STATUTORY FUNDING AGREEMENT 2013-2017

between the

Commonwealth of Australia represented by the
Department of Agriculture, Fisheries and Forestry
ABN 24 113 085 695

and

Sugar Research Australia Limited
ACN 163 670 068
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AGREEMENT DATE

BETWEEN The COMMONWEALTH OF AUSTRALIA, for the purposes of this Agreement, represented by the Department of Agriculture, Fisheries and Forestry ABN 24 113 085 695 (Commonwealth).

AND SUGAR RESEARCH AUSTRALIA LIMITED ACN 163 670 068, an RDC having its registered office at 50 Meiers Road, Indooroopilly QLD 4068 (RDC).

RECITALS

A. Sugarcane growers and millers, through a Sugar Poll, endorsed the establishment of a company limited by guarantee under the Corporations Act 2001 (Cth), with a Board with skills relevant to its objects, to undertake research, development and extension activities for the benefit of the Australian sugar industry. To this end, Sugar Research Australia Limited (SRA) was established.

B. SRA is a new company bringing together the assets and most activities of BSES Limited (the Bureau of Sugar Experimental Stations) and the Sugar Research and Development Corporation (SRDC) plus the research coordination activities of the miller agency Sugar Research Limited (SRL).

C. SRA is the “industry services body” declared for the purpose of Section 9 of the Sugar Research and Development Services Act 2013 (Cth) (the Act).

D. Section 6 of the Act allows the Commonwealth to enter into a contract (a Statutory Funding Agreement) with the Company.

E. The Commonwealth and SRA have agreed to enter into an initial four year contract.
PREAMBLE

The RDC model has operated as a partnership between the Commonwealth of Australia and the Rural Research and Development Corporations (RDCs), encompassing statutory and industry-owned RDCs.

The Commonwealth has accepted that there is a need to encourage the provision of industry services, including research, development and extension, in the primary industry sector and that the provision of these services through public funding can contribute to enhancing the viability, sustainability and competitiveness of the primary industry sector and the Australian community in general.

The RDCs act on behalf of various primary industry sectors to deliver research, development and extension, and in some cases marketing, services for the benefit of industry and the broader community. Statutory Funding Agreements (SFAs) have evolved over the past decade to put this partnership on a more robust and transparent footing.

This statutory agreement defines the operating principles for the partnership. It is intended to provide clarity consistency and transparency across the management and accountability frameworks applicable to all RDCs.

This framework recognises that RDCs aim to achieve results set out in their enabling legislation and in accordance with Commonwealth and industry priorities, as reflected in the RDC’s Strategic Plan. This Agreement provides for regular dialogue between the RDC and the Commonwealth and industry on progress with planned activities. At the same time it provides for concerns about performance to be discussed and, where needed, for appropriate responses to be developed.

This Agreement will be renewed and updated periodically to take into account the most recent performance review of the RDC, changes in government policy and priorities and developments in stakeholder expectations.
PART 1 – CORE REQUIREMENTS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

‘Act’ means the *Sugar Research and Development Services Act 2013* (Cth).

‘Advocacy’ means an activity that aims to influence public policy and resource allocation decisions but is not an Agri-Political Activity.

‘Agreement’ means this Agreement and any schedules and annexures to it.

‘Agreement Date’ is the date on which this Agreement has been signed by both parties, and where the parties sign this Agreement on different dates, it is the latest of those dates.

‘Agri-Political Activity’ means engaging in or financing any form of external or internal political campaigning, but does not include an activity required or authorised under the *Corporations Act 2001* (Cth) or another law. Clause 6.9 provides examples of activities that are not Agri-Political Activity.

‘Annual Operational Plan’ means a plan prepared by the RDC in accordance with clause 11.8.

‘Annual Report’ means a report prepared by the RDC in accordance with clause 12.6.

‘Asset Management Plan’ is a plan for managing an RDC’s infrastructure and other assets.

‘Balanced Portfolio’ means a research and development investment portfolio that appropriately considers a balance between long-term and short-term, high-risk and low-risk, and strategic and adaptive research needs and includes consideration of regional variations and needs.

‘Business Day’ means a day on which Australian banks are open for general banking business in the Australian Capital Territory, excluding Saturdays and Sundays.
‘Business Hours’ means the hours between 9.00am and 5.00pm on a Business Day.

‘Certification Report’ means a report prepared in accordance with clause 12.3.

‘Cessation Plan’ means a plan agreed between the parties to manage the cessation of operations of the RDC as the Industry Services Body following a notice of termination of the Agreement, including arrangements for the repayment or transfer of the Funds to, or as directed by, the Commonwealth and for the payment of employee entitlements and other commitments and expenses.

‘Commonwealth Matching Funds’ means funds paid to the RDC under the Act as Commonwealth Matching Funds for eligible Research and Development activities.

‘Compliance Audit Report’ means a report prepared in accordance with clause 12.1.

‘Confidential Information’ means information including, but not limited to, Levy Payer Information, for which all of the following requirements are satisfied:

(a) the information is given by one party (the disclosing party) to the other (the receiving party) for, or in connection with, this Agreement; and
(b) the information is, by its nature, confidential; and
(c) the disclosing party informs the receiving party that the information is confidential before or when the disclosing party gives the information to the receiving party. This may be by marking a document confidential or otherwise advising the receiving party that the information is confidential,

but does not include information which:

(d) is or becomes public knowledge other than by reason of a breach of this Agreement or by any other unlawful means; or
(e) had previously been disclosed to the receiving party, where such disclosure was not subject to any confidentiality restriction; or
(f) has been independently developed or acquired by the receiving party.

‘Cost Allocation Policy’ means the RDC’s policy for allocating direct and indirect costs across programs.
'Department' means:

(a) the Department of Agriculture, Fisheries and Forestry which represents the interest of the Commonwealth of Australia in this Agreement; or
(b) if the Act is administered by a Minister of State other than the Minister – the Department of State administered by that Minister.

'Director' means a person who is, for the time being, a member of the Board of Directors of the RDC.

'Director Selection Committee' means a committee established by the RDC to identify and nominate persons for appointment to the Board of Directors of the RDC.

'Economical' relates to minimising cost.

'Effective' is the extent to which intended outcomes or results are achieved.

'Efficient' relates to optimising value for the resources used.

'Ethical' relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

'Evaluation Framework' means a framework to undertake rigorous and regular evaluation of research activities and programs and should include a process for evaluating the efficiency, effectiveness and impact of the RDC's research programs and a means of publishing and disseminating relevant outcomes.

'Fraud Control Plan' means a plan prepared and maintained by the RDC specifying measures to minimise the risk of fraud within the RDC in accordance with clause 11.12(b).

'Funds' means each of the following:

(a) Research and Development Payments;
(b) Commonwealth Matching Payments;
(c) income earned or derived by the RDC from the Research and Development Payments, and Commonwealth Matching Payments; and
(d) the proceeds of the sale or other disposition of assets acquired with the Funds referred to in clauses (a) to (c) of this definition.

