposes of carrying out the Scholarship; and
- 53.1.2 continue to enrol the Scholarship Recipient for the duration of the Term.

53.2 The Research Provider must:

- 53.2.1 provide the Funding to the Scholarship Recipient in accordance with the Research Provider's scholarship administration procedures and at the times and in accordance with the executed Scholarship Approval;
- 53.2.2 keep complete and accurate accounts and records of Funding received from CRDC in relation to a Scholarship and all payments from Funding for the Term of the Scholarship Agreement and for a period of seven years after the Term;
- 53.2.3 comply with the financial reporting requirements in clause 53.4;
- 53.2.4 obtain from the Scholarship Recipient the reports specified in the executed Approval by the date specified in the executed Approval and forward them to CRDC promptly;
- 53.2.5 provide to CRDC annually an assessment from each Supervisor on the Scholarship Recipient's progress and achievements during the relevant Year and whether the Scholarship Recipient is fulfilling the requirements of the course in which the Scholarship Recipient is enrolled. The Research Provider must attach such comments to the Progress Report;
- 53.2.6 in the case of a Scholarship Recipient who is required to submit a Thesis, notify CRDC when the Scholarship Recipient submits the Thesis for assessment by the Research Provider;
- 53.2.7 report to CRDC if it becomes aware that the Recipient is unable to commence or continue performing the terms of the Scholarship at an adequate level;
- 53.2.8 comply with any reasonable direction of CRDC (including any direction to report to CRDC), provided the direction is not inconsistent with either the provisions of this Deed, or the applicable Scholarship Agreement;
- 53.2.9 comply with all deadlines as specified in this Deed, or the applicable Scholarship Agreement, or such other deadlines as are agreed by the parties;
- 53.2.10 respond promptly in writing to any reasonable queries by CRDC in relation to this Deed and any Scholarship; and
- 53.2.11 immediately notify CRDC of any matter that has, or is likely to have, a material impact on this Deed or any Scholarship.

53.3 The Research Provider must furnish to CRDC a copy of any Thesis and "plain-English summary" of the Thesis required to be written by the Scholarship Recipient

within 90 days of the Thesis being given a grade of pass or better. The plain English summary of the Thesis must be submitted in electronic form.

- 53.4** The Research Provider must provide to CRDC a Financial Report for the Funding after the end of each Financial Year and at the end of the Scholarship on dates specified in the executed Approval or otherwise within 60 Business Days of the end of each Financial Year including the end of the Scholarship. Each Financial Report must be:

- 53.4.1 in the format advised in writing by CRDC and include details, in relation to the Scholarship of all:
- (a) receipts, income and revenue;
 - (b) expenditure and outgoings incurred; and
 - (c) any Surplus Funding;
- 53.4.2 certified as correct by an independent qualified accountant (independent of any CRDC Project on which the Scholarship Recipient is performing work or research for CRDC), at no cost to CRDC; and
- 53.4.3 otherwise acceptable to CRDC, in CRDC's reasonable opinion.

54 ACKNOWLEDGMENT AND UNDERTAKINGS BY THE SCHOLARSHIP RECIPIENT

- 54.1** In respect of each Scholarship, the Research Provider must notify the Scholarship Recipient of the following things:

- 54.1.1 Funding may be withdrawn immediately if any of the following occur:
- (a) the Scholarship Recipient ceases to carry out the course of study as approved by the Research Provider and as specified in the executed Scholarship Approval;
 - (b) the Scholarship Recipient fails to comply with reasonable requirements communicated to the Scholarship Recipient by CRDC;
 - (c) if the Funding has been paid by the Research Provider to the Scholarship Recipient for a particular purpose, the Scholarship Recipient expends any of that money for any other purpose without the prior written consent of the Research Provider;
 - (d) the Scholarship Recipient is not accepted by the educational institution in which the Scholarship Recipient is enrolled (which may or may not be the Research Provider) to the following year of the course of study specified in the executed Scholarship Approval;
 - (e) the Scholarship Recipient undertakes paid employment which may give rise to a potential Conflict of Interest; or
 - (f) the Scholarship Recipient receives scholarship funds from another source which has not been approved in writing by CRDC.
- 54.1.2 The onus to claim an income tax exemption is on the Scholarship Recipient and CRDC makes no representation that any income tax exemption will be available to the Scholarship Recipient.

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- 54.1.3 If the Research Provider deems the Scholarship Recipient's progress to be unsatisfactory, the Scholarship Recipient may be required to submit evidence why the Scholarship should not be terminated.
- 54.1.4 The Research Provider must use reasonable endeavours to ensure that nothing done by the Scholarship Recipient in the course of performing the tasks specified in the Application (including the development of Scholarship Technology) infringes the IP rights of any person.
- 54.1.5 Subject to clause 54.1.6, if CRDC requests the Research Provider to provide copies of any Scholarship Technology, the Research Provider must provide those copies and CRDC may use, reproduce and modify that Scholarship Technology and any Background IP (subject to any Background Conditions) contained in that Scholarship Technology.
- 54.1.6 If the Research Provider establishes to the reasonable satisfaction of CRDC that the Scholarship Technology requested under clause 54.1.5 contains Confidential Information, the parties agree to negotiate in good faith to establish an arrangement that protects the relevant Confidential Information to the reasonable satisfaction of the Research Provider.
- 54.1.7 The Research Provider must ensure that the Scholarship Recipient notifies it, and it must notify CRDC immediately, of any Conflict of Interest which exists or is likely to arise in performing the tasks specified in the executed Scholarship Approval. A Conflict of Interest may exist, without limitation, when the Scholarship Recipient is in receipt of scholarship funds from another source, or when the Scholarship Recipient undertakes paid employment. The Research Provider must follow and must ensure that the Scholarship Recipient follows, all subsequent reasonable directions made by CRDC.

PART 5 - TRAVEL ARRANGEMENTS

55 RESEARCH PROVIDER'S OBLIGATIONS

55.1 The Research Provider must:

- 55.1.1 only use the Funding for the purposes of making payment to, or on behalf of, the Travel Recipient to undertake the Travel in accordance with the executed Travel Approval;
- 55.1.2 keep accurate accounts and records of:
 - (a) all Funding received from CRDC; and
 - (b) all payments of the Funding to, or on behalf of, the Travel Recipient for Travel undertaken;
- 55.1.3 keep all accounts, records and evidence referred to in this clause 55.1. for seven years following the completion of the Travel or the Recipient completing all of the Travel it is able to undertake as the case may be;
- 55.1.4 provide a financial statement to CRDC in the format provided by, or as otherwise approved by, CRDC including:
 - (a) an up-to-date copy of the accounts and records maintained in accordance with clause 55.1.2; and
 - (b) any other information reasonably requested by CRDC, by the date specified in the executed Approval but not later than 40 Business Days after:
 - (c) the completion of the Travel; or
 - (d) the Travel Recipient completing all of the Travel that it is able to undertake;
- 55.1.5 if:
 - (a) the Travel Recipient is unable to undertake any part of the Travel for any reason; or
 - (b) the details of the Travel need to be materially changed for any reason,promptly notify CRDC in writing and must consult with CRDC as to what action should be taken, including terminating all, or any part of, the Travel and repayment to CRDC of all or part of the Funding;
- 55.1.6 if, following completion of the Travel, the Travel Recipient has not expended all of the Funding, return the unexpended amount to CRDC;
- 55.1.7 obtain from the Travel Recipient, and give to CRDC, any reports or other information or materials to be provided by the Travel Recipient as specified in the executed Travel Approval at the times specified in the executed Travel Approval or, if no timeframes are specified, within 30 Business Days following the completion of the Travel;
- 55.1.8 comply with any reasonable direction of CRDC;
- 55.1.9 comply with all deadlines as specified in this Deed, the executed Travel Approval or as CRDC may otherwise reasonably impose;

-
- 55.1.10 respond promptly in writing to any reasonable queries by CRDC in relation to this Deed or any Agreement; and
 - 55.1.11 immediately notify CRDC of any matter that has a material impact on this Deed or a Travel Agreement.

56 ARRANGING TRAVEL

56.1 The Research Provider acknowledges that CRDC is not responsible for:

- 56.1.1 arranging any part of the Travel (including Travel insurance) on behalf of the Travel Recipient; and
- 56.1.2 any Loss arising as a result of or in connection with the Travel.

PART 6 - MAJOR CAPITAL ITEMS

57 CAPITAL ITEMS

- 57.1** In relation to any Major Capital Item, the Research Provider must:
- 57.1.1 acquire and install the Major Capital Item;
 - 57.1.2 maintain the Major Capital Item in good condition and repair;
 - 57.1.3 account for the Major Capital Item in accordance with the Research Provider's established procedures;
 - 57.1.4 keep accurate accounts and records of:
 - (a) all Funding received from CRDC; and
 - (b) all payments of the Funding for the acquisition of the Major Capital item;
 - 57.1.5 keep all accounts, records and evidence referred to in this clause 57.1 for seven years following the acquisition of the Major Capital Item;
 - 57.1.6 provide a financial statement to CRDC within 40 Business Days after the acquisition of the Major Capital item in the format provided by CRDC (or as otherwise approved by CRDC) and including:
 - (a) an up-to-date copy of the accounts and records maintained in accordance with clause 57.1.6; and
 - (b) any other information reasonably requested by CRDC;
 - 57.1.7 repair or replace any Major Capital Item as required where such replacement or repair results from the Research Provider's negligence or wilful misconduct;
 - 57.1.8 insure the Major Capital Item with a reputable insurance company or self insure (if the Research Provider self insures its own similar items) in an amount that reflects the replacement value of the Major Capital Item at all times that it has the Major Capital Item in its possession, custody or control; and
 - 57.1.9 if, following completion of the acquisition of the Major Capital Item not all of the Funding has been expended, return the unexpended amount to CRDC.
- 57.2** Unless otherwise stated in the Agreement and in accordance with notification under clause 4.10, during the Term of an Agreement, the Research Provider will own all Major Capital Items and such Major Capital Items will, at all times, be at the risk of the Research Provider.
- 57.3** Subject to this clause 57, the Research Provider must not dispose, transfer, encumber, assign, license the use of or otherwise deal with a Major Capital Item during the period notified in accordance with clause 4.10 without the prior written approval of CRDC, which approval will not be unreasonably withheld.
- 57.4** Subject to clause 57.5, if the value of the Major Capital Item (determined at a rate of depreciation notified by the Research Provider under clause 4.10) (**Depreciated Value**) is less than \$10,000 at the end of the Term of the Agreement, the Research Provider will not be required to provide to CRDC any information relating to such Major Capital Item after the end of the Term of the Agreement.
- 57.5** In respect of a Major Capital Item which:

-
- 57.5.1 regardless of its Depreciated Value at the end of the Term, cost more than \$20,000 when purchased; or
- 57.5.2 the Depreciated Value of which is \$10,000 or more at the end of the Term, that Major Capital Item (referred to below as the **Depreciated Capital Item**) will be dealt with in accordance with clauses 57.6 to 57.11.
- 57.6** Upon termination of an Agreement, the Research Provider must, within 60 Business Days after the effective date of termination of the Agreement, advise CRDC in writing of all Depreciated Capital Items and must:
- 57.6.1 promptly deliver to CRDC all Depreciated Capital Items owned by CRDC (as specified in the executed Major Capital Item Approval); and
- 57.6.2 advise CRDC of the Research Provider's intended use of each Depreciated Capital Item owned by the Research Provider.
- 57.7** CRDC, within 20 Business Days after receiving the advice referred to in clause 57.6.2, may notify the Research Provider of its response to the Research Provider's intended use for the Depreciated Capital Item.
- 57.8** Until receiving CRDC's response referred to in clause 57.7, the Research Provider may continue to use the Depreciated Capital Item, but only for the purposes referred to in clause 4.10.2 or for the benefit of the Australian cotton industry.
- 57.9** If:
- 57.9.1 CRDC does not respond in accordance with clause 57.7 within 60 Business Days; and
- 57.9.2 the Research Provider's intended use of the Depreciated Capital Item is for the benefit of the Australian cotton industry,
- CRDC grants or will procure the grant to the Research Provider of the right to use the Depreciated Capital Item indefinitely, at no additional cost to the Research Provider.
- 57.10** If the Research Provider does not intend to primarily use the Depreciated Capital Item for the benefit of the Australian cotton industry, the Research Provider, at its election, must return the Depreciated Capital Item to CRDC at the earliest opportunity or pay CRDC the Depreciated Value of the Depreciated Capital Item.
- 57.11** If this Deed or an Agreement in relation to a Major Capital Item, is terminated:
- 57.11.1 the Research Provider must promptly deliver to CRDC all Depreciated Capital Items owned by CRDC (as specified in the executed Major Capital Item Approval); and
- 57.11.2 in respect of Depreciated Capital Items owned by the Research Provider clause 57.10 applies.
- 57.12** The Research Provider must, at its own cost, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to:
- 57.12.1 give effect to this clause 57 and any direction, imposition or advice given by CRDC pursuant to this clause 57; and
- 57.12.2 secure CRDC's rights set out in this clause 57.

EXECUTION PAGE

EXECUTED as a deed.

