



# **2016 EXAMPLE FUNDING AGREEMENT**

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## FUNDING AGREEMENT

THIS AGREEMENT is made on the    th day of

**BETWEEN:**

(1) Michael Treloar, Bryan Smith and Maxwell Young as trustees for **THE SOUTH AUSTRALIAN GRAIN INDUSTRY TRUST FUND** ABN 23 116 814 640, PO Box 108, Goodwood SA 5034 the "Trust");

and

(2) (the "Grantee").

**THE PARTIES AGREE AND DECLARE AS FOLLOWS:**

### **1. INTERPRETATION**

#### **1.1 Definitions**

In this agreement:

**"Accountant"** means a person who is:

- (a) registered as an auditor under the *Corporations Act 2001* (Commonwealth); or
- (b) a member of The Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants;

**"Application"** means the application for Trust funds submitted to the Trust by the Grantee incorporating the initial Project Plan, as varied by any amendments made in accordance with this agreement;

**"BRR"** means the breeder royalty return, being the EPR less any reasonable costs of commercialisation of the Intellectual Property, which have been approved by the Trust;

**"Budget"** means an annual budget for the Project set out in the Project Plan, as amended in accordance with **clause 4.2**;

**"Capital Item"** means any real or personal property acquired by the Grantee wholly or in part with Trust funds (including, without limitation, land, buildings, improvements, yards, fencing, roads, irrigation facilities, plant, equipment, and livestock) and in relation to any livestock acquired by the Grantee wholly or in part with Trust funds, includes the progeny of such livestock;

**"Category of Expenditure"** means one of the following categories of expenses relating to the Project:

- (a) salary expenses;
- (b) travel expenses;
- (c) operating expenses; and
- (d) capital expenses.

“**Confidential Information**” means any information relating to the Project, this agreement or the parties to this agreement, disclosed by one party to another, whether deliberately or inadvertently, in written form or otherwise, whether before or after the date of this agreement;

“**Depreciation Rate**” means, in relation to a Capital Item, the depreciation rate nominated by the Trust from time to time for items of that type;

“**Employee**” means an employee of the Grantee whose duties relate wholly or in part to the conduct of the Project;

“**EPR**” means the gross end-point royalty for the commercialisation of any Intellectual Property;

“**Final Report**” means the report prepared by the Grantees pursuant to **clause 7.3** of this agreement.

“**Financial Year**” means the financial year of the Trust, being the period commencing on 1 July in each calendar year and finishing on 30 June in each calendar year;

“**Force Majeure**” means a circumstance beyond the reasonable control of the parties, which results in a party being unable to observe or perform on time an obligation under this agreement, including, but not limited to, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, any other natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and industrial action;

“**Form A**” and “**Form B**” mean the forms so marked in Annexure A to this agreement, or such other forms as may be prescribed for the purpose by the Trust from time to time;

“**Intellectual Property**” means any intellectual property rights arising from the Project and includes, without limitation, any rights to or Confidential Information concerning any discovery, invention or process (whether patentable or not) and any process improvement, computer program, know-how, design procedure or technique, information regarding the chemical composition of materials, genetic material, plant variety rights or manufacturing method, process or treatment, whether or not registered or registrable, throughout the world, for the duration of those rights and any renewals;

“**Project**” means the research and development project or projects described in **Schedule 1**, the Application and the Project Plan;

“**Project Plan**” means a project plan prepared in accordance with **clause 4.2** and incorporated in the Application, as varied by any amendments made in accordance with this agreement;

“**Project Term**” means the period commencing on the Commencement Date specified in the schedule to this agreement, and terminating on the earlier of the Completion Date specified in the schedule to this agreement and the date of any notice given by the Trust under the **clause 5.1** of this agreement terminating the Trust’s funding of the Project; and

“**Trust funds**” means all monies provided to the Grantee by the Trust under this agreement.

## **1.2 General**

In this agreement unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;

- (b) a reference to an individual or person includes a Trust, partnership, joint venture, association, authority, trust or government;
- (c) a reference to any gender includes all genders;
- (d) a recital, schedule, annexure or description of the parties forms part of this agreement;
- (e) a reference to either party to this agreement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (f) where an expression is defined, another part of speech or grammatical form has a corresponding meaning; and
- (g) a reference to any organisation, committee or body includes a reference to any successor of that organisation, committee or body.