‘Guidelines’ means each of the following:

(a) the National and Rural Research and Development Priorities;
(b) other priorities or directions communicated to the RDC by the Minister from time to time in writing; and
(c) the Levy Principles and Guidelines, being the guidelines relating to the introduction of new levies or changes to existing levies.

‘Industry’ means the Australian sugar industry, as defined in the Sugar Research and Development Services Act 2013 (Cth).

‘Industry Representative Body’ means a peak industry body or a body with similar industry advocacy or Agri-Political objectives.

‘Industry Services Body’ means the body as declared by the Minister under the Act.

‘Insolvency Event’ means:

(a) that the RDC disposes of the whole or part of its assets, operations or business other than in the ordinary course of business; or
(b) that the RDC ceases to carry on business; or
(c) that the RDC ceases to be able to pay its debts as they become due; or
(d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the RDC’s assets, operations or business; or
(e) any step is taken to enter into any compromise or arrangement between the RDC and its creditors or a class of them; or
(f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of the RDC’s assets, operations or business.

‘Intellectual Property’ means all copyright and neighbouring rights, and all rights in relation to inventions (including patents), plant varieties, registered and unregistered trademarks, registered designs, confidential information (including trade secrets and
know how) and designs resulting from the intellectual activity in the industrial, scientific, literary or artistic fields.

‘Intellectual Property Management Plan’ means a plan prepared and maintained by the RDC specifying the procedures for management, adoption and commercialisation of Intellectual Property created by the RDC in accordance with clause 11.12(c) of this Agreement.

‘Levy’ means a levy, tax or charge required to be paid under the Levy Legislation.


‘Levy Payers’ means the persons who are required to pay amounts determined under the Levy Legislation.

‘Matching Payments’ means payments referred to in section 4 of the Act.

‘Minister’ means the Commonwealth Minister for Agriculture, Fisheries and Forestry who from time to time has responsibility for the Act and includes a delegate of the Minister for Agriculture, Fisheries and Forestry.

‘National and Rural Research and Development Priorities’ means the

(a) Research and Development priorities communicated to the RDC, from time to time, by letter from the Minister; and

(b) National Research Priorities that are determined by the Minister for Industry and Innovation and communicated to the RDC, from time to time, by letter from the Minister.

‘Performance Review’ means a review conducted in accordance with clause 13 of this Agreement.

‘Performance Review Report’ means a report prepared in accordance with clause 13.1 of this Agreement.

‘Person’ includes an individual, a partnership and a body corporate or unincorporated.
‘Program Framework’ means the planning and budgeting framework applied by the Department of Finance and Deregulation to manage Commonwealth funds. Essential components of the Program Framework are specifications of:

(a) the planned outcomes;
(b) the programs being funded to advance the planned outcomes;
(c) key deliverables arising from the programs funded;
(d) performance indicators linking the deliverable to the planned outcomes; and
(e) cost of the programs and associated deliverables.


‘RDCs’ means the statutory research and development corporations declared under the Primary Industries and Energy Research and Development Act 1989 (Cth) and the declared agricultural industry-owned companies (IOCs).

‘RDC Model’ means the operating partnership between the Commonwealth and the RDCs for the funding and delivery of Research and Development and other services to industry.

‘Research and Development’ means systematic experimentation and analysis in any field of science, technology or economics (including the study of the social or environmental consequences of the adoption of new technology) carried out with the object of:

(a) acquiring knowledge that may be of use in obtaining or furthering an objective of the Industry, including knowledge that may be used for the purpose of improving any aspect of the production, processing, storage, transport or marketing of goods that are the produce, or that are derived from the produce, of the Industry; or
(b) applying such knowledge for the purpose of achieving or furthering such an objective.

Note: Schedule 1 provides examples of activities which may be determined to be Research, Development and Extension activities for the purposes of the payment of Commonwealth Matching Funds.
‘Research and Development Activity’ means an activity that:

(a) is carried out by the RDC or with its support for the purposes of Research and Development; and

(b) relates to the Industry and is for the benefit of the Industry, and the Australian community generally, and includes, by way of example, the activities contemplated by Schedule 1 as being Research, Development and Extension activities.

‘Research and Development (R&D) Payments’ means payments referred to in section 4 of the Act.

‘Risk Management Plan’ means the plan prepared and maintained by the RDC specifying the measures to be implemented to manage its material, commercial, legal and administrative risks in accordance with clause 11.12(a) of this Agreement.


‘Skills Based Board’ means a board of Directors which can demonstrate collective expertise against each of the skills identified from time to time by the Director Selection Committee, which as at the Agreement Date include skills in respect of:

(a) corporate governance;

(b) production and/or processing in the relevant industry;

(c) finance and/or business management;

(d) Research and Development; technology and technology transfer; commercialisation and adoption; and

(e) environmental management,

and reflects the RDC’s constitution.

‘Strategic Plan’ means a plan prepared by the RDC in accordance with clause 11.2.
2. TERM AND OPERATION OF THIS AGREEMENT

2.1 This Agreement commences and takes effect on the day following the Agreement Date and expires four years after the Agreement Date.

2.2 The parties must, at least six months before the expiry of this Agreement, commence negotiation in good faith with a view to renewing this Agreement either on the same terms and conditions or on varied terms and conditions as agreed by the parties. If the parties are unable to agree on the terms of a new agreement to replace this Agreement within that six month period, then the parties agree that the Agreement will continue in full force and effect as between the parties for an additional six months or such other period as the parties agree unless one of the parties advises the other party in writing it does not wish to extend the Agreement having given reasonable consideration to the progress made, and the matters yet to be agreed, as at that date.

2.3 In negotiating the renewal of this Agreement, the outcomes of the latest Performance Review may be taken into account.

2.4 The RDC must publish this Agreement on its website.

3. LEGISLATION

3.1 The RDC must comply with the Act and the requirements of the Corporations Act 2001 (Cth).

Note: This Agreement does not override obligations under the Corporations Act 2001 (Cth).

3.2 The enabling legislation for Sugar Research Australia Limited is the Sugar Research and Development Services Act 2013 (Cth).

4. RDC CORPORATE GOVERNANCE AND BOARD PERFORMANCE

4.1 The RDC must implement a framework of good corporate governance practice in managing and investing the Funds, which should draw on best practice guides, including the ASX Corporate Governance Council’s Corporate Governance

as appropriate and as amended from time to time.

4.2 The RDC must report on steps taken to enhance corporate governance at the six-monthly meeting held under clause 15.1.

4.3 The RDC must establish a Skills Based Board of Directors which can demonstrate collective expertise against skill requirements identified at clause 1 and reflects the RDC’s constitution. It is expected that the skills required would be kept under review by the Director Selection Committee.

4.4 The RDC must:

(a) consult with the Commonwealth on changes to its Constitution to ensure that it will remain appropriate to a body performing the functions of the declared Industry Services Body; and

(b) give the Commonwealth a copy of each notice of a motion to modify the RDCs Constitution, at the same time as it gives notice of the motion to its members; and

(c) as soon as practicable after any modification of the RDCs Constitution is made, give the Commonwealth notice setting out the modification and explaining its effect.