SIGNED for
and on behalf of the **Cotton Research and
Development Corporation** by its duly authorised officer
in the presence of:

Signature of witness

Signature of CRDC representative

Name
Date:

Name of CRDC representative

Position of CRDC representative

SIGNED for and on behalf of
[insert full name of Research Provider]
by an authorised officer in the presence of:

Signature of witness

Signature of Research Provider representative

Name
Date:

Name of Research Provider representative

Position of Research Provider representative

SCHEDULE 1 – FORM OF APPROVAL

Approval issued pursuant to the Cotton Research and Development Corporation Deed between the:

COTTON RESEARCH AND DEVELOPMENT CORPORATION ABN 71 054 238 316

and

[Insert name of Partner Organisation (if applicable)]

ABN ***[Insert ABN]*** in Deed dated ***[Insert date]***

and

[Insert name of Research Provider]

ABN ***[Insert ABN]*** in Deed dated ***[Insert date]***

and

[Insert name of Third Party]

ABN ***[Insert ABN]*** in Deed dated ***[Insert date]***

[Add additional partners]

Approval or variation of an Approval for a [Project/Scholarship/Travel/Major Capital Item]

Approval titled: *[Insert title]*

Project Start and Cease Date: ***[Dates]***

CRDC Agreement Code: ***[Insert code]***

Approval Date: _____

[Insert date on which CRDC executed this Approval or other date]

From the Approval Date (as specified above), this Approval forms an Agreement which is subject to the terms and conditions of the Deed. All capitalised terms in this Approval have the same meaning as defined in the Deed.

This is an Approval, as defined in the Deed which includes details of:

- the Funding approved by CRDC;
- if applicable, any Partner Organisation funding approved in a Program Management Agreement;
- each party's share of Project Income or Scholarship Income;
- ownership of IP-;
- the Research Provider's reporting obligations; and
- whether the Approval is subject to the terms of a Head Funding Agreement,

The following documents are attached:

- the Application detailing the Methodology, Heads of Expenditure, the types of expenditure to be incurred and financial contributions by each party to each type of expenditure;
- Schedule 2 IP Register, which forms part of this Approval;
- any applicable Head Funding Agreement;
- Schedule 3 Acknowledgement;
- Third Party agreements or licences;

- any applicable Program Management Agreement;
- any applicable IP assignment by a Student; and
- ***[Insert details of any other attachments to the Approval].***

Ownership of Project Technology and Scholarship Technology

Project Technology and Scholarship Technology will be owned as follows:

- (a) copyright in Reports will be owned by CRDC;
- (b) where applicable, copyright in a Thesis will be owned by the Student;
- (c) in accordance with IP ownership recorded on the IP Register (Schedule 2), updated in accordance with the Deed; and
- (d) If not listed in (a), (b) or (c) above, in the following proportions: CRDC % and Research Provider % and possibly with third parties. (provide list and %).

Share of Project Income and Scholarship Income

The parties will share the Project Income or Scholarship Income in the following proportions:

List of parties	Percentage
Cotton Research and Development Corporation (CRDC)	%
[add name] (Research Provider)	%
[add name] (Third Party)	%
Total	100%

CRDC Funding Obligations:

Include Funding to be received by CRDC from other parties and included in CRDC's payments.

[Insert table]

Partner Organisation Funding Obligations: *[if applicable and not included above]:*

[Insert table]

Research Provider's reporting obligations:

The Research Provider is required to report to CRDC at various times in accordance with the Deed. The following table includes a list of the reporting activities and due dates but is not a full list of reporting responsibilities.

[Insert table]

Managers (for notices per clause 30)

For CRDC:

Project Administration Manager:

Address:

Email:

For the Research Provider:

Project Administrator:

Address:

Email:

Phone:

Phone:

Additional terms or conditions for the conduct of the Project:

[Insert any additional terms or conditions]

This Approval is **EXECUTED** as an Agreement

Signed for and on behalf of the **Cotton Research and Development Corporation** by its duly authorised representative:

Signature of CRDC representative

Name of CRDC representative

Position of CRDC representative

Date:

Signed for and on behalf of the **[name of Partner Organisation]** by its duly authorised representative:

Signature of Research Provider representative

Name of Research Provider representative

Position of Research Provider representative

Date:

Signed for and on behalf of the **[name of Research Provider]** by its duly authorised representative:

Signature of Research Provider representative

Name of Research Provider representative

Position of Research Provider representative

Date:

Signed for and on behalf of the **[name of other Provider]** by its duly authorised representative:

Signature of Research Provider representative

Name of Research Provider representative

Position of Research Provider representative

Date:



SCHEDULE 2 - IP REGISTER

Approval issued between the:

COTTON RESEARCH AND DEVELOPMENT CORPORATION ABN 71 054
238 316

and **Organisation ABN** pursuant to the Deed dated _____

and **[Insert name of Third Party]** ABN **[Insert ABN]** pursuant to the Deed dated **[Insert date]**

This schedule forms part of an Agreement which is subject to the terms and conditions of the Deed. **CRDC Agreement Code:** **[Insert]**

PART 1: Background IP (BIP) and Third Party IP (TPIP)

Describe IP brought to project	
Type of IP	Choose an item.
Owner(s)	
How is it supplied for use in current project?	Choose an item.
	Provide details:
Provide additional details about the IP item (if required)	
Background IP Status	Choose an item.

PART 2: Potential IP (PIP) to be generated or IP created

Describe potential IP to be created or IP created in the project	
Type of IP	Choose an item.
Owner(s)	
Can IP be used outside of current project?	Choose an item.
	Provide details:
Commercialisation potential	Choose an item.
	Provide additional details for commercialisation (if required)
Provide additional details about the IP item (if required)	
Technology Readiness Level (TRL) (for IP created)	Choose an item.
Project IP Status	Choose an item.

PART 3: Additional comments

Signed for and on behalf of the **Cotton Research and Development Corporation** by its duly authorised representative:

Signature of CRDC representative

Name of CRDC representative

Position of CRDC representative

Date:

Signed for and on behalf of the **[name of Partner Organisation]** by its duly authorised representative:

Signature of Research Provider representative

Name of Research Provider representative

Position of Research Provider representative

Date:

Signed for and on behalf of the **[name of Research Provider]** by its duly authorised representative:

Signature of Research Provider representative

Name of Research Provider representative

Date:

SCHEDULE 3 - ACKNOWLEDGEMENT

CRDC Agreement Code: [Insert]

To be signed by each member of the Project/Scholarship Team and submitted as part of the Project/Scholarship Approval.

This Schedule forms part of an Agreement which is subject to the terms and conditions of the Deed.

All capitalised terms in this Schedule have the same meaning as defined in the Deed.

CRDC and **[INSERT NAME OF RESEARCH PROVIDER] (RP)** are entering into an Agreement for the conduct of **[INSERT ACTIVITY TITLE] (Project)**

As a person responsible for performing the Project named in the Application, I/we acknowledge that the Agreement contains the following terms and imposes the following obligations relating to the standard of work and the ownership and management of Intellectual Property (IP) and Confidential Information.

Specific terms and conditions relating to the Project at its commencement are detailed in the Project Approval and my/our RP has notified me/us of those terms and conditions including the following:

1. Standard of Work

- The RP is required to conduct the Project at a high professional standard and in accordance with accepted scientific, ethical, business and financial principles and standards.
- The RP is required to ensure that all material produced in the performance of the Project is neatly and legibly compiled and adequately documented and contains sufficient evidence (including laboratory notes) required to support all conclusions, findings and opinions.
- The RP and Project Team members are required to conduct the Project in a way which ensures that the ability to obtain statutory protection of any IP which is generated by the conduct of the Project is not jeopardised, except where there is a written agreement between CRDC and the RP to the contrary.

2. Confidentiality

- Each party is required to keep the other party's Confidential Information confidential, and to only use it as permitted by the Agreement and not to wrongly disclose it. In certain circumstances a Deed of Confidentiality is required.

3. Intellectual Property Ownership

- CRDC may be entitled to a share of the ownership of the IP arising out of the Project in order to safeguard the interests of the cotton industry and, in such a case, the RP will have assigned ownership to CRDC.

Background IP (BGIP)

- Both parties are required to notify their employees or team that they have an obligation to observe any Background IP conditions of use. Any liability resulting from a breach of BGIP will be borne by the party whose employees or team were responsible for the breach.

Copyright and Moral Rights

- CRDC may own the copyright in all reports (progress, final & financial) in respect of the Project but not in respect of the other IP which is specified in the reports unless CRDC is specified as the owner in the Agreement.
- If CRDC owns copyright in other material, it may apply conditions to the use of its copyright material. It will not unreasonably withhold its consent to the use of material in which it owns the copyright.
- CRDC will not require researchers to 'waive' their moral rights or otherwise consent to an action that would infringe their moral rights.

4. Teaching

- The RP is entitled to use the Project Technology and Scholarship Technology for student education purposes provided that it does not disclose Confidential Information, prejudice the protection of the Project Technology or Scholarship Technology or prejudice the Commercialisation of the Project Technology or Scholarship Technology.

5. Publication

- The RP is required to obtain CRDC's written approval before distributing or publishing any material resulting from the Project.
- Media Releases, public announcements or unrefereed publications (eg conference papers) about the Project or the material produced in the Project require CRDC's prior approval in accordance with the Deed. CRDC will endeavour to approve the publication within 10 Business Days of CRDC receiving the documentation from the RP.
- CRDC may withhold its consent to publish where such publication:
 - contains confidential information: or
 - may prejudice the protection of the Project Technology or Scholarship Technology: or
 - may prejudice the Commercialisation of the Project Technology or Scholarship Technology; or
 - has not been subject to peer review and, in CRDC's reasonable opinion, requires peer review; or
 - following peer review, CRDC considers on reasonable grounds that the proposed Publication is not considered acceptable for publication in a recognised journal; or
 - in CRDC's reasonable opinion is not in the interests of the Australian cotton industry.
- In respect of any publication or other material arising from the Project, the RP is required to acknowledge CRDC as an investor in the Project and to provide to CRDC an electronic copy of the publication before distribution.

-
- If CRDC owns the copyright in material produced in the Project, its consent to publishing the material will be conditional on it being able to make any changes before its distribution.

6. IP and data management

- The RP is required to provide to CRDC an IP Register setting out all IP rights it proposes to use in, or expects to be generated by, the conduct of the Project as well as the owners of the IP and any conditions of use, including in respect of data collected during the Project.
- The RP is required to notify CRDC in writing within 20 Business Days of all significant material and/or changes to IP ownership arising from the carrying out of the Project (and include such notification in the next Progress Report or Final Report).
- The RP is required to take all reasonable steps to ensure that no person or organisation other than those identified in the IP Register will be in a position to make a claim to IP, including in data, in respect of the Project Technology, except in cases where CRDC has agreed otherwise in writing.
- Data collected in a Project must not be used or shared with other parties unless approved by the RP and CRDC, as stated in the Schedule 2 IP Register.

7. Conflict of interest

- The RP is required to warrant to the best of its knowledge after having made proper enquiry that no Conflict of Interest exists or is likely to arise in respect of its involvement in the conduct of the Project.
- The RP undertakes to use all reasonable endeavours to avoid any situation from arising or engaging in any activity during the conduct of the Project, which may result in a Conflict of Interest.

8. Privacy

- In respect of any Personal Information made available or provided by or on behalf of the CRDC, the RP must:
 - comply the provisions of the *Privacy Act 1988*, as if it were an agency bound by that Act, concerning the collection, security, access, data quality, relevance, use and disclosure of Personal Information;
 - co-operate with any reasonable demands or enquires made by the Privacy Commissioner;
 - take all reasonable measures to ensure that such Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised recipients have access to it;
 - not disclose such Personal Information outside Australia without CRDC's prior written approval; and
 - promptly notify CRDC of, and co-operate with CRDC in resolving, any complaint regarding an interference with privacy.

Team Member Name	Signature	Date

PLEASE CONTINUE ON A FURTHER SHEET IF NECESSARY

SCHEDULE 4 – DEED OF CONFIDENTIALITY FOR PROTECTION OF CRDC CONFIDENTIAL INFORMATION

DATE **[Insert date]**

PARTIES

Cotton Research and Development Corporation (ABN 71 054 238 216) a body incorporated in accordance with the Primary Industries Research and Development Act 1989 (CRDC) and

[Insert name and address of employee, student, agent, subcontractor of the Research Provider] (the **Recipient**)

RECITALS

- A. CRDC is providing funding for the conduct of the Project or Scholarship, CRDC Agreement Code **[Insert]**.
- B. The Project or Scholarship requires the Recipient to have access to information confidential to CRDC.
- C. CRDC and **[Insert name and address of the Research Provider]** (**Research Provider**) have entered into an Agreement pursuant to which the Research Provider will conduct the Project or Scholarship.
- D. The Recipient will be assisting the Research Provider to conduct the Project or is a Student of a Scholarship supervised by the Research Provider.

OPERATIVE PROVISIONS

1 INTERPRETATION

"Agreement" means the agreement between CRDC and the Research Provider dated **[Insert date of Agreement]** for the conduct of the Project or Scholarship.

"CRDC Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by CRDC as confidential; or
- (c) the Recipient knows or ought to know is confidential; or
- (d) is comprised in or relates to Material where CRDC is the owner or co-owner thereof; or

and includes the terms of the Agreement, but does not include information which:

- (e) is or becomes public knowledge other than by breach of the Agreement, this Deed of Confidentiality or any other confidentiality obligations; or
- (f) has been independently developed or acquired by the Recipient as established by written evidence.