### **1.3 Headings**

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

## **2. PAYMENTS BY THE TRUST**

### **2.1 Agreement to Provide Funds**

Subject to this agreement, during the Project Term the Trust must provide funding to the Grantee as specified in Schedule 1 (inclusive of GST) to this agreement in order to enable the Grantee to carry out the Project.

### **2.2 Payment Procedure**

Subject to **clause 2.3** of this agreement, during the Project Term the Trust must make one or more payments to the Grantee during each Financial Year in the amounts and at the dates specified in **Schedule 1 ("Payment Dates")**. The Trust will withhold 10% of the second payment of the approved funding for the final year of the Project until a satisfactory Final Report is received in respect of the Project.

The Grantee must issue the Trust with a tax invoice at least 14 days prior to each Payment Date (usually 1 July and 1 January). In the event that the invoice is not received within 28 days from the Payment Date, the trustees reserve the right to cancel the payment and/or the project.

The tax invoice must clearly show the payment amount requested plus an additional component of GST in respect of any supply that is subject to GST. For institutions that have more than one project funded by the Trust, each project must be listed separately on the tax invoice by code and title and clearly marked with the payment amounts required. If the Grantee does not provide the Trust with their ABN number when requesting payments, the Grantee acknowledges that the Trust will be required to withhold 48.5% of any payment.

### **2.3 Withholding Payments**

The Trust will be under no obligation to make any payment to the Grantee under this agreement unless:

- (a) the Grantee has complied with all of its obligations under this agreement arising prior to the date of the payment, including, without limitation, the Grantee's accounting and reporting obligations under **clauses 6 and 7** of this agreement, the Grantee's obligation to provide an approved Project Plan pursuant to **clause 4.2** and any milestones or performance targets set out in the Project Plan;

- (b) the Trust has sufficient funds to enable it to make the payment to the Grantee and to make all other payments during the relevant Financial Year under all other funding agreements entered into by the Trust with any other parties;
- (c) in the opinion of the Trust, the Grantee has a continuing need for funding; and
- (d) the Grantee has fully expended or has committed to expend all funds previously provided to the Grantee by the Trust under this agreement.

#### **2.4 Trust funds to be Expended on an Annual Basis**

The Grantee must use its best endeavours to expend all funds received from the Trust within the same Financial Year as the funds are received by the Grantee.

### **3. USE OF FUNDS**

#### **3.1 General Obligation**

The Grantee must only use funds received from the Trust to meet expenses of the Project as outlined in the Budget. Administrative and organisation expenses of the Grantee are not considered to be expenses of the Project for the purposes of this agreement.

#### **3.2 Obligation to Return Unused Funds at the End of the Project Term**

Within 2 months of the end of the Project Term, the Grantee must return to the Trust any funds not expended on expenses of the Project.

#### **3.3 Obligation to Return Unused Funds Each Financial Year**

Unless otherwise agreed in writing by the Trust, within 2 months of the end of each Financial Year during which the Grantee receives funds from the Trust, the Grantee must return to the Trust any funds received during that Financial Year that were not expended on expenses of the Project during the Financial Year. [The Grantee should note that the policy of the Trust is not to permit funds to be carried forward for more than one year.]

#### **3.4 Categories of Expenditure**

Subject to **clause 3.5** of this agreement, the Grantee must expend Trust funds allocated by the Trust in relation to particular Categories of Expenditure on expenses of the Project properly categorised as falling under those Categories of Expenditure, as specified in the Budget.

#### **3.5 Transfers of Expenditure**

If the expenses of the Project properly categorised as falling under a Category of Expenditure exceed the available Trust funds allocated in relation to that Category of Expenditure, the Grantee may pay up to \$5,000 (or such greater amount as the Trust may first approve in writing) of those expenses from funds allocated in relation to a different Category of Expenditure in each Financial Year provided that the Grantee notifies the Trust in the form set out in Form B:

- (a) for expenditure totalling \$5,000 or more – prior to the expenditure of those funds, and the Trust approves the expenditure; or
- (b) for expenditure totalling less than \$5,000 – as soon as possible after the expenditure.



## 4. CONDUCT OF PROJECT

### 4.1 *Carrying out of Project*

The Grantee must:

- (a) use its reasonable endeavours to carry out the Project in a proper and professional manner during the Project Term;
- (b) provide at its own expense all facilities, services, premises and third party assistance specified in the Application or required to conveniently carry out the Project; and
- (c) conduct the Project in accordance with Application and the Project Plan.
- (d) Participate in a half day training session covering communication of results, presentation skills and reporting style.