4.5 The RDC must do all things necessary to ensure it effectively represents and reflects the interests of its members and, through those members, the Industry’s Research, Development and Extension interests.

4.6 The RDC must use reasonable endeavours to ensure Levy Payers who are not members are advised of their entitlements to become, and how they may become members of the RDC.

4.7 The RDC must ensure that up to date information on the following is available on its website:

(a) The RDC’s Strategic Plan, including information relating to its development and any changes;

(b) The priorities used by the RDC to determine which projects it will fund;

(c) An overview of the RDC’s key activities; and

(d) Key research, development, extension and or industry services activities which the RDC is funding.

4.8 The information to be published under the preceding subclause shall not include information of the following kinds:
(a) personal information or an opinion (whether true or not) about any individual, from which the individual’s identity is apparent or could reasonably be ascertained, if it would be unreasonable to publish that information;
(b) information about the business, commercial, financial or professional affairs of any Person if it would be unreasonable to publish that information, such as:
   (i) a matter communicated in confidence; or
   (ii) trade secrets; or
   (iii) a matter which would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
(c) information which would, or could reasonably be expected to damage:
   (i) the RDC; or
   (ii) the Industry; or
   (iii) the national interest.

5. PAYMENT OF FUNDS

5.1 In consideration for the RDC undertaking activities as specified in this Agreement, and subject to this Agreement, the Commonwealth must pay to the RDC Research and Development Payments and Commonwealth Matching Payments.

5.2 Nothing in this Agreement obliges the Commonwealth to make a payment to the RDC unless:
   (a) the RDC is an ‘eligible body’ under the Act; and
   (b) a declaration of the RDC as the “Industry Services Body” under the Act is in force at the time the payment is to be made; and
   (c) this Agreement has not expired or been terminated.

5.3 Notwithstanding any other provision of this Agreement:
   (a) the Commonwealth may either invoice the RDC for, or deduct from R&D Payments to be paid to the RDC, amounts equal to the costs incurred by the Commonwealth in relation to collecting, recovering, administering
provisions relating to, or making refunds of the R&D Payments as referred in the Act and consistent with the *Australian Government Cost Recovery Guidelines*;

(b) the RDC must pay any amount so invoiced to the Commonwealth within 30 days of receipt of the invoice; and

(c) an amount to be deducted by the Commonwealth or paid by the RDC under this clause must be deducted or paid from the R&D Payments to the extent that the amount relates to the R&D Payments.

5.4 The Commonwealth must give the RDC, in accordance with an agreed reporting timetable, an indicative estimate of the amount of the costs and amounts referred to in clause 5.3 for the financial year.

*Timing and manner of payments*

5.5 The Commonwealth must pay the Levy amounts to the RDC as soon as reasonably practicable after the Commonwealth receives the relevant levy or charge payments in cleared funds. Payments to the RDC must be made as soon as reasonably practicable after the 15th day and the final Business Day of each month.

5.6 The Commonwealth must use its reasonable endeavours to pay the Commonwealth Matching Funds to the RDC within one calendar month after receiving from the RDC a claim for payment, together with evidence reasonably satisfactory to the Commonwealth that the RDC has already spent the amount that forms the basis of the claim on Research and Development.

5.7 For the purposes of clause 5.6, a certificate signed by the Chief Executive Officer (or equivalent), the Chief Financial Officer or the Secretary of the RDC, certifying that the RDC has spent a particular amount on Research and Development, is reasonably satisfactory evidence in the absence of any evidence to the contrary.

5.8 Payment must be by direct deposit or cheque or other method agreed between the parties.
6. APPLICATION OF THE FUNDS

6.1 The RDC must spend the Funds:

(a) only in accordance with the Act and this Agreement; and

(b) in a manner that is consistent with:

(i) the Strategic Plan; and

(ii) the Guidelines; and

(iii) must otherwise take all reasonable steps to operate in a manner that is Efficient, Effective, Economically and Ethically sound.

6.2 The Commonwealth acknowledges the RDC may receive funding from other sources, such as the Queensland Government Department of Agriculture, Fisheries and Forestry, and co-invest them with the Funds. The RDC must ensure the Funds are spent in accordance with this Agreement, including the Strategic Plan and the Guidelines.

Research and Development Payments and Matching Payments

6.3 Research and Development Payments and Commonwealth Matching Payments may only be applied by the RDC for, or in relation to, Research, Development and Extension activities related to the Industry, for the benefit of the Industry, and in the case of Commonwealth Matching Payments, also for the benefit of the Australian community generally.

6.4 The RDC must determine an appropriate Balanced Portfolio of Research and Development activities through the Strategic and Annual Operating Plans, and explain the approach to giving effect to this.

6.5 The RDC must contribute to the implementation of relevant industry sector and cross-sectoral strategies under the National Primary Industries RD&E Framework as appropriate and consistent with the RDC Strategic Plan. SRA is the lead RDC, and the Queensland Government Department of Agriculture, Fisheries and Forestry is the lead Primary Industries Standing Committee agency, for the National Sugarcane Industry RD&E Strategy.

6.6 The Company may apply Transferred Funds or Transferred Assets in the same manner as the Research and Development Payments or Commonwealth Matching Payments.
6.7 Without limiting clause 6.6, Transferred Funds or Transferred Assets and Liabilities may be applied by the Company to:

(a) meet liabilities transferred to the Company under Item 4 of Schedule 2 of the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Act 2013; or

(b) meet costs incurred by the Company, or by the Commonwealth, in connection with the wind up of the Sugar Research and Development Corporation (SRDC), and transition to the Company.

Note: Sitting fee payments for SRDC Directors are considered eligible costs under this clause.

6.8 For the purposes of clause 6, any Unmatched Research and Development excess will be rolled over into the following financial years.

6.9 The RDC must not engage in Agri-Political activity. For example, the RDC must not apply the Funds to:

(a) act as an Industry Representative Body or to reference or provide information which implies to stakeholders that the RDC is an Industry Representative Body if it is not; or

(b) actively advocate a particular industry policy position; or

(c) encourage or support a campaign for the election of a candidate, person or party for public office.

6.10 Agri-political activity does not include any of the following:

(a) the RDC, or an officer of the RDC, recommending a candidate for election to the board of the RDC; or

(b) the RDC making statements or providing information to the Industry on matters related to the RDC’s objects in the proper performance of the RDC’s functions and the proper furtherance of its objects; or

(c) use by another person, for Agri-political purposes, of a report or other publication prepared or financed by the RDC in accordance with this Agreement; or

(d) the use by an officer of the RDC, or an employee of the RDC, of his or her own funds to conduct a campaign for election to the board of the RDC or any entity engaging in Agri-Political Activity; or

(e) the cost of consultation with, or a contribution towards consultation by an Industry Representative Body.
6.11 The RDC must not spend the Funds on making payments to Industry Representative Bodies. This does not preclude:

(a) payments by way of membership fees where that membership contributes to the RDC pursuing its objects; or

(b) payments on an arm’s-length value for money basis to acquire goods or services or fund Research and Development activities.