"Data" includes all information stored on magnetic tapes, disks or in electronic or written form of any kind.

"Material" means:

- (a) any material, facilities, premises, equipment, documents, information, Data, software and organisms (living or dead), discoveries, inventions, improvements, engineering or other processes and innovations, including any intellectual property:

-
- (i) provided by CRDC to the Research Provider for the purposes of the Agreement; or
 - (ii) developed or created in the performance of the Project or Scholarship; and
- (b) anything which is copied or derived from the material referred to in paragraph (a).

"Personal Information" has the meaning given to it in the *Privacy Act 1988*.

"Project" means the project set out in the Agreement.

"Scholarship" means the scholarship set out in the Agreement.

2 NON DISCLOSURE

- 2.1 Except as required in the proper performance of the Project or Scholarship or as expressly permitted by the Agreement, the Recipient must not copy, reproduce or disclose any CRDC Confidential Information without the prior written consent of CRDC, which consent CRDC may grant or withhold in its absolute discretion.

3 RESTRICTION ON USE

- 3.1 The Recipient must use CRDC Confidential Information only for the purpose of properly performing the obligations and exercising the rights of the Research Provider pursuant to, or in relation to, the Agreement.
- 3.2 The Recipient must:
- (a) ensure that any Personal Information the Recipient has acquired during the conduct of the Project is handled in accordance with the *Privacy Act 1988* and CRDC's privacy policy;
 - (b) only use that Personal Information for the purpose of conducting the Project; and
 - (c) not, without CRDC's prior written consent, disclose or permit access to that Personal Information other than for the purpose of conducting the Project.

4 SECURITY

- 4.1 If requested by CRDC, the Recipient must cooperate in any security checks CRDC wishes to make of the Recipient (including by providing information usually requested in such circumstances).

5 DATA BREACHES

- 5.1 If there has been or may be, or if the Recipient reasonably suspects that there has been or may be, any unauthorised disclosure of or unauthorised access to Personal Information the Recipient has acquired during the conduct of the Project ("**Data Breach**"), the Recipient must:
- (a) notify CRDC as soon as reasonably practicable;
 - (b) promptly investigate the Data Breach;
 - (c) take all reasonable steps to:
 - (i) remedy the Data Breach; and

-
- (ii) prevent serious harm occurring to the relevant individuals;
 - (d) provide CRDC with such information and assistance as it reasonably requests in respect of the Data Breach; and
 - (e) subject to paragraph (c)(ii), at least 14 days before making any report, notification or public statement, provide a copy to CRDC and make any amendment reasonably required by CRDC within those 14 days.

6 DELIVERY UP OF DOCUMENTS

- 6.1** CRDC may, upon not less than 2 business days written notice to the Recipient, demand the delivery to CRDC or the destruction of all documents in the possession or control of the Recipient which contain CRDC Confidential Information.

7 SURVIVAL OF OBLIGATIONS

- 7.1** The obligations in this agreement are perpetual.

8 GOVERNING LAW

- 8.1** This Deed will be governed by the laws for the time being in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

EXECUTED as a deed.

SIGNED for
and on behalf of the **Cotton Research and
Development Corporation** by its duly authorised representative
in the presence of:

Signature of witness

Signature of CRDC representative

Name of witness

Name of CRDC representative

Position of CRDC representative

Date:

SIGNED by
[name of Recipient] in the presence of:

Signature of witness

Signature of Recipient

Name

Name of Recipient

Date:

SCHEDULE 5 – DEED OF CONFIDENTIALITY FOR PROTECTION OF RESEARCH PROVIDER CONFIDENTIAL INFORMATION

DATE **[Insert date]**

PARTIES

[Insert name, ABN and address of the Research Provider] (Research Provider).

[Insert name and address of employee, agent, subcontractor of CRDC] (Recipient)

RECITALS

- A. The Research Provider and the Cotton Research and Development Corporation, ABN 71 054 238 216 (**CRDC**) have entered into the Agreement pursuant to which CRDC will provide funding for the Project.
- B. The Research Provider is conducting the Project.
- C. The Recipient requires access to information confidential to the Research Provider.

OPERATIVE PROVISIONS

1 INTERPRETATION

"Agreement" means the agreement between CRDC and the Research Provider dated **[Insert date of Agreement]** for the conduct of the Project.

"Data" includes all information stored on magnetic tapes, disks or in electronic or written form of any kind.

"Material" means:

- (a) any material, facilities, premises, equipment, documents, information, Data, software and organisms (living or dead), discoveries, inventions, improvements, engineering or other processes and innovations, including any intellectual property:
 - (i) provided by the Research Provider to CRDC for the purposes of the Agreement; or
 - (ii) developed or created in the performance of the Project or Scholarship; and
- (b) anything which is copied or derived from the material referred to in paragraph (a).

"Personal Information" has the meaning given to it in the *Privacy Act 1988*.

"Project" means the project set out in the Agreement.

"Research Provider Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by the Research Provider as confidential;
- (c) the Recipient knows or ought to know is confidential;
- (d) is comprised in or relates to Material where the Research Provider is the owner or co-owner thereof; or

but does not include information which:

- (e) is or becomes public knowledge other than by breach of the Agreement or this Deed of Confidentiality or any other confidentiality obligations; or
- (f) has been independently developed or acquired by the Recipient as established by written evidence.

"Scholarship" means the scholarship set out in the Agreement.

2 NON DISCLOSURE

- 2.1 Except as required in the proper performance of the Agreement or as otherwise authorised by the Agreement, the Recipient must not copy, reproduce or disclose any Research Provider Confidential Information without the prior written consent of the Research Provider, which consent the Research Provider may grant or withhold having regard to the terms of the Agreement in its absolute discretion.

3 RESTRICTION ON USE

- 3.1 The Recipient must use Research Provider Confidential Information only for the purpose of properly performing the obligations, or exercising the rights, of CRDC pursuant to, or in relation to, the Agreement.
- 3.2 The Recipient must:
- (a) ensure that any Personal Information the Recipient has acquired during the conduct of the Project is handled in accordance with the *Privacy Act 1988*;
 - (b) only use that Personal Information for the purpose of conducting the Project; and
 - (c) not, without the Research Provider's prior written consent, disclose or permit access to that Personal Information other than for the purpose of conducting the Project.

4 SECURITY

- 4.1 If requested by the Research Provider, the Recipient must cooperate in any security checks the Research Provider wishes to make of the Recipient (including by providing information usually requested in such circumstances).

5 DATA BREACHES

- 5.1 If there has been or may be, or if the Recipient reasonably suspects that there has been or may be, any unauthorised disclosure of or unauthorised access to Personal Information the Recipient has acquired during the conduct of the Project ("**Data Breach**"), the Recipient must:
- (a) notify the Research Provider as soon as reasonably practicable;
 - (b) promptly investigate the Data Breach;
 - (c) take all reasonable steps to:
 - (iii) remedy the Data Breach; and
 - (iv) prevent serious harm occurring to the relevant individuals;
 - (d) provide the Research Provider with such information and assistance as it reasonably requests in respect of the Data Breach; and

-
- (e) subject to paragraph (c)(ii), at least 14 days before making any report, notification or public statement, provide a copy to the Research Provider and make any amendment reasonably required by the Research Provider within those 14 days.

6 DELIVERY UP OF DOCUMENTS

- 6.1** The Research Provider may, upon not less than (2) two business days' written notice to CRDC, demand the delivery to the Research Provider, or destruction of, of all documents in the possession or control of the Recipient which contain Research Provider Confidential Information.

7 SURVIVAL OF OBLIGATIONS

- 7.1** The obligations in this deed are perpetual.

8 GOVERNING LAW

- 8.1** This deed will be governed by the laws for the time being in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

EXECUTED as a deed.

SIGNED for
and on behalf of the **[Insert name of Research Provider]**
by its duly authorised representative in the presence of:

Signature of witness

Signature of Research Provider representative

Name of witness

Name of Research Provider representative

Position of Research Provider representative

Date:

SIGNED by
[name of Recipient] in the presence of:

Signature of witness

Signature of Recipient

Name

Name of Recipient

Date:

SCHEDULE 6 – FORM OF DISCLAIMER AND ACKNOWLEDGEMENT

Disclaimer

CRDC accepts no responsibility for the accuracy or completeness of any material contained in this publication. Additionally, CRDC disclaims all liability to any person in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partly, on any information contained in this publication. Material included in this publication is made available on the understanding that CRDC is not providing professional advice. If you intend to rely on any information provided in this publication, you should obtain your own appropriate professional advice.

Acknowledgement

The Research Provider **[Insert their actual name]** acknowledges the financial assistance **[Insert detail of any other assistance provided by CRDC]** of the Cotton Research and Development Corporation in order to undertake this **[Insert details of the Project or Scholarship]**.

SCHEDULE 7 - EXISTING PROJECT AGREEMENTS

SCHEDULE 8 – PROGRAM MANAGEMENT AGREEMENT

PROGRAM TITLE

[Insert title of the Program]

RECITALS

- A. CRDC's mission is, through excellence in research, development and extension, to lead effective change and to improve the profitability and sustainability of the Australian cotton industry.
- B. Taking account of their respective experience and efficiencies the Parties have agreed to collaboratively contribute to a Program by providing either cash, services to be performed on account of the Program and/or in-kind assistance.
- C. CRDC has agreed to manage the Program in accordance with the Head Funding Agreement if any, and assume responsibility for the administration, monitoring, performance delivery and evaluation of the delivery of the Program under the terms and conditions of this Agreement.
- D. The Parties now wish to formalise the way in which they shall collaborate, both strategically and financially, in order to facilitate the Program and agree to do so on the terms and conditions set out in this Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. Definitions

- 1.1 In this Agreement, the Recitals and the Annexes, unless the contrary intention appears:

"Activity Material" means all material, including intellectual property and Publications, other than Reporting Material, brought or required to be brought into existence as part of, or for the purpose of performing the work required for the Project including, but not limited to, reports and other documents (public and otherwise), equipment, information and data stored by any means;

"Agreement" means this agreement and includes the Annexes hereto;

"Business Days" means a day, other than a Saturday, Sunday or public holiday, when banks are generally open for business in New South Wales, Australia;

"Commencement Date" means [insert date];

"Commercialise" in relation to Intellectual Property means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating that Intellectual Property, or to license any third party to do any of those things and Commercialisation shall be similarly construed;

"Completion Date" means [insert date];

"Confidential Information" means all commercial information, technical information and Intellectual Property, including without limitation Intellectual Property in the Activity Material, which is disclosed by a Party and which is stated by the disclosing Party as being confidential or which might reasonably be regarded by the receiving Party as confidential, other than: (a) information which was, at the time it was disclosed to the receiving Party, in the public domain; (b) information which

subsequently became part of the public domain otherwise than through a breach of this Agreement; (c) information which comes lawfully into the possession of the receiving Party otherwise than as a result of a disclosure in breach of an obligation of confidence; and (d) information that the receiving Party is required to disclose by court order, legislation, regulation or the like;

"Contribution" means any cash or in kind contributions made by any of the Partner Organisations, as set out in Annex 1;

"CRDC Research Deed(s)" means the separate Deeds previously entered into between CRDC and individual Partner Organisations for Research and Development, Postgraduate Scholarships, Travel and Major Capital items to be undertaken in support of the Australian Cotton Industry.

"Existing Material" means Material developed independently of this Agreement that is incorporated in or supplied as part of Activity Material or the Reporting Material;

"Financial Reports" means the reports to be provided by each Partner Organisation to the Manager, in accordance with the requirements and timetable set out at Annex 3;

"Grant" means the funds being provided by the Grantor for the Program or any aspect of it (including a Project) ;

"Grantor" means the [Insert Grantor Name];

"GST" means Goods and Services Tax payable in Australia under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Head Funding Agreement" means the grant agreement between the Grantor and CRDC titled ["Insert Grant Title" and Code], and which is attached at Annex 7 to this Agreement;

"In-Kind Contribution" means a non-cash contribution provided by a Party, as set out in Annex 1;

"Intellectual Property" means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, trade secrets, data, business and domain names and inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable and whether or not created in Australia or elsewhere, but does not include Moral Rights.

"Material" includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them;

"Moral Rights" means, inter alia, an author's right not to have authorship falsely attributed and an author's right of integrity of authorship, as more fully particularised in the *Copyright Act 1968* (Cth);

"Partner Organisations" means each of the Parties with the exception of CRDC;

"Permitted Purposes" means all of the purposes required by the Partner Organisations, including:

- (a) research, development and extension;

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- (b) published scientific papers;
 - (c) training;
 - (d) education;
 - (e) regulatory functions;
 - (f) compliance with reporting requirements and obligations;
 - (g) Commercialisation of Partner Organisation-created Intellectual Property arising out of use of the Activity Material where that Activity Material is embodied in that Intellectual Property, provided that the prior consent to such Commercialisation is sought and obtained from the Program Management Committee, which consent shall not be unreasonably withheld or delayed; and
 - (h) policy work, including development and implementation.

"Person" includes a partnership and a body corporate or unincorporated;

"Personal Information" has the meaning given to it in the Privacy Legislation;

"Privacy Legislation" means the Privacy Act 1988 (Cth) and includes the Australian Privacy Principles (APPs), as amended from time to time;

"Program" means the program called [*Insert Program Title from header*];

"Program Plan" means the plan to be developed by the Program Management Committee in accordance with Clause 11.2 of this Agreement;

"Program Forum" means the forum described in Clause 11.1 of this Agreement;

"Program Management Committee" means the committee that will oversee the proper conduct of the Program on an operational basis and will be made up of representatives from Partner Organisations as set out in Annex 5;

"Program Steering Committee" means a committee established to provide expert strategic advice on issues of Research, Development and Extension across the range of agricultural sectors that invest in the Program, the members of which would be representative of the Partner Organisations and may include key personnel from the Partner Organisations responsible for understanding and managing extension, or their delegates;

"Progress Reports" means the milestone progress reports to be provided by each Partner Organisation to the Manager, in accordance with the requirements and timetable set out at Annex 3;

"Project" means a project funded by the Program;

"Project Agreement" means an agreement between CRDC and each Service Provider for the provision of services required to successfully complete a Project that is part of the Program;

"Publish" means to distribute or publish, or cause to be distributed or published, by any means and in any forum, including by press release, journal article, conference paper, research poster, monograph or internet posting of any type concerning the Program or Activity Material.

"Reporting Material" means all Material which the Parties are required to provide to CRDC for the purposes of reporting in accordance with the Program Management Agreement.

"Services" means the works required to complete the Program as particularised in Annex 2, which must be the subject of Project Agreement(s);

"Service Providers" means the organisations contracted by CRDC to undertake the Services;

"Stakeholders" means other organisations and people involved in the Program and/or the wider extension community of practice, and if applicable the Grantor;

"Term" shall have the meaning ascribed to it in Clause 4.1 herein.

1.2 Words in the singular include the plural and words in the plural include the singular.

1.3 Words importing a gender include any other gender.

1.4 Headings are for convenience only and shall not affect the interpretation of the provisions contained herein.

1.5 Includes is not a word of limitation.

2. **Program aims**

2.1 The Parties acknowledge and agree that the Program aims to:

(a) ##.

(b) ##.

(c) ##.

3. **Expected Program outcomes**

3.1 The Parties acknowledge and agree that the Program is expected to lead to:

(a) ##.

(b) ##.

(c) ##.

3.2 Each Party acknowledges that no Party has made and does not make any warranty or representation whatsoever as to:

(a) the Commercialisation prospects of; or

(b) the profits or revenues that may result from the Commercialisation of,
any Activity Materials or Intellectual Property created pursuant to this Agreement.

4. **Term**

4.1 This Agreement shall commence on the Commencement Date and end on the Completion Date.

4.2 In the event that this Agreement is executed by the Parties after the Commencement Date, it shall nevertheless be of effect from that Commencement Date.

5. **Appointment of Manager**

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- 5.1 The Parties appoint CRDC as the Manager to:
- (a) enter into Project Agreements;
 - (b) exercise the Manager's rights and perform the Manager's obligations under the Project Agreements; and
 - (c) assume responsibility for the administration, monitoring, performance, delivery and evaluation of all services and In-Kind Contributions to the Program, as outlined.
- 5.2 CRDC accepts the appointment.

6. Manager's Obligations

- 6.1 The Manager must:
- (a) receive the Grant if applicable;
 - (b) receive each Party's cash contributions referred to in Annex 1 to this Agreement;
 - (c) engage the Service Providers to perform the Services in the manner prescribed in this Agreement; and
 - (d) notify the other Parties of any material variation made to either the Program or to any of the Project Agreements.
- 6.2 The Manager must not, without consultation with the Program Management Committee:
- (a) waive any material breach by Service Providers of Project Agreements; or
 - (b) terminate Project Agreements.
- 6.3 The Manager must as soon as practical report to the Program Management Committee any material breach of a Project Agreement by a Service Provider.

7. Partner Organisations' obligations

- 7.1 Each of the Partner Organisations must:
- (a) make the Contributions referred to in Annex 1 to this Agreement;
 - (b) comply with its obligations under this Agreement; and
 - (c) comply with the terms of the Head Funding Agreement if applicable as though it were a party to it. To the extent of any inconsistency between the Program Management Agreement and the Head Funding Agreement, the terms of the Head Funding Agreement will take precedence.

8. Project Agreements

- 8.1 The Parties must comply with their obligations under any Project Agreement(s) to which they are a party.
- 8.2 The Parties acknowledge and accept that all communications between the Parties and a Service Provider in connection with a Project Agreement must include the Manager.

9. Payments

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- 9.1 Unless the Party has withdrawn in connection with Clause 21, each Party must pay its Contribution excluding In-Kind Contributions to the Manager in accordance with Annex 1. The Manager will invoice each Party at the commencement of the financial year unless otherwise negotiated.
- 9.2 Each Party shall pay within thirty (30) days from the end of invoice month of receipt from the Manager the amount of each validly rendered invoice for each instalment up to its maximum individual funding liability over the Term, particularised in Annex 1.
10. **Reporting**
- 10.1 The Manager must:
- (a) keep each other Party informed about the progress of the Program and the performance of the Service Providers under Project Agreements;
 - (b) provide copies of reports to each Partner Organisation;
 - (c) on request, provide to each other Party copies of all requests for consents and material notices received from a Service Provider; and
 - (d) provide any other information about a Project or Project Agreement as any other Party may reasonably require.
- 10.2 Each Partner Organisation must provide the Progress Reports and Financial Reports to the Manager as required under the Head Funding Agreement if applicable and in accordance with the requirements of the Manager.
11. **Program Forum and Program governance**
- 11.1 Program Forums must be held for Partner Organisations and Stakeholders as noted in Annex 4. The Program Forum will provide an update on Program progress and delivery and will provide the opportunity for Partner Organisations and Stakeholders to raise strategic issues for the Program to consider. The Program Management Committee will be responsible for follow up actions from the Program Forum. Each Party or Stakeholder must bear their own cost of participation in the Program Forums.
- 11.2 The role of the Program Management Committee will be to:
- (a) determine if, or when, a Program Steering Committee will be established and appoint or replace representatives to the Program Steering Committee;
 - (b) develop a Program Plan and monitor the Program's progress against that Program Plan on an ongoing basis;
 - (c) make recommendations to the Manager on the negotiation of research and other agreements required to efficiently deliver the Program;
 - (d) assist the Manager with monitoring and evaluation of the Program and Project Agreements;
 - (e) assist the Manager with developing the communication plan;
 - (f) assist the Manager in preparing reports required under the Head Funding Agreement if applicable;
 - (g) provide advice on any areas of additional activity outside the ambit of the Program scope that are identified during the course of the Program;

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- (h) act as a high level communication conduit for the Stakeholders;
 - (i) make recommendations relating to the Commercialisation of Activity Material; and
 - (j) make recommendations regarding the merit of pursuing further identified new collaborations and potential alliances.
 - 11.3 The Program Management Committee may delegate to the Program Steering Committee duties, but not the responsibility for, sub-Clauses 11.2 (c) to 11.2 (g)
 - 11.4 The Program Management Committee proceedings must be conducted in accordance with Annex 4.
 - 11.5 Each Party must bear their own costs of participation in the Program Management Committee which may be included as part of that parties In-Kind Contribution.
 - 11.6 The role of the Program Steering Committee will be to:
 - (a) assess and (where reasonably possible) generally assist the progress of the Program and the timely achievement of the Program's milestones;
 - (b) recommend to the Manager the strategic direction and priorities for the Program not being inconsistent with the conditions of the Head Funding Agreement;
 - (c) provide representative and expertise based review of proposed projects with a view to the efficient conduct of the Project; and
 - (d) evaluate recommendations made by the Program Management Committee regarding the merit of pursuing further identified new collaborations and potential alliances.
 - 11.7 The Program Steering Committee proceedings must be conducted in accordance with Annex 4.
 - 11.8 Each Party must bear their own costs of participation in the Program Steering Committee which may be included as part of that parties In-Kind Contribution.
 - 12. **Program attribution and logo usage**

It is intended that each of the Parties shall be acknowledged and receive attribution as contributors to the Program, however the Parties acknowledge and accept that they must comply with any additional guidelines set out in Annex 6 required under a Head Funding Agreement.
 - 12.1 The Parties acknowledge and agree that:
 - (a) all publicity, announcements and media releases relating to the Program must be cleared through the Manager at least 30 days before release to the media; and
 - (b) permission must be sought by a Partner Organisation from the Manager when the name, logo, information or data of another proponent or organisation is required for publication, and that that such permission will be sought in accordance with the Communications Protocol set out at Annex 6.
 - 13. **Confidential Information**
 - 13.1 The Partner Organisations acknowledge that all Confidential Information disclosed by or on behalf of the Manager or any of the other Partner Organisations in

undertaking the Program is the confidential and proprietary information of the Party disclosing the Confidential Information ("Disclosing Party") and may only be used by the Manager and/or the Partner Organisation and/or any Service Provider in undertaking the Program.

13.2 The Parties agree to keep a Disclosing Party's Confidential Information confidential and not use any Confidential Information for any purpose other than the purposes contemplated by this Agreement without the prior written consent of the Disclosing Party.

13.3 The Partner Organisations acknowledge and agree that the Manager may disclose Confidential Information to officers, employees and sub-contractors of any Service Provider to the extent necessary for the conduct of the Services, subject always to the Manager ensuring that any such persons are under the same obligations of confidentiality under this Agreement in relation to the Confidential Information.

14. **Protection of Personal Information**

14.1 Each of the Parties agree to comply with the Privacy Legislation in respect of Personal Information disclosed to one another in connection with this Agreement.

14.2 Without limiting the generality of Clause 14.1, the Parties each agree that, in particular, they:

- (a) will not do, or omit to do, anything in respect of Personal Information disclosed to it by the disclosing Party which results, or could reasonably result, in the disclosing Party being in breach of the Privacy Legislation;
- (b) will not use or disclose the Personal Information disclosed to it by the disclosing Party, other than for the purposes for which it was disclosed, unless with the prior written consent of the disclosing Party or otherwise in accordance with applicable law;
- (c) will protect the Personal Information disclosed to it by the disclosing Party from misuse, interference and loss and from unauthorised access, modification or disclosure;
- (d) will ensure that only employees or agents who are authorised to fulfil the obligations of this Agreement and who need to have access to any Personal Information disclosed to it by the disclosing Party have access to the particular Personal Information;
- (e) will immediately notify the disclosing Party if it becomes aware of a breach, or potential breach, of its obligations under this Clause 14, the Privacy Legislation or any other law, with regard to Personal Information disclosed to it by the disclosing Party;
- (f) will cooperate with any reasonable requests or directions of the disclosing Party arising from or in connection with Personal Information disclosed to it by the disclosing Party or otherwise in connection with the disclosing Party's obligations under the Privacy Legislation;
- (g) will return or destroy Personal information disclosed to it by the disclosing Party upon the disclosing Party's request or otherwise upon the termination of this Agreement;
- (h) will, upon disclosing Personal Information to another Party, notify each individual to whom the Personal Information relates of the disclosure

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- including the disclosing Party's name and that information about the disclosing Party's handling of Personal Information can be found on the disclosing Party's website; and
- (i) will not transfer or disclose Personal Information disclosed to it by the disclosing Party to any other person or entity located in a country other than Australia, except where that transfer or disclosure is made in compliance with the requirements of the Privacy Legislation.
- 14.3 The provisions of this Clause 14 shall survive the termination or expiration of this Agreement.
15. **Intellectual Property**
- 15.1 The Parties acknowledge and agree that, unless otherwise agreed in writing by CRDC, ownership of all Intellectual Property, other Activity Material and Reporting Material created pursuant to this Agreement or any Project Agreement shall vest upon its creation in the Manager.
- 15.2 The Manager has the right:
- (a) to use, reproduce, publish and adapt Reporting Material for the purposes of the Grantor if applicable; and
- (b) to sub-licence the Reporting Material to the Grantor for the purposes of the Grant if applicable.
- 15.3 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.
- 15.4 The Manager grants to the Partner Organisations a non-exclusive, royalty free, worldwide licence, with a right to sub-licence, to use and adapt the Activity Material for the Permitted Purposes.
- 15.5 If the Manager seeks to register Intellectual Property rights in or Commercialise any Activity Material, it must:
- (a) seek the written consent of the Partner Organisations of this intent; and
- (b) seek all licences to Existing Material and Intellectual Property embodied in the Activity Material which are necessary for the Commercialisation of the Activity Material.
- 15.6 Notwithstanding any other provision of this Agreement, copyright in the thesis produced by any student involved in the Project which forms part of their assessment or reporting obligations for a course will remain vested in the student.
16. **Financial Records**
- 16.1 All Parties shall maintain appropriate books and records so that all receipts and expenditures relating to the Program or a Project Agreement are properly recorded and accounted for, and shall retain all books and records relating to the Program (and particularly, their respective funding of it) for at least seven (7) years after its completion).
- 16.2 The Parties acknowledge and agree to give the Manager, or any persons authorised to do so on their behalf, access to premises where the Services relating to the Program are being performed and to permit those persons to inspect and take copies of any Material relevant to the Services.