6.12 The RDC may, at any time, seek consultations with the Commonwealth in relation to any matter connected with this Agreement, including whether a proposed expenditure would amount to engaging in Agri-Political Activity or to seek written approval from the Commonwealth to undertake activities in accordance with Schedule 1 clause 31.5(k).

7. MANAGEMENT OF THE FUNDS

7.1 The RDC must establish such accounting systems, procedures and controls as are necessary to ensure:

(a) the Funds are spent only in accordance with this Agreement and the Act;

and

(b) all dealings with the Funds are properly authorised, conducted and accounted for; and

(c) an auditor is able to readily verify that the Funds have been used only in accordance with this Agreement.

7.2 The accounting systems, processes and controls to manage the Funds established in accordance with clause 7.1 are required to take into account the Risk Management, Fraud Control and Asset Management plans developed under clauses 11.12(a), (b), and (d) and Cost Allocation Policy.

7.3 The RDC must notify the Commonwealth of the details of the systems, procedures and controls established in accordance with clause 7.1 on request.

7.4 The RDC must:

(a) keep complete and detailed accounts and records of receipt, use and expenditure of the Funds in accordance with good accounting practice including all applicable Australian accounting standards; and
(b) keep the accounts and records referred to in clause 7.4(a) separately in relation to the Research and Development Payments and Commonwealth Matching Payments; and
(c) keep accounts and records referred to in clause 7.4(a) to enable disclosure of the full costs of the Research, Development and Extension under Schedule 1.

7.5 Any additional systems, processes and controls necessary to meet the requirements of this Agreement must be implemented during the term of this Agreement, within a timing agreed to by the Commonwealth.

Management of transferred assets, liabilities and funds

7.6 The Company must establish such accounting systems, procedures and controls as are necessary to ensure:
   (a) the Transferred Assets and Liabilities and Transferred Funds are used only in accordance with this Agreement;
   (b) all dealings with the Transferred Assets and Liabilities and Transferred Funds are properly authorised, conducted and accounted for; and
   (c) an auditor is able to readily verify that the Transferred Assets and Liabilities and Transferred Funds have been used only in accordance with this Agreement.

7.7 The Company shall not destroy or otherwise dispose of records which are part of the Transferred Assets and Liabilities, Transferred Funds without the prior written approval of the Commonwealth.

7.8 The Company must use the Transferred Assets and Liabilities and Transferred Funds only for the purposes specified in clauses 6.6 and 6.7.

8. SUSPENSION OR TERMINATION OF AGREEMENT

8.1 The Commonwealth may issue a notice to the RDC indicating its intention to terminate this Agreement in the following circumstances:
   (a) an insolvency Event occurring; or
   (b) a material breach by the RDC of this Agreement or the Act; or
(e) a change to the RDC’s Constitution which the Commonwealth reasonably considers to be in conflict with this Agreement or the Act; or
(d) revocation of the declaration of the RDC as the Industry Services Body under the Act; or
(e) a change in Commonwealth policy relating to raising or spending of the Levy or the payment or spending of Commonwealth Matching Funds.

8.2 The Commonwealth may issue a notice requiring, within a reasonable time, the RDC to:

(a) rectify the breach of the RDC’s obligations under the Agreement or the Act; and/or
(b) provide a satisfactory report or explanation for the breach; and/or
(c) otherwise remedy the circumstances giving rise to the notice, as directed by the Commonwealth.

A notice issued by the Commonwealth under this clause must specify the:

(d) details of the alleged breach; and
(e) time for compliance; and
(f) consequence of non-compliance.

8.3 If the RDC does not remedy the grounds for the notice under the two preceding clauses, the Commonwealth may, by giving further written notice to the RDC:

(a) direct the RDC to deal with all or any of the Funds in a certain way; and/or
(b) reduce the amount of payment of the Funds that would otherwise be made; and/or
(c) suspend payment of any or all of the Funds; and/or
(d) terminate this Agreement.

8.4 Any dispute in relation to the suspension or termination of this Agreement will be dealt with in accordance with clause 23.

8.5 The Commonwealth must not terminate this Agreement (other than pursuant to clauses 8.1(a) or 8.1(d)) unless it has:

(a) first, provided an explanation to the RDC of its intention to terminate and consulted with the RDC in relation to that explanation;
(b) second, issued a notice to the RDC advising the RDC it has three months to respond to the explanation provided in 8.5(a);
(c) third, had regard to any matters raised by the RDC in response (including, but not limited to, matters related to any long term commitments of the RDC); and

(d) fourthly, subject to meeting the requirements of the preceding subclauses, the Commonwealth may issue a notice of termination, specifying the date on which such termination shall be effective, provided that such date is not earlier than six months after the issue of the notice.

8.6 Where a termination notice has been issued by the Commonwealth to the RDC in accordance with the process set out in clause 8.5, the RDC must prepare a plan for cessation of operations (a Cessation Plan) of the RDC as the Industry Services Body, including arrangements for the repayment or transfer of the Funds to or as directed by the Commonwealth and for the payment of employee entitlements and other commitments and expenses, by the termination date that is specified in that notice, or within such other period as the Parties agree, such agreement not to be unreasonably withheld.

9. **REPAYMENT OF FUNDS**

9.1 If any part of the Funds has been used or expended by the RDC otherwise than in accordance with this Agreement or the Act, the Commonwealth may, by written notice to the RDC, require the RDC to repay that part of the Funds. The RDC must repay the amount specified in the notice by the time prescribed in the notice.

9.2 If this Agreement is terminated the Commonwealth may, by notice to the RDC, require the RDC to repay to the Commonwealth, by a time specified in the notice, all or any part of the Funds held by the RDC at the time of the notice. The Commonwealth may not require repayment of any part of the Funds required by the RDC to meet liabilities of the RDC properly incurred in accordance with this Agreement.

9.3 The RDC must repay Funds to the Commonwealth in accordance with a notice under clauses 9.1 or 9.2 as a debt due to the Commonwealth.

9.4 If the RDC repays Funds to the Commonwealth, the Commonwealth must either pay those Funds to another body that is declared under the Act to be the Industry Services Body or otherwise apply those Funds for the benefit of the Industry.
10. EXTENSION OF RESEARCH & DEVELOPMENT

10.1 Extension is carried out to, varying degrees, by almost all participants involved in the rural research and development system, invariably also partners to the National Primary Industries RD&E Strategy. To ensure effective extension of research and development the RDC must:

(a) include in its Strategic Plan how it addresses extension, technology transfer and commercialisation of Research and Development;

(b) demonstrate that the pathways to extension and adoption are incorporated into the planning and approval process; and

(c) report on its extension activities in accordance with clause 12.15.