17. **Conflict of Interest**

The Partner Organisations each warrant, to the best of their current knowledge, that at the date of entering into this Agreement, they do not hold any office, possess any property, or have any obligation by virtue of any contract or any venture in association with another person whereby duties or interests are or might be created which conflict or will conflict with its duties or interests under this Agreement of which they have not notified the Manager. In the event that during the Term an actual, perceived or potential conflict of interest ("Conflict") arises, the relevant conflicted Party must notify the Manager immediately of that Conflict.

18. **Potential Delays**

The Parties agree to notify each of the other Parties as soon as practicable of anything reasonably likely to affect their ability to perform their respective obligations under this Agreement.

19. **Force Majeure**

19.1 In this Clause 19 "Force Majeure Event" means an event beyond the reasonable control of a Party ("the Affected Party"), including, without limitation, strike, lock-out or labour dispute (except where the same solely relates to the Affected Party's workforce), act of God, war, riot, civil commotion, malicious damage, compliance with a law or government order, rule, regulation or direction (other than as a result of an act or omission of the Affected Party), accident, breakdown or unavailability of plant or machinery, fire, flood, storm, biosecurity incursion, difficulty or increased cost in obtaining workers, goods or transport which in every case is not reasonably foreseeable and is beyond the reasonable control and without the fault or negligence of the Affected Party.

19.2 If the Affected Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:

- (a) the Affected Party's obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
- (b) as soon as reasonably practicable after the start of the Force Majeure Event the Affected Party shall notify the other Parties in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- (c) the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
- (d) as soon as possible after the end of the Force Majeure Event the Affected Party shall notify the other Parties in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

19.3 If the Force Majeure Event continues for more than fourteen (14) days starting on the day the Force Majeure Event starts, CRDC may vary or terminate this Agreement by giving not less than thirty (30) days written notice to the other Parties.

20. Indemnities

20.1 Each party shall indemnify and agrees to keep indemnified ("the Indemnifying Party") each of the other parties and their respective officers and employees in respect of Loss incurred or suffered as a result of:

- (a) any breach of this Agreement by the Indemnifying Party; or
- (b) any negligent act, error or omission in connection with the performance of this Agreement by the Indemnifying Party or its respective officers, employees or agents;

PROVIDED THAT this indemnity does not apply to the extent that Loss is caused by or contributed to by any of the indemnified parties or their officers, employees or agents.

20.2 The indemnity referred to in Clause 20.1 above includes, without limitation, Loss due to bodily injury, sickness or death or loss, destruction or damage to property.

20.3 For the purposes of this Clause 20, "Loss" includes loss, damage or liability of every kind, unless too remote but does not include pure economic loss not recoverable at common law.

20.4 The obligations to indemnify set out in Clause 20.1 survive the expiration or termination of this Agreement.

20.5 Each Partner Organisation must have and maintain:

- (a) Public liability insurance with a limitation of cover of not less than \$10,000,000; and
- (b) Professional indemnity insurance with a limitation of cover of not less than \$5,000,000;

20.6 A Partner Organisation will, if requested by the Manager, produce evidence of the insurance cover required by Clause 20.5 within fourteen (14) days of such request.

20.7 The taking out of the insurance policies referred to in Clause 20.5 does not relieve the Partner Organisation of any obligation or liability, including in respect of the infringement of IP, which it has due to any other provision of this Deed or any Agreement.

21. Withdrawal, Substitution or Addition of Partner Organisations

21.1 The Parties acknowledge and agree that:

- (a) where a Partner Organisation is unable to make any Contribution it has agreed to make, the Manager may elect to terminate that Partner Organisation ("Terminated Partner Organisation") in accordance with Clause 22, and replace the Terminated Partner Organisation with an equivalent organisation ("Replacement Partner Organisation") to make the Contributions to the Program that were previously committed to the Program by the Terminated Partner Organisation; or
- (b) the Manager may invite an additional organisation to make the Contributions to the Program, in addition to the then current Partner Organisations.

21.2 Any termination and replacement of a Terminated Partner Organisation, or inclusion of an additional organisation to become a Partner Organisation in accordance with Clause 21.1 above, (in both cases, a "New Partner Organisation")

must receive the prior approval of the Program Management Committee, and must be subject to the New Partner Organisation entering into an agreement on substantially similar terms and conditions to this Agreement.

22. Termination

- 22.1 A Party may terminate its participation in this Agreement by notice in writing to the other Parties on the happening of one or more of the following:
- (a) if another Party commits or allows to be committed a breach of any term or condition contained herein and does not within thirty (30) days of receipt of notice in writing from the other Party requiring the breach to be remedied, make good the breach within such time;
 - (b) if a material warranty, representation or statement given or made by another Party to this Agreement is not complied with or proves to be untrue; or
 - (c) if another Party has entered, threatened to enter, or it is reasonably anticipated that they shall or may enter, into any form of insolvency, liquidation, winding-up or external administration, whether voluntary or involuntary, formal or informal, or otherwise ceases to exist;
- 22.2 Notwithstanding the provisions of Clause 22.1 above, the Manager reserves the right, without payment to any of the Partner Organisations or the provision of any form of compensation for loss of the contract beyond the date of termination, to terminate this Agreement immediately, if the Manager ceases to exist
- 22.3 The termination of this Agreement for any reason shall not extinguish the obligations of the Parties pursuant to those clauses which, by their nature, are intended to survive termination, including without limitation, those clauses pertaining to:
- (a) the rights of the Parties with respect to Intellectual Property;
 - (b) obligations of the Parties in relation to Confidential Information; or
 - (c) the post termination financial and reporting requirements.

23. Cancellation for Convenience

- 23.1 The Partner Organisations acknowledge and agree that the Manager may cancel this Agreement by notice in circumstances where the Head Funding Agreement has been cancelled by the Grantor or for convenience by giving to the Partner Organisations thirty (30) days' notice in writing.
- 23.2 Upon receipt of a notice of cancellation from the Manager provided pursuant to Clause 23.1 above, each Partner Organisation will:
- (a) stop the performance of its obligations as specified in the notice; and
 - (b) take all reasonable steps to minimise loss resulting from that cancellation.
- 23.3 In the event of cancellation pursuant to Clause 22.2 or 23.1, the Partner Organisations acknowledge and agree that the Manager will be liable only to:
- (a) pay any monies due and owing to any Partner Organisation under this Agreement at the date of the notice;
 - (b) repay to the Partner Organisations any money paid under this Agreement for any portion of the Program or a Project that will not be undertaken as a

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- result of the termination or cancellation; and
- 23.4 In the event of cancellation pursuant to Clause 23.1, the Partner Organisations acknowledge and agree that the Manager's liability to pay any amount under this Clause 23 is subject to:
- (a) that Partner Organisation's compliance with this Agreement; and
 - (b) the total amount of the Grant.
- 23.5 Each Partner Organisation acknowledges and agrees that it will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on that Partner Organisation.
24. **Dispute Resolution**
- 24.1 In the event of any difference or dispute arising between the Parties concerning this Agreement, which cannot satisfactorily be resolved between them, the Parties agree to use their best endeavours to agree on a process for resolving the same, through means other than arbitration or litigation, such as, but not limited to, mediation or conciliation.
- 24.2 In the event that the difference or dispute is unable to be resolved by the means referred to in Clause 24.1, then the same may be referred with the agreement of the Parties for determination at Sydney in the State of New South Wales by an arbitrator agreed upon by both Parties. If the Parties are unable to agree upon an arbitrator the matter shall be dealt with in accordance with the laws relating to arbitration in force in the said State.
- 24.3 The costs of and incidental to every such reference and award shall be in the discretion of the arbitrator.
25. **General**
- 25.1 A waiver by either Party in respect of a breach, condition or provision of this Agreement shall not be deemed to be a waiver in respect of any other or of any subsequent breach.
- 25.2 This Agreement constitutes the entire agreement between the Parties and supersedes all other communications, negotiations, arrangements and agreements, between the Parties with respect to the subject matter hereof.
- 25.3 This Agreement may only be varied by instrument in writing signed by all Parties.
- 25.4 No Party may assign the benefit of, or any of its rights under, this Agreement, including without limitation, rights to the use of any Activity Material, without the prior written consent of the other Parties. Nothing in this clause is intended to limit the rights granted to the Parties under Clause 15.4 of this Agreement.
- 25.5 This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
26. **Notices**
- 26.1 Notices and other communications under and for the purposes of this Agreement must, unless otherwise agreed at any time between the Parties, be given by or sent in writing and addressed to the appropriate Party at the address referred to in the description of the Parties above.

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- 26.2 A notice or other communication sent to a party will be taken to be delivered:
- (a) if sent by pre-paid post, when it would be received by the party in the normal course of post;
 - (b) if delivered by hand, at the time of delivery; or
 - (c) if sent by e-mail, on receipt of a read notification which the sender will request on sending the email.

27. **Negation of Partnership and Agency**

This Agreement will not be construed so as to render the Parties liable as partners or as creating any partnership, agency or similar relationship.

28. **Governing Law**

This Agreement shall be governed by the laws of New South Wales, Australia.

29. **Signatures**

This Agreement is executed by the Parties on the last date written below. By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of that Party.

Signed for and on behalf of Cotton Research and Development Corporation by:		
Authorised signatory name (print)	Signature	Date
Position of authorised signatory		

Signed for and on behalf of [Partner Organisation name] by:		
Authorised signatory name (print)	Signature	Date
Position of authorised signatory		

Signed for and on behalf of [Research Provider name] by:		
Authorised signatory name (print)	Signature	Date
Position of authorised signatory		

Signed for and on behalf of [Third Party name] by:		
Authorised signatory name (print)	Signature	Date
Position of authorised signatory		

LIST OF ANNEXES

Annex 1 – Program Contributions

Annex 2 – Services

Annex 3 – Reporting Timetable

Annex 4 – Program Forums and Program Management Committee

Annex 5 – Partner Organisation Contacts for Notices

Annex 6 – Communications Protocol

Annex 7 – Head Funding Agreement

TEMPLATE ONLY

ANNEX 1 – Program Contributions

Program Contributions - Cash

Contributor	[Year]	[Year]	[Year]	[Year]	[Year]	Total
CRDC						
Name 2						
Name 3						
Name 4						

TEMPLATE ONLY

Program Contributions – In-kind

Contributor and description	[Year]	[Year]	[Year]	[Year]	Year	Total
CRDC						
Name 2						
Name 3						
Name 4						

ANNEX 2 - Services

Activity 1. Program Initiation

Output 1(a) – .

Activity 2. Program planning and management

Output 2(a) – .

Activity 3. Communication and extension activities

Output 3(a) –.

Activity 4. [Insert title]

Output 4(a) –.

Activity 5. [Insert title]

Output 5(a) –.

Activity B6. [Insert title]

Output 6(a) –.

Activity B7. [Insert title]

Output 7(a) –.

All the above activities include the preparation of reports, in line with Annex 3 of this Agreement.

ANNEX 3 – Reporting Timetable

Program Milestones and Reporting Timetable

Milestone	Due Date
Execution of funding deed	On signing
Progress Report 1 [List parties to report for each report]	##
Progress Report 2	##
Progress Report 3	##
Progress Report 4	##
Progress Report 5	##
Progress Report 6	##
Progress Report 7	##
Financial Report	##
Final Report	##

ANNEX 4 – Forums, and Program Management and Steering Committees

Program Forums

- A Program Forum shall be held within the first twelve month period of the Program
- Program Forums shall be held annually through the term of the Program as determined by the Program Management Committee

Program Management Committee

The Program Management Committee will oversee the proper conduct of the Program and will be made up of representatives from the Parties.

The Program Management Committee will meet at least twice per financial year, either face to face or via teleconference.

Program Steering Committee

The Program Steering Committee will be appointed by the Program Management Committee and will meet at times approved by the Manager, either face to face or via teleconference.

The procedural rules applicable to both the Program Management Committee and the Program Steering Committee are set out below.

1. Appointment of Members

- 1.1 The Program Management Committee will have one member from each of the Parties.
- 1.2 Each Party may nominate an alternate member who is entitled to attend Committee meetings and represent the member in the member's absence with full voting rights.
- 1.3 The Program Steering Committee shall be appointed by the Program Management Committee.

2. Chairperson

- 2.1 The Parties must elect a Chairperson from the members selected for each committee.
- 2.2 The Chairperson must take the chair at all meetings of that committee. If at any meeting the Chairperson is not present within 30 minutes after the time appointed for holding the meeting, the members present must choose one of the other members to be chairperson of that meeting.
- 2.3 The Chairperson of the committee does not have a second or casting vote.

3. Meetings

- 3.1 Each committee must meet at least as regularly as it is required to under the Head Funding, and at such times as it thinks fit.
- 3.2 Any member of a committee may at any time request the Chairperson of that committee to convene a meeting of the committee, but not earlier than 7 days after the request.
- 3.3 Each Party must bear any fees, travel and other expenses of the persons appointed by it attending meetings of the committee.
- 3.4 Unless all members of the applicable committee agree otherwise, notices of each meeting and the proposed agenda for the meeting must be given to each member at least 7 days before the meeting.

-
- 3.5 Each committee may hold meetings in person, by teleconference or by videoconference. The Chairperson of the committee can request an out-of-session vote through email or other suitable electronic system that can record the decisions of the members.

4. Quorum

- 4.1 A quorum for a meeting of a committee is 75% of the members of that committee.
- 4.2 If a quorum is not present within one hour after the time set for the meeting, the meeting must be adjourned.

5. Decision making

- 5.1 Each member present at a meeting has one vote.
- 5.2 Decisions of a committee require 75% of the votes of members attending the meeting, to be passed.
- 5.3 All decisions of a committee must be recorded in minutes and circulated to all parties as soon as practicable after the decision is made.
- 5.4 A committee cannot make decisions in conflict with the terms and conditions of Project Agreements or the Head Funding Agreement conditions.

6. Conflict of Interest

- 6.1 A member present at a meeting that has a pecuniary interest that relates to the affairs under consideration by a committee must disclose that interest to the Chairperson of that committee.
- 6.2 A member may take part in discussions involving a possible conflict of interest unless the Chairperson of that committee rules that the member be absent during the discussion.
- 6.3 A member is required to absent himself or herself from the meeting during voting on a matter which that member has a conflict of interest.
- 6.4 The exit and entry of the member must be minuted.
- 6.5 If more than one member declares a conflict of interest then the matter must be referred to the Manager for a decision by the Manager.

ANNEX 5 – Partner Organisation Contacts for Notices

Organisation name: Cotton Research and Development Corporation
Contact person: Insert name]
Position: [Insert position]
Postal/physical address: PO Box 282 / 2 Lloyd Street Narrabri 2390
Business hours 02 67924088
telephone:
Email: grants@crdc.com.au

(add each Partner Organisation)

TEMPLATE ONLY

ANNEX 6 – Communications Protocol

A Partner Organisation must acknowledge the financial and other support it has received from the Grantor, as follows:

TEMPLATE ONLY

ANNEX 7 – Head Funding Agreement

See Attachment

TEMPLATE ONLY

SCHEDULE 9 – FORM OF SUBCONTRACT

[INSERT PROJECT TITLE]

RECITALS

- A. The Research Provider is a party to the Research Deed.
- B. The Research Provider wishes to engage the Subcontractor to provide the Services and the Subcontractor has agreed to accept the engagement on the terms set out in this Subcontractor Agreement.

NOW IT IS AGREED AS FOLLOWS

1. **Definitions and interpretation**

1.1 **Definitions**

1.1.1 Where commencing with a capital letter:

Acknowledgement means a document in the form set out in annexure 4 (as amended by the Research Provider from time to time);

Background Conditions means, in respect of Background IP, any restrictions or limitations in the use of, or third party ownership rights in respect of, the Background IP that relate to the use of the Background IP in accordance with this Subcontractor Agreement that are:

- (a) specified in item 14 of annexure 1 in respect of a party; or
- (b) otherwise agreed in writing by the Research Provider;

Background IP means IP that:

- (a) is in existence at the Commencement Date or is otherwise brought into existence other than as a result of the performance of the Project or the Services; and
- (b) is contributed to or made available for and used in the conduct of the Project or the Services.

and includes the IP specified in item 13 of annexure 1 in respect of a party;

Business Day means, in relation to the doing of any act in a place, any day other than a Saturday, Sunday or public holiday in that place;

Commencement Date means the date specified in item 1 of annexure 1;

Commercialise means, in relation to IP or other property, to manufacture, sell, hire or otherwise commercially exploit a product or process, or to provide a service, using the IP or other property, or to license any person to do any of those things;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential; or
- (c) the other party knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Subcontractor Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by the other party as established by written evidence,

and includes the information specified in item 15 of annexure 1;

CRDC means Cotton Research and Development Corporation ABN 71 054 238 316;

Data includes all information stored on magnetic tapes, disks or in electronic or written form of any kind;

Deed of Confidentiality means a document in the form set out in annexure 3;

Deliverables means the deliverables specified in item 9 of annexure 1;

Expenses means any expenses specified in item 18 of annexure 1;

Fees means the fees specified in item 17 of annexure 1;

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

IP means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, trade secrets, data, business and domain names and inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable and whether or not created in Australia or elsewhere;

Loss means any loss, damage, liability, cost or expense (excluding consequential loss, loss of profit or opportunity and indirect loss, damage, liability, cost or expense), including legal expenses whether incurred or awarded;

Nominated Persons means the persons specified in item 12 of annexure 1 and such other or replacement persons approved in writing by the Subcontractor to perform the work in respect of the Services on behalf of the Subcontractor;

Payment Schedule means the payment schedule specified in item 19 of annexure 1;

Personal Information has the meaning given to it in section 6 of the *Privacy Act 1988 (Cth)*;

Personnel means, in respect of a party, its officers, employees, contractors (other than the other party to this Subcontractor Agreement), agents, students and researchers;

Project means the research and development project specified in the Project Approval and item 6 of annexure 1, to be completed by the Research Provider (and others, if applicable) in accordance with the Research Deed;

Project Approval means the Project Approval referred to in item 7 of annexure 1;

Project Technology means, in respect of the Project or the Services:

- (a) all material developed or created by the Subcontractor in performing that Project or those Services or otherwise arising out of the Research Provider's conduct of that Project or those Services, including all discoveries, inventions, improvements, genetic material, biological material, engineering or other processes and innovations;
- (b) all reports created by the Subcontractor pursuant to this Subcontractor Agreement;
- (c) any other documents, equipment, information and Data stored by any means brought into existence as part of, or for the purpose of carrying out, that Project or those Services; and
- (d) all IP subsisting in or in respect of the materials referred to in paragraphs (a) to (c) and in the Deliverables.

Reporting Requirements means the reporting requirements specified in item 16 of annexure 1;

Research Deed means the Deed for Research and Development, Postgraduate Scholarships, Travel and Major Capital Items to be undertaken in Support of the Australian Cotton Industry between CRDC and the Research Provider, dated on the date specified in item 5 of annexure 1;

Research Provider means the party specified in item 3 of annexure 1;

			Research Provider Material means any material, facilities, premises, equipment, documents, information, Data, software and organisms (living or dead), including any Background IP and the materials specified in item 11 of annexure 1, provided by the Research Provider to the Subcontractor for the purposes of this Subcontractor Agreement, and anything which is copied or derived from them; Services means the services specified in item 8 of annexure 1; Subcontractor means the party specified in item 4 of annexure 1; Subcontractor Agreement means this agreement and all annexures; Term means the period specified in item 2 of annexure 1; and Timeline means the timeline specified in item 10 of annexure 1.	government department or statutory body; (iv) any agreement or other document includes that agreement or document as amended or replaced; (v) money is to Australian dollars unless otherwise stated; and (vi) any thing (including any amount) is a reference to the whole and each part.
	1.1.2	2.	Where a word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning.	
	1.2		Interpretation	
	1.2.1		Unless the context otherwise requires:	
			(a) a word that denotes:	
			(i) the singular denotes the plural and vice versa; and	
			(ii) a person includes an individual, a body corporate, an unincorporated entity and a government; and	
		3.		
		3.1		
		3.1.1	(b) a reference to:	
			(i) a party includes the executors, administrators and successors of the party;	
			(ii) any legislation includes any regulation or instrument made under it and any amended, re-enacted or replacement legislation;	
			(iii) a government department or statutory body includes any replacement	
	1.2.2		In this Subcontractor Agreement:	
			(a) clause headings are for convenience only and do not affect interpretation; and	
			(b) "including" and its other grammatical forms are not words of limitation.	
	1.2.3		Where the day on or by which any thing is to be done under this Subcontractor Agreement is not a Business Day, that thing must be done on or by the next Business Day.	
			Services	
			The Subcontractor must:	
			(a) provide the Services; and	
			(b) deliver the Deliverables to the Research Provider,	
			during the Term, in accordance with the Timeline and on the terms set out in this Subcontractor Agreement.	
			Obligations of the Subcontractor	
			Nominated Persons	
			The Subcontractor must:	
			(a) subject to the terms of this Subcontractor Agreement, cause only the Nominated Persons to perform the work in respect of the Services on behalf of the Subcontractor;	
			(b) ensure that the Nominated Persons perform this work to the best of their skill and ability and in accordance with this Subcontractor Agreement; and	

	(c) ensure that each Nominated Person signs an Acknowledgement, and promptly provide the Research Provider with a copy.	3.3	Directions
		3.3.1	The Subcontractor must comply with all reasonable and lawful directions of the Research Provider concerning the Services.
3.1.2	If any Nominated Person is unable to undertake work in respect of the Services, the Subcontractor must promptly notify the Research Provider in writing. The Subcontractor must, if requested in writing by the Research Provider, provide replacement Personnel acceptable to the Research Provider in the Research Provider's reasonable opinion, at the earliest opportunity.	3.3.2	Without limiting clause 3.3.1, the Subcontractor acknowledges that any direction of the Research Provider for the purpose of ensuring the Research Provider's compliance with the terms of the Research Deed or the Project Approval constitutes a reasonable and lawful direction.
		3.4	Compliance with laws
			The Subcontractor must comply with all relevant laws, including holding all relevant licences, when performing the Subcontractor's obligations under this Subcontractor Agreement.
3.1.3	The Research Provider may, after consultation with the Subcontractor and on reasonable grounds, request in writing that the Subcontractor remove Personnel from work in respect of the Services. The Subcontractor must promptly arrange for the removal of such Personnel from work in respect of the Services and their replacement with Personnel acceptable to the Research Provider in the Research Provider's reasonable opinion.	3.5	Insurance
		3.5.1	The Subcontractor must, at its own expense, effect and maintain with a reputable insurance company during the Term (except in the case of professional indemnity insurance, which must also be maintained until seven years after the Term) in amounts commensurate with those amounts that a responsible entity would put in place to cover the risks associated with the Services for each of the following categories of insurance:
3.2	Liaison and reporting		
3.2.1	The Subcontractor must:		
	(a) liaise with the Research Provider in providing the Services; and		(a) public liability and product liability insurance;
	(b) participate in reviews and meetings,		(b) workers' compensation insurance as required by statute and if that statutory insurance does not include cover for the employer's liability at common law, appropriate employer's liability insurance; and
	for the purpose of enabling the Research Provider to review the performance of the Subcontractor's obligations under this Subcontractor Agreement.		(c) professional indemnity insurance.
3.2.2	The Subcontractor must:		
	(a) comply with the Reporting Requirements; and	3.5.2	The Subcontractor must, if requested by the Research Provider, provide evidence without delay that is acceptable to the Research Provider of the insurances referred to in clause 3.5.1 (including copies or policy wordings) and their currency.
	(b) otherwise provide the Research Provider with such information and reports, including financial information and reports, as the Research Provider requests in connection with this Subcontractor Agreement and the Services.	3.5.3	[This clause 3.5 does not apply where the Subcontractor is a department or statutory body of the Commonwealth of Australia or an Australian state or

	territory and self-insures.]		contributing it to or making it available for use in connection with this Subcontractor Agreement.
3.6	Project Approval and Research Deed		
	The Subcontractor will not at any time do anything or allow anything to be done that would cause the Research Provider to be in breach of any terms of the Project Approval or the Research Deed.	5.1.2	The Subcontractor grants to the Research Provider a non-exclusive, non-transferable, royalty-free licence of its Background IP to use, reproduce and adapt the Background IP, including the right to sublicense, in accordance with this Subcontractor Agreement for the purposes contemplated by this Subcontractor Agreement, to carry out the Project, and to use the Project Technology as contemplated by the Research Deed (including any Commercialisation).
4.	Research Provider Material		
4.1	Acknowledgement		
	The Subcontractor acknowledges the Research Provider's ownership or control by licence of the Research Provider Material.		
4.2	Use		
	The Subcontractor must:		
	(a) ensure that Research Provider Material in its care, custody or control is used, copied, supplied or reproduced only for the purposes of this Subcontractor Agreement;	5.1.3	If the Subcontractor becomes aware of any change to Background Conditions it must notify the Research Provider within 10 Business Days.
	(b) ensure that Research Provider Material is maintained in good order and repair and must meet all costs of any repairs or replacement for loss or damage caused or contributed by the Subcontractor or its Personnel;	5.1.4	The Subcontractor provides Background IP on the following bases:
	(c) keep Research Provider Material safe; and		(a) the Background IP is provided to, and must be used by, the Research Provider subject to any Background Conditions;
	(d) use Research Provider Material strictly in accordance with any conditions notified to it by the Research Provider.		(b) the Subcontractor retains the right to control the Background IP and, if relevant, it remains the Subcontractor's property;
			(c) the Subcontractor is free to continue to use and deal with its Background IP outside the Services as long as it can still be used by the Research Provider and CRDC for the purposes for which it was provided, including Commercialisation; and
5.	IP		
5.1	Background IP		
5.1.1	The Subcontractor must:		(d) if the Subcontractor transfers ownership of the Background IP to a third party, the transfer must be subject to a licence being granted by that third party to the Research Provider in the same terms as the licence granted by the Subcontractor under this Subcontractor Agreement.
	(a) notify the Research Provider of full details of all Background IP that it proposes to contribute to or make available for use in connection with this Subcontractor Agreement, and all applicable Background Conditions; and	5.1.5	The Subcontractor warrants to the other that, to the best of its knowledge at the date its Background IP is contributed or made available, after having made
	(b) obtain the Research Provider's written approval before		