11. PLANS

Strategic Plan

11.1 The RDC must maintain a Strategic Plan covering a three to five year period and must:

(a) review and, if necessary, update the Strategic Plan at least once every year; and

(b) work with the Commonwealth during the term of this Agreement to ensure that its Strategic Plan has regard to the intent of the Rural Research and Development Policy Statement (as at July 2012) and Program Framework; and

(c) obtain the Minister’s endorsement of each new or amended draft Strategic Plan; and the Department must take all reasonable efforts to ensure that this endorsement is given within 30 days of the Strategic Plan being submitted to it by the RDC. The parties agree that until such time as the Minister’s views on the final draft Strategic Plan are known, once the current plan has expired, the RDC may act in accordance with the new or amended draft Strategic Plan notwithstanding that it has not received the Minister’s formal endorsement; and

(d) provide the Commonwealth with a copy of a new or amended Strategic Plan, as appropriate, within 30 days of approval by the Board; and
(e) publish the Strategic Plan on its website within 30 days of approval.

11.2 The Strategic Plan must be prepared in accordance with good planning practice and must cover matters such as:

(a) the RDC’s vision or mission;
(b) an assessment of the RDC’s operating environment including its strengths, weaknesses, threats and opportunities, and including current and future trends and implications;
(c) collaboration with other RDCs on priority Research and Development issues;
(d) consultation with Industry and an explanation on the extent to which Industry priorities are reflected in the plan;
(e) key investment priorities and outcomes planned for the period of the plan;
(f) the programs that the RDC intends to adopt to achieve the planned outcomes;
(g) key deliverables which contribute to achieving the planned outcomes;
(h) performance indicators that enable progress being made towards achieving planned outcomes to be monitored and reported upon;
(i) how the activities to be funded align with, and give effect to, the Guidelines and the National Sugarcane Industry RD&E Strategy;
(j) research extension and adoption pathways;
(k) how it addresses extension, technology transfer, and commercialisation of research and development and demonstrate that extension and adoption are incorporated into the planning and approval process;
(l) estimates of income and expenditure for the life of the plan including broad estimates of expenditure for each program for the life of the plan; and
(m) an explanatory statement of the RDC’s approach to ensuring a Balanced Portfolio of Research and Development appropriate to its industry.

11.3 In developing the Strategic Plan, the RDC must develop and obtain the Minister’s approval of a consultation plan including, details of proposed consultations with:

(a) the Commonwealth; and
(b) Levy Payers; and
(c) Industry Representative Bodies; and
(d) other RDCs as appropriate; and
(e) other stakeholders as appropriate.
11.4 The approved consultation plan is to be published on the RDC's website.

11.5 The Commonwealth must treat the Strategic Plan, and each amendment of the Strategic Plan, as Confidential Information until the Strategic Plan or amendment is publicly released by the RDC.

11.6 The RDC must seek agreement of the Minister for an interim Strategic Plan within one month of the date of agreement. The interim strategic plan will expire on the commencement of the approval of the first Strategic Plan.

11.7 The RDC must seek agreement from the Minister for its first Strategic Plan within 6 months of the date of agreement.

**Annual Operational Plan**

11.8 The RDC must, prior to 1 July each year, provide to the Commonwealth an Annual Operational Plan to implement the Strategic Plan setting out:

(a) the intended operations of the RDC for the next financial year; and

(b) the key programs and activities to be funded by the RDC during the year under each of the Research and Development programs of the RDC; and

(c) activities to be funded to give effect to the Guidelines; and

(d) key deliverables arising from the activities planned; and

(e) performance indicators, timetables and milestones relating to the RDC's proposed activities and expenditure which enable the progress being made towards achieving the planned outcomes to be monitored and reported upon; and

(f) estimates of income and expenditure for the financial year which include:

   (i) the amounts to be received by the RDC, separately, in respect of Research and Development Payments and Commonwealth Matching Payments and any other form of income; and

   (ii) expenditure by the RDC on Research and Development Programs; and

(g) any other matters the Directors consider should be set out in the plan; and

(h) a statement on how the RDC intends to implement and operationalise a Balanced Portfolio appropriate to the Industry for the next financial year.

11.9 The RDC must submit all plans developed in accordance with clause 11.8, and all material variations or updates of such plans, to the Commonwealth within 30 days of the plans or variations being adopted by the RDC.
11.10 The Commonwealth must treat a plan or an amended plan provided to it as Confidential Information until it is publicly released by the RDC.

11.11 The RDC should agree with the Department, within 3 months of the date of agreement, an interim Annual Operational Plan to cover the remainder of the first financial year from the date of agreement.

Other Plans

11.12 The RDC must implement the following plans:
    (a) a Risk Management Plan; and
    (b) a Fraud Control Plan; and
    (c) an Intellectual Property Management Plan; and
    (d) an Asset Management Plan.

11.13 The RDC must review these plans at intervals of no more than four years.

11.14 The RDC must provide the Commonwealth with a copy of the plans, or amendments to the plans, within 30 days of their approval by the Board.

11.15 The Commonwealth must treat a plan or an amended plan as Confidential Information until it is publicly released by the RDC.

12. REPORTS

Compliance Audit Report

12.1 The RDC must, within five months after the end of its financial year, give the Commonwealth a report (Compliance Audit Report), providing an audit opinion on whether the RDC has complied with its obligations under clauses 6 and 7 during the financial year. A Compliance Audit Report must:
    (a) be prepared in accordance with relevant Australian Auditing and Assurance Standards; and
    (b) include a review of the efficacy of the accounting systems processes and controls required under clause 7.1; and
    (c) indicate whether any qualifications to the Compliance Audit Report, and any incidences of non-compliance that have come to the auditor’s attention, are material; and

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(d) if an incidence of non-compliance is, in the auditor’s opinion, material, provide an explanation of the incident of non-compliance; and
(c) include a statement that the Compliance Audit Report has been prepared for the Commonwealth for the purposes of this Agreement.

12.2 A Compliance Audit Report need not include an opinion whether the Funds have been applied for the benefit of Industry, or Efficiently, Effectively, Economically and Ethically or for Agri-Political purposes.

**Certification Report**

12.3 The RDC must, within five months after the end of its financial year, give the Minister a report (a Certification Report) from the Board of Directors of the RDC, signed by the Chairperson of the Board and the Chief Executive Officer (or equivalent) of the RDC:

(a) certifying whether the RDC has complied with its obligations under the Act and this Agreement during the financial year; and
(b) stating whether, in their opinion, any non-compliances are material; and
(c) if any non-compliances are, in their opinion, material, giving an explanation of the non-compliance; and
(d) an acknowledgement that the Certification Report will be relied upon by the Commonwealth.

**Other Audit Reports**

12.4 If, in the reasonable opinion of the Commonwealth, the RDC is in or may be in breach of this Agreement or the Act, the Commonwealth may request an audit report or opinion on any matter relevant to the RDC’s compliance with this Agreement and/or the Act.

12.5 If the Commonwealth requests an audit report or opinion under clause 12.4, the RDC must at its own expense:

(a) obtain the audit report or opinion from the RDC’s auditor; or
(b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by the RDC’s auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
(e) give a copy of the audit report or opinion to the Commonwealth within 14
days after the RDC receives it.