	reasonable inquiries and subject to any Background Conditions:		in accordance with the Payment Schedule, subject to receipt of a tax invoice in accordance with clause 7.3 and provided that the Services or Deliverables to which each payment relates are completed or delivered to the reasonable satisfaction of the Research Provider.
	(a) it has the right to control, is the owner of, or is otherwise entitled to provide, the Background IP; and		
	(b) the Background IP may be used in accordance with this Subcontractor Agreement.	7.2	Expenses If indicated in annexure 1, the Research Provider must reimburse the Subcontractor for the Expenses incurred by the Subcontractor in providing the Services, provided that the Subcontractor obtains the Research Provider's prior written consent before incurring the Expenses.
5.2	Project Technology The Subcontractor:		
	(a) acknowledges and agrees that ownership of all right, title and interest in all Project Technology will vest in the Research Provider on its creation;	7.3	Invoices Each invoice provided by the Research Provider must set out details of: (a) the Services and/or Deliverables provided and Fees payable; and (b) any Expenses incurred, and be accompanied by all documents reasonably required by the Research Provider to verify the invoice.
	(b) assigns all IP in the Project Technology to the Research Provider on its creation; and		
	(c) must promptly sign all documents and do all things that the Research Provider reasonably requests to give effect to this clause.		
5.3	Moral rights	7.4	GST
	The Subcontractor must obtain the consent of each author of works protected by copyright that are created in the course of providing the Services to the works being used in any manner (including electronically and without attribution) and for any purpose contemplated by the Research Deed (including Commercialisation). The Subcontractor must ensure that the consent extends to the Research Provider's successors in title and any of its licensees or persons authorised by it and is freely given.	7.4.1 7.4.2 7.4.3 7.5	Unless otherwise indicated, amounts stated in this Subcontractor Agreement do not include GST. In relation to any GST payable for a taxable supply by a party under this Subcontractor Agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice. Terms used in this clause 7.4 that are defined in the GST Act have the same meaning as in that Act.
6.	Publication The Subcontractor must not publish any Project Technology without the prior written consent of the Research Provider and CRDC.		CRDC funding The Research Provider's obligation to pay Fees or Expenses under this Subcontractor Agreement is conditional upon the Research Provider's receipt of funding from CRDC under the Research Deed in respect of those Fees and Expenses.
7.	Fees and expenses		
7.1	Fees The Research Provider must pay the Subcontractor the Fees for providing the Services and delivering the Deliverables,	7.6	Unused Fees The Subcontractor must comply with any written direction of the Research Provider in connection with any unused

	Fees.		Research Provider's Confidential Information:
8.	Confidentiality		
8.1	Maintenance and return		(a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Subcontractor;
	The Subcontractor must, in relation to the Research Provider's Confidential Information:		(b) if required in connection with legal proceedings,
	(a) keep it confidential;		provided that the Subcontractor must give the Research Provider immediate notice of any requirement to disclose.
	(b) use it only as permitted by this Subcontractor Agreement and subject to any other reasonable conditions notified by the Research Provider at the time of disclosure including any	9.	Privacy
	Background Conditions;	9.1	Personal Information
	(c) not disclose it to any person other than to the Subcontractor's Personnel:		The Subcontractor must:
	(i) who have a need to know (and only to the extent that each such person has a need to know); and		(a) ensure that any Personal Information held by it in connection with this Subcontractor Agreement is handled in accordance with the Privacy Act 1988 and the Research Provider's privacy policy;
	(ii) who, if requested by the Research Provider, have signed a Deed of Confidentiality and, to the extent possible, the Subcontractor must arrange for all such undertakings to be given promptly and prior to the commencement of the Services;		(b) only use that Personal Information for the purpose of performing its obligations under this Subcontractor Agreement; and
	(d) not copy it or any part of it that is in a material form other than as strictly necessary and must mark any such copy as "Confidential";		(c) not, without the Research Provider's prior written consent, disclose or permit access to that Personal Information other than for the purpose of performing its obligations under this Subcontractor Agreement.
	(e) promptly comply with any request by the Research Provider to return or destroy any or all copies of the Confidential Information; and	9.2	Data Breaches
	(f) immediately notify the Research Provider if the Subcontractor becomes aware of any unauthorised copying, use or disclosure of the Confidential Information in any form.		If there has been or may be, or if the Subcontractor reasonably suspects that there has been or may be, any unauthorised disclosure of or unauthorised access to Personal Information held by it in connection with this Subcontractor Agreement (Data Breach), the Subcontractor must:
8.2	Permitted disclosure		(a) notify the Research Provider as soon as reasonably practicable;
	The Subcontractor may disclose the		(b) promptly investigate the Data Breach;

	(c)	take all reasonable steps to:		Research Provider from time to time.
	(i)	remedy the Data Breach; and	11.2	Access to premises
	(ii)	prevent serious harm occurring to the relevant individuals;		The Subcontractor must grant, at all reasonable times after receiving at least 7 Business Days' notice, to the Research Provider, CRDC and any other persons authorised in writing by either of them, reasonable access to the Subcontractor's premises, records, accounts and other financial material or material relevant to this Subcontractor Agreement, wherever stored, in the custody, possession or control of the Subcontractor or its Personnel for inspection and copying.
	(d)	provide the Research Provider with such information and assistance as it reasonably requests in respect of the Data Breach; and		Conflict of interest
	(e)	subject to paragraph (c)(ii), at least 14 days before making any report, notification or public statement, provide a copy to the Research Provider and make any amendment reasonably required by the Research Provider within those 14 days.	12. 12.1	Warranty
10.		Accounts and records		The Subcontractor warrants to the best of its knowledge after having made proper enquiry that, at the date of signing this Subcontractor Agreement, no conflict of interest exists or is likely to arise.
		The Subcontractor must at all times maintain proper accounts in relation to this Subcontractor Agreement. Such accounts must:	12.2	Existence of a conflict
	(a)	be complete and be maintained up-to-date;	12.2.1	The Subcontractor must use its best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Subcontractor must not engage in any activity, subject to clause 12.2.2 that may result in a conflict of interest arising or continuing.
	(b)	be kept in a manner that permits them to be conveniently and properly audited;	12.2.2	If a conflict of interest, a risk of conflict of interest or a perceived conflict of interest arises, the Subcontractor must notify the Research Provider promptly of the relevant circumstances and must follow any direction made by the Research Provider about the method for handling the conflict of interest, risk of conflict of interest or perceived conflict of interest.
	(c)	be drawn in accordance with any applicable Australian accounting standards;		
	(d)	enable the extraction of all information relevant to this Subcontractor Agreement; and		
	(e)	be kept for at least seven financial years after the termination of this Subcontractor Agreement.	13.	Indemnity
11.		Audits and access to premises		The Subcontractor indemnifies the Research Provider against any Loss suffered or incurred by the Research Provider during or after the Term in relation to:
11.1		Audits		(a) any breach by the Subcontractor of its obligations under this Subcontractor Agreement;
		The Subcontractor must participate co-operatively in audits in connection with the Services at the frequency, and in relation to the matters, specified by the		(b) any act or omission of the Subcontractor, its employees, agents or contractors that causes

	or results in damage to property or death or injury of a third party;	14.3.2	Resolution Institute's Mediation Rules.
(c)	any demand, claim or proceedings under any cause of action alleging that the Research Provider's use of the Project Technology infringes the IP rights of a third party; or	14.3.3	The mediation is to be conducted by a mediator appointed by agreement of the parties or, failing agreement within 14 days or such other time as they agree in writing, by a mediator appointed by the Resolution Institute.
(d)	any act or omission of the Subcontractor in connection with the Services,	15.	A party may not commence proceedings in respect of the Dispute unless the Dispute is not settled
	except to the extent that the Loss is caused or contributed to by the negligence or the Research Provider.		Students
14.	Dispute resolution		The Subcontractor must not permit any student to be involved in the Services without the prior written approval of, and on terms required by, the Research Provider.
14.1	Disputes	16.	Excusable delay
14.1.1	Subject to clause 14.1.4, during and after the Term the parties must, without delay and in good faith, attempt to resolve any dispute in connection with this Subcontractor Agreement (Dispute) prior to commencing any proceedings.	16.1	Liability
14.1.2	If a party requires resolution of a Dispute it must do so in accordance with this clause 14. Compliance with this clause 14 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such Disputes.		A party (Non-Performing Party) will not be liable for any default or delay in performance of its obligations in this Subcontractor Agreement if, and to the extent that, the default or delay is caused, directly or indirectly, by an excusable delay event. For the purposes of this clause 16, an excusable delay event (Excusable Delay Event) means any:
14.1.3	The existence of a Dispute or the commencement of proceedings does not affect the obligation of the parties to continue to perform their obligations under this Subcontractor Agreement.		(a) fire, flood, earthquake, elements of nature or act of God;
14.1.4	This clause 14 does not apply to applications for urgent injunctive or urgent interlocutory relief.		(b) riot, civil disorder, rebellion or revolution;
14.2	Notice of dispute		(c) delay in passing any relevant legislation, including appropriation bills;
14.2.1	If a party requires resolution of a Dispute, it must immediately submit full details of the Dispute to the other party.		(d) biosecurity incursion; or
14.2.2	If the Dispute is not resolved within 30 days after submission of the Dispute to them, or such other time as they agree in writing, the provisions of clause 14.3 will apply.		(e) other similar cause beyond the reasonable control of the Non-Performing Party, but in each case only if, and to the extent that, the Non-Performing Party is without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the Non-Performing Party at its expense through the use of
14.3	Mediation		
14.3.1	The parties must submit and participate in mediation of the Dispute in accordance with and subject to the		

	alternate sources, work around plans or other means,		
	and does not include any industrial action which is specific to the party or any acts of contractors.		
16.2	Occurrence of Excusable Delay Event		
16.2.1	When an Excusable Delay Event has occurred, the Non-Performing Party will be excused from further performance of the obligations affected for as long as the circumstances prevail provided the Non-Performing Party continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay. Any party so delayed in its performance must promptly notify the other party to whom performance is due and specify in a reasonable level of detail the circumstances causing such delay.	17.2	Reduction The Research Provider may reduce the scope of the Services or Deliverables in accordance with any relevant reduction in respect of the Project by CRDC.
16.2.2	If the Non-Performing Party is excused from performing its obligations by operation of clause 27.2 for a period of 60 Business Days, the other party may terminate this Subcontractor Agreement by notice to the Non-Performing Party without limiting any other rights it may have.	17.3	Consequences of termination On termination or expiration of this Subcontractor Agreement the Subcontractor must deliver to the Research Provider all Research Provider Background IP and all Project Technology.
16.2.3	If a party terminates this Subcontractor Agreement pursuant to clause 16.2.2, that party is not liable to pay the Non-Performing Party any termination costs or otherwise compensate it in respect of the termination.	18.	Notices
17.	Termination	18.1	Delivery A notice under this Subcontractor Agreement must be in writing and may be given to the addressee by:
17.1	Default The Research Provider may, by notice to the Subcontractor, terminate this Subcontractor Agreement if the Research Provider:		(a) delivering it to the address of the addressee;
	(a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;		(b) sending it by registered post to the address of the addressee; or
	(b) fails, within [14 days] after receipt of notice, to remedy any breach of its obligations under this Subcontractor Agreement that are capable of remedy;		(c) sending it to the email address of the addressee.
		18.2	Receipt A notice given under clause 18.1 is deemed to have been received:
			(a) if delivered, at the time of delivery;
			(b) if sent by registered post, when it would be received by the party in the normal course of post; or
			(c) if sent by e-mail, on receipt of a read notification which the sender will request on sending the email.

19.	Miscellaneous		Agreement must be in writing and signed by both parties.
19.1	Counterparts		
	This Subcontractor Agreement may be signed in a number of counterparts and the counterparts will constitute one agreement.	19.8	Severance
19.2	Entire agreement		Each of the agreements of the parties under this Subcontractor Agreement is severable from the others and the severance of one agreement does not affect the other agreements.
19.2.1	This Subcontractor Agreement embodies the entire understanding and agreement between the parties as to its subject matter.	19.9	Relationship
19.2.2	All previous negotiations, understandings, representations, warranties, documents or commitments in relation to, or in any way affecting, the subject matter of this Subcontractor Agreement are merged in and superseded by this Subcontractor Agreement.		Except as expressly stated in this Subcontractor Agreement:
19.3	Further assurance		(a) nothing in this Subcontractor Agreement creates an agency, partnership, joint venture or employment relationship between the parties or any of their respective employees, agents or contractors; and
	Each party must promptly sign all documents and do all things that the other party reasonably requests to effect, perfect or complete this Subcontractor Agreement and all transactions incidental to it.		(b) neither the Subcontractor nor any person acting on behalf of the Subcontractor may hold themselves out as being entitled to contract or accept payment in the name of or on account of the Research Provider.
19.4	Assignment	19.10	Legal costs
	The Subcontractor must not assign any of its rights or novate any of its obligations under this Subcontractor Agreement without the prior written consent of the Research Provider.		The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this Subcontractor Agreement and all documents incidental to it.
19.5	Consent	19.11	Governing law and jurisdiction
	Where the consent or approval of the Research Provider is required under this Subcontractor Agreement, the Research Provider may, except as expressly stated, withhold its consent or approval or give it conditionally or unconditionally as it sees fit.	19.11.1	This Subcontractor Agreement is governed by and must be construed in accordance with the laws of New South Wales.
19.6	Waiver	19.11.2	Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts that have jurisdiction to hear appeals from those courts and waives any right to object to proceedings being brought in those courts for any reason.
	A waiver under this Subcontractor Agreement is not binding on a party unless it is in writing and signed by the party. A waiver is not a waiver of any other right.		
19.7	Variation		
	A variation of this Subcontractor		

LIST OF ANNEXURES

Annexure 1 – Subcontract Details

Annexure 2 – Copy of Project Approval

Annexure 3 – Deed of Confidentiality

Annexure 4 – Acknowledgement

TEMPLATE ONLY

ANNEXURE 1 – Subcontract Details

Item	Term	Definition
1.	Commencement Date	[Insert Commencement Date]
2.	Term	[Insert Term] from the Commencement Date
Parties		
3.	Research Provider	Name: [Insert name] ABN: [Insert ABN] Address: [Insert address] Contacts: [Insert contact details]
4.	Subcontractor	Name: [Insert name] ABN: [Insert ABN] Address: [Insert address] Contacts: [Insert contact details]
Services Details		
5.	Research Deed Date	[Insert date of Deed]
6.	Project	[Insert name of Project]
7.	Project Approval	The Project Approval dated [insert date], a copy of which is annexed to this agreement as Annexure 2
8.	Services	[Insert details of Services]
9.	Deliverables	[Insert Deliverables]
10.	Timeline	[Insert Timeline]
11.	Research Provider Materials	[Insert Research Provider Materials]
12.	Nominated Persons	[Insert Nominated Persons]
13.	Background IP	<i>Subcontractor Background IP</i> [Insert Subcontractor Background IP]
		<i>Research Provider Background IP</i> [Insert Research Provider Background IP]

Item	Term	Definition
14.	Background Conditions	<i>Subcontractor Background Conditions</i> [Insert Subcontractor Background Conditions]
		<i>Research Provider Background Conditions</i> [Insert Research Provider Background Conditions]
15.	Confidential Information	[Insert details of Confidential Information]
16.	Disclosure of Conflicts	[insert details of actual, potential or perceived Conflicts]
17.	Reporting Requirements	[Insert Reporting Requirements]
Fees and Expenses		
18.	Fees	[Insert Fees]
19.	Expenses	[Insert Expenses]
20.	Payment Schedule	[Insert Payment Schedule]

ANNEXURE 2 – Copy of Project Approval

[Insert copy of Project Approval]

TEMPLATE ONLY

ANNEXURE 3 – Deed of Confidentiality

DEED OF CONFIDENTIALITY FOR PROTECTION OF CRDC CONFIDENTIAL INFORMATION

DATE **[Insert date]**

PARTIES

[Insert name, ABN and address of the Research Provider] (the Research Provider)

and

[Insert name and address of officer, employee, student, researcher, agent or contractor of the Subcontractor] (the Recipient)

RECITALS

- A. The Research Provider and the Subcontractor have entered into an Agreement pursuant to which the Subcontractor will assist the Research Provider to conduct the Project.
- B. The Project requires the Recipient to have access to information confidential to the Research Provider.
- C. The Recipient agrees to the obligations of confidentiality set out in this Deed.

OPERATIVE PROVISIONS

1 INTERPRETATION

"Agreement" means the agreement between the Research Provider and the Subcontractor dated **[Insert date of Subcontractor Agreement]** for the conduct of the Project or Scholarship.

"Research Provider Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by the Research Provider as confidential; or
- (c) the Recipient knows or ought to know is confidential; or
- (d) is comprised in or relates to Material where the Research Provider is the owner or co-owner thereof; or

and includes the terms of the Agreement, but does not include information which:

- (e) is or becomes public knowledge other than by breach of the Agreement, this Deed of Confidentiality or any other confidentiality obligations; or
- (f) has been independently developed or acquired by the Recipient as established by written evidence.

"Data" includes all information stored on magnetic tapes, disks or in electronic or written form of any kind.

"Material" means:

(a) any material, facilities, premises, equipment, documents, information, Data, software and organisms (living or dead), discoveries, inventions, improvements, engineering or other processes and innovations, including any intellectual property:

- (i) provided by the Research Provider to the Subcontractor for the purposes of the Agreement; or
- (ii) developed or created in the performance of the Project; and

(b) anything which is copied or derived from the material referred to in paragraph (a).

"Personal Information" has the meaning given to it in the *Privacy Act 1988*.

"Project" means the project set out in the Agreement.

2 NON DISCLOSURE

- 2.1 Except as required in the proper performance of the Project or as expressly permitted by the Agreement, the Recipient must not copy, reproduce or disclose any Research Provider Confidential Information without the prior written consent of the Research Provider, which consent the Research Provider may grant or withhold in its absolute discretion.

3 RESTRICTION ON USE

3.1 The Recipient must use Research Provider Confidential Information only for the purpose of properly performing the obligations and exercising the rights of the Subcontractor pursuant to, or in relation to, the Agreement.

3.2 The Recipient must:

- (a) ensure that any Personal Information the Recipient has acquired during the conduct of the Project is handled in accordance with the *Privacy Act 1988*;
- (b) only use that Personal Information for the purpose of conducting the Project; and
- (c) not, without the Research Provider's prior written consent, disclose or permit access to that Personal Information other than for the purpose of conducting the Project.

(b) promptly investigate the Data Breach;

(c) take all reasonable steps to:

(v) remedy the Data Breach; and

(vi) prevent serious harm occurring to the relevant individuals;

(d) provide the Research Provider with such information and assistance as it reasonably requests in respect of the Data Breach; and

5.2 subject to paragraph (c)(ii), at least 14 days before making any report, notification or public statement, provide a copy to the Research Provider and make any amendment reasonably required by the Research Provider within those 14 days

4 SECURITY

4.1 If requested by the Research Provider, the Recipient must cooperate in any security checks the Research Provider wishes to make of the Recipient (including by providing information usually requested in such circumstances).

6

DELIVERY UP OF DOCUMENTS

6.1 The Research Provider may, upon not less than 2 Business Days written notice to the Recipient, demand the delivery to the Research Provider or the destruction of all documents in the possession or control of the Recipient which contain Research Provider Confidential Information.

5 DATA BREACHES

5.1 If there has been or may be, or if the Recipient reasonably suspects that there has been or may be, any unauthorised disclosure of or unauthorised access to Personal Information the Recipient has acquired during the conduct of the Project ("**Data Breach**"), the Recipient must:

- (a) notify the Research Provider as soon as reasonably practicable;

7

SURVIVAL OF OBLIGATIONS

7.1 The obligations in this agreement are perpetual.

8

GOVERNING LAW

8.1 This Deed will be governed by the laws for the time being in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

EXECUTED as a deed.

SIGNED for
and on behalf of the **[Insert name of Research Provider]**
by its duly authorised representative in the presence of:

Signature of witness

Signature of Research Provider representative

Name of witness

Name of Research Provider representative

Position of Research Provider representative

Date:

SIGNED by
[name of Recipient] in the presence of:

Signature of witness

Signature of Recipient

Name

Name of Recipient

Date:

ANNEXURE 4 – Acknowledgement

ACKNOWLEDGEMENT

To be signed by each member of the Project team.

This Schedule forms part of the Subcontractor Agreement (**Subcontractor Agreement**) between **[INSERT NAME OF RESEARCH PROVIDER] (RP)** and **[INSERT NAME OF SUBCONTRACTOR] (Subcontractor)** dated [Insert date] for the conduct of **[INSERT ACTIVITY TITLE] (Project)**.

The Subcontractor Agreement is subject to the terms and conditions of the agreement between the Research Provider and Cotton Research and Development Corporation ABN 71 054 238 316 (**CRDC**) dated [insert date].

All capitalised terms in this Acknowledgement have the same meaning as defined in the Subcontractor Agreement.

A. As a person responsible for performing the Project, I/we acknowledge that the Subcontractor Agreement contains the following terms and imposes the following obligations relating to the standard of work and the ownership and management of Intellectual Property (**IP**) and Confidential Information.

B. Specific terms and conditions relating to the Project at its commencement are detailed in the Project Approval and my/our Subcontractor has notified me/us of those terms and conditions including the following:

1. Standard of Work

- The Subcontractor is required to conduct the Project at a high professional standard and in accordance with accepted scientific, ethical, business and financial principles and standards.
- The RP is required to ensure that all material produced in the performance of the Project is neatly and legibly compiled and adequately documented and contains sufficient evidence (including laboratory notes) required to support all conclusions, findings and opinions.
- The Subcontractor and Project team members are required to conduct the Project in a way which ensures that the ability to obtain statutory protection of any IP which is generated by the conduct of the Project is not jeopardised, except where there is a written agreement between the Subcontractor and the RP to the contrary.

2. Confidentiality

- Each party is required to keep the other party's Confidential Information confidential, and to only use it as permitted by the Subcontractor Agreement and not to wrongly disclose it. In certain circumstances a Deed of Confidentiality is required.

3. Intellectual Property Ownership

- The RP may be entitled to a share of the ownership of the IP arising out of the Project in order to safeguard the interests of the cotton industry and, in such a case, the Subcontractor will have assigned ownership to the RP.

Background IP (BGIP)

- Both parties are required to notify their employees or team that they have an obligation to observe any Background IP conditions of use. Any liability resulting from a breach of BGIP will be borne by the party whose employees or team were responsible for the breach.

Copyright and Moral Rights

- The RP may own the copyright in all reports (progress, final & financial) in respect of the Project but not in respect of the other IP which is specified in the reports unless the RP is specified as the owner in the Subcontractor Agreement.
- If the RP owns copyright in other material, it may apply conditions to the use of its copyright material. It will not unreasonably withhold its consent to the use of material in which it owns the copyright.
- The RP will not require researchers to 'waive' their moral rights or

otherwise consent to an action that would infringe their moral rights.

4. Teaching

- The RP is entitled to use the Project Technology and Scholarship Technology for student education purposes provided that it does not disclose Confidential Information, prejudice the protection of the Project Technology or Scholarship Technology or prejudice the Commercialisation of the Project Technology or Scholarship Technology.

5. Publication

- The Subcontractor is required to obtain the RP's written approval before distributing or publishing any material resulting from the Project.
- Media Releases, public announcements or unrefereed publications (eg conference papers) about the Project or the material produced in the Project require CRDC's prior approval in accordance with the Deed.
- CRDC may withhold its consent to publish where such publication:
 - contains confidential information; or
 - may prejudice the protection of the Project Technology or Scholarship Technology; or
 - may prejudice the Commercialisation of the Project Technology or Scholarship Technology; or
 - has not been subject to peer review and, in CRDC's reasonable opinion, requires peer review; or
 - following peer review, CRDC considers on reasonable grounds that the proposed Publication is not considered acceptable for publication in a recognised journal; or
 - in CRDC's reasonable opinion is not in the interests of the Australian cotton industry.

- In respect of any publication or other material arising from the Project, the RP is required to acknowledge CRDC as an investor in the Project and to provide to CRDC an electronic copy of the publication before distribution.
- If CRDC owns the copyright in material produced in the Project, its consent to publishing the material will be conditional on it being able to make any changes before its distribution.

6. IP and data management

- The RP is required to provide to CRDC an IP Register setting out all IP rights it proposes to use in, or expects to be generated by, the conduct of the Project as well as the owners of the IP and any conditions of use, including in respect of data collected during the Project.
- The RP is required to notify CRDC in writing within 20 Business Days of all significant material and/or changes to IP ownership arising from the carrying out of the Project (and include such notification in the next Progress Report or Final Report).
- The RP is required to take all reasonable steps to ensure that no person or organisation other than those identified in the IP Register will be in a position to make a claim to IP, including in data, in respect of the Project Technology, except in cases where CRDC has agreed otherwise in writing.
- Data collected in a Project must not be used or shared with other parties unless approved by the RP and CRDC, as stated in the IP Register.

7. Conflict of interest

- The Subcontractor is required to warrant to the best of its knowledge after having made proper enquiry that no conflict of interest exists or is likely to arise in respect of its involvement in the conduct of the Project.
- The Subcontractor undertakes to use all reasonable endeavours to avoid any situation from arising or engaging in any activity during the conduct of the Project, which may result in a Conflict of Interest.

8. Privacy

- In respect of any Personal Information made available or provided by or on behalf of the Subcontractor or the RP, the Subcontractor must:
 - comply the provisions of the *Privacy Act 1988*, as if it were an agency bound by that Act, concerning the collection, security, access, data quality, relevance, use and disclosure of Personal Information;
 - co-operate with any reasonable demands or enquires made by the Privacy Commissioner;
 - take all reasonable measures to ensure that such Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised recipients have access to it;
 - not disclose such Personal Information outside Australia without the RP's prior written approval; and
- promptly notify the RP of, and co-operate with the RP in resolving, any complaint regarding an interference with privacy.

Team Member Name	Signature	Date

PLEASE CONTINUE ON A FURTHER SHEET IF NECESSARY

Execution

Signed as an agreement

Signed by **[insert full name of Research Provider]:**

.....
Signature of authorised person

.....
Office held

.....
Name (print)

.....
Date (print)

Signed by **[insert full name of Subcontractor]:**

.....
Signature of authorised person

.....
Office held

.....
Name (print)

.....
Date (print)