Annual Reports

12.6 The RDC must prepare its annual report in accordance with the Corporations Act
2001 (Cth) as appropriate. It must also meet the requirements of this Agreement.

12.7 The RDC must provide four copies of its annual report, prepared in accordance with
clause 12.6, to the Commonwealth by December each year.

12.8 Additional information beyond the requirements of the Corporations Act 2001 (Cth)
required to meet the requirements of this Agreement can be provided to the
Commonwealth separately if so desired by the RDC.

12.9 The Annual Report should also include reasonably comprehensive coverage of:

(a) sources of income allowing for separate identification of Research and
Development Payments, and Matching Payments;

(b) full cost of each program, with costs being allocated in accordance with the
Cost Allocation Policy;

(c) progress made in implementing plans, including progress against key
performance indicators specified in the plans;

(d) key Company and program deliverables and associated outcomes achieved;

(e) alignment of programs and outcomes with Priorities;

(f) progress in implementing the Rural Research and Development Policy
Statement;

(g) collaboration with Industry and other research providers;

(h) directions given by the Minister under the Guidelines;

(i) consultation with Levy Payers and Industry Representative Bodies on its
Strategic and Annual Operational Plans, and programs and activities;

(j) details of Senior Executive and Board remuneration (any changes to
Government disclosure requirements will be advised by the Commonwealth
in the lead up to preparation of each Annual Report);

(k) the rationale for the mix of projects included in the Balanced Portfolio;

(l) a report on the RDC’s contribution to the implementation of relevant
industry sector and cross-sectoral strategies under the RD&E framework;

and
(m) other matters notified to the RDC by the Commonwealth to which the RDC has reasonable access to the information sought.

Other Reports

12.10 The RDC must report to the Commonwealth any significant matters that have come to the RDC’s notice that will or may affect the RDC’s ability to achieve the outcomes stated in its Strategic Plan or comply with its obligations under this Agreement within 30 days of becoming aware of that matter.

12.11 In addition to the reports required under clauses 12.6 and 12.10, the RDC must give the Commonwealth, within such reasonable period as the Department specifies, any other report or explanation relating to management and expenditure of the Funds that the Commonwealth requires from time to time.

12.12 When giving the reports or explanations referred to in clause 12.11, the RDC must consult with the Commonwealth as to the nature of any action required and must take that action within a timeframe agreed with the Department.

12.13 During the first twelve months of operation the Company must, within one month after the end of each six month period ending 30 June and 31 December, provide the Commonwealth with the following financial information for that period:

(a) a statement of the Company’s financial performance; and

(b) a statement of the Company’s financial position.

12.14 The financial information referred to in clause 12.13 shall be certified as being complete and accurate by the Chief Executive Officer or equivalent officer of the Company.

12.15 The RDC will report annually (in relation to the period covered by the last Annual Operational Plan) to the Commonwealth setting out how it addresses extension, technology transfer and commercialisation of R&D.

12.16 The RDC will report its contribution to the implementation of relevant industry sector and cross-sectoral strategies under the RD&E framework.

13. REVIEW OF PERFORMANCE

13.1 The RDC must complete a Performance Review six months before the expiry of this agreement and must:
(a) engage an independent organisation to undertake the Performance Review and prepare a report on the Performance Review (the Performance Review Report); and

(b) agree the terms of reference at least six months before the Performance Review commences with the Commonwealth to ensure that the Performance Review will meet the requirements of this Agreement; and

(c) meet RDC specific measures as advised by the Commonwealth, such as incorporating outcomes of levy polls; and

(d) provide the Commonwealth with a copy of the draft Performance Review Report at the same time as the board receives a copy; and

(e) provide the final Performance Review Report to the Commonwealth within 14 days of its acceptance by the board; and

(f) develop a response to the final Performance Review Report and a proposed implementation plan including dates and milestones for the implementation of recommendations within three months of the board's acceptance of the Performance Review Report; and

(g) provide the Commonwealth with the response developed under clause 13.1(f) within 30 days of the Board’s acceptance of that response; and

(h) report to the Commonwealth in the meetings required under clause 15.1 of the progress in implementing the Performance Review Report recommendations; and

(i) publish the Performance Review Report and the RDC’s response to the Performance Review Report recommendations on the RDC’s website.

13.2 The independent organisation engaged to carry out the Performance Review must be an organisation that has not, within the previous four years, carried out any corporate governance activity or reviews, performance audit or similar reviews of the RDC.

13.3 The Performance Review will take into account:

(a) the performance of the RDC in meeting its obligations under this Agreement; and

(b) the RDC’s development and implementation of its Strategic, Annual Operational, Risk Management, Fraud Control, Intellectual Property Management and Asset Management plans, and the RDC’s effectiveness in meeting the priorities, targets and budgets set out in those plans; and

(c) the efficiency with which the RDC carried out those plans; and
(d) the delivery of benefits to the Industry foreshadowed by those plans; and
(e) any other matters consistent with the RDC’s Strategic Plan and the Act for
the period of the Review reasonably required by the Minister to be covered
and any other issues relevant to the industry or sector that may require
specific attention.

14. PERFORMANCE MANAGEMENT

14.1 If, in the opinion of the Commonwealth, the RDC is underperforming, the
Commonwealth will first consult with the RDC as to determine the accuracy and
reasonableness of such opinions, including the existence and the nature of the
underperformance.

14.2 To support the parties to clarify the existence and/or nature of the underperformance
and to develop appropriate responses the Commonwealth may:

(a) request additional reports including audit reports related to the
underperformance be provided in accordance with clause 12.11; or
(b) in consultation with the RDC, use their best endeavours to develop and
agree a work plan for the RDC to resolve that underperformance; and
(c) invoke its powers under this Agreement to provide the RDC with a
direction in accordance with clause 15.7.

14.3 Any disputes relating to the existence or nature of the underperformance will be dealt
with in accordance with clause 23.

15. CONSULTATIONS AND DIRECTIONS

Consultation with the department

15.1 The Chairperson of the RDC, or in their absence, their nominee (who must be a
Director), must meet with the Commonwealth at not more than six-monthly intervals,
the first meeting to be held within four weeks of the declaration of the Industry
Services Body, or at any other time requested by the Commonwealth on reasonable
notice, to brief the Commonwealth on the RDC’s performance of its functions as the
Industry Services Body including:

(a) progress on implementing the RDC’s Annual Operational Plan and
Strategic Plan;
(b) progress on the implementation of the relevant sectoral and cross-sectoral strategies under the National Primary Industries RD&E Framework;
(c) consultation with other RDCs and Industry Representative Bodies;
(d) measures taken to enhance corporate governance in accordance with clause 4;
(e) progress in developing and implementing the Evaluation Framework;
(f) progress on implementing the recommendations from the most recent Performance Review; and
(g) the development and implementation of additional systems, processes and controls necessary to meet the requirements of this Agreement required by clause 7.5 of this Agreement.

15.2 At the six monthly meeting, referred to in clause 15.1, the Commonwealth will provide the RDC with an update on key Commonwealth activities, including levy collections.

Consultation with Industry

15.3 The Commonwealth must report annually to Industry stakeholders on the performance of the RDC model.

15.4 The RDC must consult with Industry Representative Bodies at not more than six-monthly intervals to:

(a) review Industry priorities for Research and Development investments, including any regional equity considerations; and
(b) report on the RDC’s performance against the Strategic Plan and the Annual Operational Plan.

Consultation with Research, Development and Extension providers

15.5 As part of a project selection process the RDC must provide appropriate feedback to unsuccessful applicants in accordance with an agreed process.
Ministerial Directions & changes to the Guidelines

15.6 Subject to clause 15.7 the Commonwealth may vary the Guidelines provided that:
(a) it consults with the RDC prior to the variation; and
(b) it gives the RDC a reasonable period or implement the variation.

15.7 If the Department becomes aware of a proposal for the issue by the Minister of a direction under this Agreement including under paragraph (b) of the definition of ‘Guidelines’ in clause 1:
(a) the Department agrees to use reasonable endeavours to inform the RDC of the proposal; and
(b) if the Directors of the RDC are of the reasonable opinion that the proposed direction would require the Directors to act, or omit to act, in a manner that is likely to breach the duties owed by the Directors to the stakeholders or be in contravention of any law or the Company’s constitution, the Directors must notify the Department of this; and
(c) the Commonwealth and the RDC must engage in discussion about the relevant issue including to consider whether there is a mutually acceptable resolution.

15.8 Any disputes relating to these directions will be resolved in accordance with clause 23.

16. ACCESS TO RECORDS AND USE OF INFORMATION

16.1 The Commonwealth, the Auditor-General and any duly authorised representative of either of them, may, for the purpose of monitoring compliance by the RDC with this Agreement and the Act, have access to:
(a) premises occupied by or under the control of the RDC; and
(b) data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of the RDC.

16.2 The RDC must grant this access, on request:
(a) during Business Hours – at any time on reasonable notice in writing; and
(b) outside Business Hours – on 48 hours’ notice given to the RDC and marked for the attention of the Chief Executive Officer or equivalent of the RDC.
16.3 The RDC must provide access to all its accounts and records relating to this Agreement and the Act and otherwise co-operate fully with the Commonwealth the Auditor-General or any duly authorised representative of either of them to enable them to exercise their rights under clause 16.1.

16.4 Each party must, in respect of Confidential Information given by the other party:

(a) use that Confidential Information only for the purposes of administering or enforcing this Agreement or the Act; and

(b) not disclose that Confidential Information to any person without the prior approval in writing from the other party and subject to any reasonable conditions or restrictions imposed by the other party in giving approval.

16.5 A party will not be in breach of this clause to the extent that it is legally obliged to make a particular use or disclosure of Confidential Information.

16.6 The Commonwealth will not be in breach of clause 16.4 in respect of Confidential Information given by the RDC and held by the Commonwealth where a request is made by Parliament (including a committee of Parliament) for that information to be given to Parliament, provided that the Commonwealth notifies Parliament of the confidential nature of the information and requests Parliament hold and deal with that information on an in camera basis.

16.7 The RDC grants the Commonwealth a licence to use the copyright in any document provided to the Commonwealth under this Agreement in any way for any purpose of the Commonwealth. A document provided to the Commonwealth is a document in which the RDC owns or is a licensee of copyright (whether alone or with one or more other persons). This clause does not amount to an assignment of copyright.

17. INDEMNITY

17.1 The RDC indemnifies the Commonwealth, its officers and agents against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the person claiming the indemnity) sustained or incurred as a result, whether directly or indirectly, of:

(a) any breach of this Agreement by the RDC; or
(b) any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the RDC or its officers and employees.

17.2 The amount payable under an indemnity under clause 17.1 is reduced to the extent that the expenses, losses, damages and costs concerned were caused or contributed to by a breach of this Agreement by, or a negligent act or omission of the Commonwealth, or a negligent act or omission or wilful misconduct of an officer or agent of the Commonwealth.

17.3 The RDC agrees that a person indemnified under clause 17.1 may recover a payment under an indemnity in this Agreement before the person makes the payment in respect of which the indemnity is given.

17.4 The indemnities in this Agreement are irrevocable and survive the termination of this Agreement.

17.5 The RDC agrees that the Commonwealth holds the benefit of an indemnity under clause 17.1 in favour of an officer or agent of the Commonwealth in trust for the officer or agent.

18. CONFLICT OF INTEREST

18.1 The RDC warrants that, at the date of this Agreement, no conflict exists or is likely to arise in the performance of its obligations under this Agreement.

18.2 If a conflict of interest, or risk of a conflict of interest, arises in the performance of the RDC’s obligations under this Agreement, the RDC must notify the Minister of that conflict or risk and take steps acceptable to the Minister to resolve or avoid the conflict.

19. ACKNOWLEDGEMENT OF FUNDING

19.1 Unless otherwise agreed with the Commonwealth, the RDC must ensure that all significant publications and publicity by the RDC in relation to matters on which Commonwealth Matching Payments are expended acknowledge the provision of the Matching Payments by the Commonwealth.
20. **AUTHORISATION OF PERSONS TO ACT**

20.1 The rights, functions and powers of the Commonwealth under this Agreement may be exercised and performed on behalf of the Commonwealth by the Minister or a delegate of the Minister or the Department.

20.2 Performance of an obligation of the Commonwealth under this Agreement by the Minister or a delegate of the Minister or the Department is taken to be performance of the obligation by the Commonwealth.

21. **RELATIONSHIP**

21.1 This Agreement does not create a relationship of employment, agency or partnership between the parties.

22. **FURTHER ACTION**

22.1 Each party must use its best efforts to do all things necessary to give full effect to this Agreement, including the execution of any document requested by either party.

23. **RESOLUTION OF DISPUTES**

23.1 Except where a party seeks urgent interlocutory relief, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement which cannot be resolved by informal discussion ("Dispute") until the procedures set out in this clause 23 have been followed.

23.2 The parties agree that any Dispute arising during the course of this Agreement will be dealt with as follows:

(a) the party claiming that there is a Dispute will send the other party a written notice setting out the nature of the Dispute and requesting a meeting between the parties to discuss that Dispute; and

(b) the parties will have 20 Business Days (or such longer period agreed to in writing by the parties to the Dispute) from the date of the notice within which to hold a meeting of one duly authorised representative of each party, and those representatives must use reasonable efforts to resolve the Dispute.

23.3 If the Dispute is not resolved by the parties at the meeting referred to in clause 23.2(b) the parties must refer the Dispute to mediation, which must be
conducted in Canberra (or elsewhere as agreed in writing between the parties), in accordance with the Institute of Arbitrators and Mediators of Australia Rules for the Mediation of Commercial Disputes (in operation from time to time), except where such Rules conflict with this clause 23, in which case this clause 23 shall prevail.

23.4 If the parties have not agreed upon the mediator and the mediator’s remuneration within 5 Business Days after the Dispute is referred to mediation in accordance with clause 23.3:

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by, the Chairman of the Institute of Arbitrators and Mediators Australia (Chairman), or the Chairman’s nominee.

23.5 The mediator’s remuneration must be paid by the parties in equal proportions.

23.6 The mediation is confidential and the parties each acknowledge and agree that:

(a) written statements prepared by the mediator or the parties; and

(b) any discussions between the participants to the mediation, before or during the mediation, cannot be used or relied upon by either party in any subsequent legal proceedings.

23.7 Despite the existence of a Dispute, both parties must, unless requested in writing by the other party not to do so, continue to perform their respective obligations under this Agreement.

23.8 If there is no resolution of the Dispute within 20 Business Days of the commencement of the mediation (or such extended time as the parties may agree in writing before the expiration of that period), then either party may commence legal proceedings in respect of the Dispute.

24. ASSIGNMENT

24.1 The RDC must not assign or novate this Agreement or any right or obligation under this Agreement unless the RDC:

(a) is not in breach of this Agreement; and

(b) obtains the prior written consent of the Commonwealth; and

(c) ensures that the assignee agrees to be bound by all of the RDC’s obligations under this Agreement.
25. ENTIRE AGREEMENT

25.1 This Agreement:

(a) constitutes the entire agreement between the parties as to its subject matter;

and

(b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

26. ALTERATION

26.1 Except as expressly permitted under this Agreement, this Agreement may be altered only by an agreement in writing signed by each party.

27. WAIVER

27.1 Waiver of any provision of or right under this Agreement:

(a) must be in writing signed by the party entitled to the benefit of that provision or right; and

(b) is effective only to the extent set out in any written waiver.

28. SEVERABILITY

28.1 Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

29. GOVERNING LAW AND JURISDICTION

29.1 This Agreement is governed by the law applicable in the Australian Capital Territory.

29.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in relation to matters arising in connection with this Agreement.
30. **NOTICE**

30.1 A party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:

   (a) directed to the recipient’s address specified in this clause, as varied by any notice; or

   (b) hand delivered or sent by prepaid post to facsimile or Electronic Communication to that address.

30.2 The parties’ addresses are:

<table>
<thead>
<tr>
<th>Commonwealth</th>
<th>The Secretary</th>
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<tbody>
<tr>
<td></td>
<td>Department of Agriculture, Fisheries and Forestry</td>
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<tr>
<td></td>
<td>GPO Box 858</td>
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<tr>
<td></td>
<td>CANBERRA ACT 2601</td>
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<td></td>
<td>Fax: 02 6272 3025</td>
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<td></td>
<td>Email: <a href="mailto:andrew.metcalf@daff.gov.au">andrew.metcalf@daff.gov.au</a></td>
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<tr>
<td></td>
<td>cc: <a href="mailto:RDCGovernance@daff.gov.au">RDCGovernance@daff.gov.au</a></td>
</tr>
<tr>
<td>Sugar Research Australia Limited</td>
<td>Chief Executive Officer</td>
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<td></td>
<td>Sugar Research Australia Limited</td>
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<tr>
<td></td>
<td>50 Meiers Road</td>
</tr>
<tr>
<td></td>
<td>INDOOROOPILLY QLD 4068</td>
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<tr>
<td></td>
<td>Fax: (07) 3871 0383.</td>
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<tr>
<td></td>
<td>Email: <a href="mailto:nfisher@sugarresearch.com.au">nfisher@sugarresearch.com.au</a></td>
</tr>
<tr>
<td></td>
<td>cc: <a href="mailto:jstaddon@sugarresearch.com.au">jstaddon@sugarresearch.com.au</a></td>
</tr>
</tbody>
</table>

30.3 A notice given in accordance with clause 30.1 is taken to be received if:

   (a) hand delivered—on delivery; or

   (b) if sent by prepaid post—3 Business Days after the date of posting; or
(c) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the notices unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
(d) if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).

31. INTERPRETATION

31.1 In this Agreement, unless the contrary intention appears:

(a) the words “includes” and “including” are not words of limitation;
(b) headings are for ease of reference only and do not affect the meaning of this Agreement;
(c) the singular includes the plural and vice versa and words importing a gender include other genders;
(d) other grammatical forms of defined words or expressions have corresponding meanings;
(e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
(f) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
(g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
(h) a reference to a party includes its executors, administrators, successors and permitted assigns;
(i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
(j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth); and
(k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

31.2 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

31.3 Where a provision of this Agreement requires a thing to be done on a day which is a Saturday, Sunday or public holiday in the place at which the thing is to be done, that provision shall be taken to require the thing to be done on the next day which is not a Saturday, Sunday or public holiday at that place.

31.4 The Schedules are provisions of this Agreement, but notes and headings are not provisions of this Agreement.
SCHEDULE 1– RESEARCH, DEVELOPMENT AND EXTENSION ACTIVITIES

31.5 Examples of activities which may be determined to be Research, Development and Extension activities are:

(a) the development of workforce skills, education and the training of people to undertake Research and Development and apply the outcomes;

(b) the building of strong Research and Development leadership capacity and encouraging diversity of people across the Industry;

(c) the investigation and evaluation of the requirements for Research and Development and, on the basis of such investigation and evaluation, the preparation, reviewing and revising of Research and Development plans;

(d) the carrying out, and the coordination and funding of the carrying out of Research and Development;

(e) the monitoring, evaluating and the reporting to the Commonwealth and the Industry on Research and Development funded by the RDC;

(f) facilitating the dissemination, extension, adoption and commercialisation of the results of Research and Development or of practices or technological developments that have been designed or adapted to improve the operation or efficiency of the Industry;

(g) the dissemination of information related to any aspect of Research and Development whether electronically, by print or by any other means;

(h) improving the accountability for expenditure on Research and Development activities in relation to the Industry;

(i) the development in the Industry of an awareness of the contribution that can be made by Research and Development in improving its efficiency and competitiveness;

(j) the collection and interpretation of statistical information on the Industry;

(k) such other activities as may be approved by the Commonwealth in writing from time to time;

(l) engaging Directors, employees, consultants and agents of the RDC and in meeting administration, operating or capital expenses (including, but not limited to, lease costs and legal and other professional expenses) reasonably
necessary or appropriate to be incurred by the RDC to support its Research and Development Activities; and

(m)any activity incidental but considered important to its Research and Development Activities.
SIGNING PAGE

EXECUTED as an agreement

SIGNED for and on behalf of the COMMONWEALTH OF AUSTRALIA by the Hon. Joel Andrew Fitzgibbon MP Minister for Agriculture, Fisheries and Forestry in the presence of

Signature of witness

Peter McCabe
Name of witness

SIGNED for and on behalf of Sugar Research Australia Limited by

Mr Paul Wright AM
Name of signatory Chairman
Position of signatory

Signature

26 July 2013
Date

in the presence of

Signature of witness

Mr Neil Fisher
Name of witness