### 4.2 *Application and Project Plan*

- (a) Prior to the commencement of this agreement, the Grantee will provide to the Trust a Project Plan for the Project consistent with any criteria including:
  - (i) details of research and works to be undertaken in relation to the Project;
  - (ii) details of objectives and anticipated results for the Project;
  - (iii) specific milestones and performance targets relating to the Project and expected outcomes from the Project;
  - (iv) a detailed Budget for the Project including breakdowns for expenditure by Financial Year and Categories of Expenditure, compatible with Form A and Form B; and
  - (v) any other information relevant to the conduct of the Project or other information required by the Trust to be included in the Project Plan.
- (b) The Project Plan must be included in the initial Application for funds from the Trust. The Project Plan and Application will form part of this agreement in respect of any funds to be provided by the Trust to the Grantee for the Project.
- (c) The Grantee may review and update the Project Plan within 3 months prior to the commencement of each Financial Year of the Project. The Trust will give reasonable consideration to the revised Project Plan within 30 days of its receipt and will notify the Grantee of its approval or disapproval of the submitted revised Project Plan.
- (d) If the Trust disapproves of a submitted revised Project Plan, the Trust will notify the Grantee in writing of that disapproval, setting out reasons for that disapproval. The parties will negotiate in good faith to determine any variation to the Project Plan.
- (e) If the Trust does not notify the Grantee of its disapproval of a submitted revised Project Plan within 30 days of receipt of the Project Plan, the Trust will be deemed to have approved that Project Plan.

### 4.3 *Sub-Contracting*

Except to the extent specified in the Application, the Grantee must not sub-contract the conduct of the Project without prior written consent of the Trust. The Grantee will be responsible for any act or omission of any sub-contractor engaged by the Grantee.

#### **4.4 Variation of Project**

Subject to **clause 4.2**, the Grantee may not vary the aims or methodology of the Project or the Project Plan without the prior written consent of the Trust. See 4.2 (c) – (e) above

#### **4.5 Additional Funding**

The Grantee must immediately notify the Trust in writing if it receives funds in relation to the Project from any third party.

#### **4.6 Sale or Licence of Property**

If the Grantee sells, licences or otherwise disposes of any property (other than Intellectual Property) created, constructed or produced during the course of carrying out the Project, within 28 days of the date of sale the Grantee must pay the proceeds of the sale, less the Grantee's reasonable selling costs, to the Trust.

#### **4.7 Delay**

The Grantee must notify the Trust in writing immediately if;

- (a) it does not commence work on the Project within 1 month of the Commencement Date specified in the schedule to this agreement; or
- (b) it ceases work on the Project during the Project Term for any period greater than 1 month.

## **5. TERMINATION OF PROJECT**

### **5.1 Termination by Trust**

- (a) The Trust may immediately terminate its funding of the Project if:
  - (i) the Grantee breaches any provision of this agreement;
  - (ii) in the opinion of the Trust, the Grantee is not conducting the Project in a competent and diligent manner;
  - (iii) a receiver, receiver or manager, liquidator, provisional liquidator or any other external administrator is appointed to the Grantee, or an application is made or a resolution is passed to wind up the Grantee, or in the opinion of the Trust, the Grantee is unable to pay its debts as they fall due; or
  - (iv) the provisions of **clause 16** apply.
- (b) The Trust may terminate its funding of the Project with effect at the end of any Financial Year (or such earlier date as may be agreed between the parties) with 3 months written notice to the Grantee prior to the end of the relevant Financial Year if:
  - (i) in the opinion of the Trust, the Project is unlikely to achieve the objectives, milestones or performance targets set out in the Project Plan;
  - (ii) the Trust's finances do not, in the opinion of the Trust, enable it to continue to fund the Project;

- (iii) in the opinion of the Trust, the Project is not or has ceased to be relevant to the objectives or functions of the Trust or otherwise ceases to be of significant value to the South Australian grains industry; or
- (iv) it would, in the opinion of the Trust, be in the best interests of the South Australian grains industry for the Trust to cease to fund the Project so as to enable the Trust to fund one or more proposed research projects that may, in the opinion of the Trust, be of exceptional benefit to the industry.

## **5.2 Additional Costs**

Where the Trust's funding of the Project has been terminated pursuant to this clause, the Trust may reimburse the Grantee for any reasonable additional costs in connection with the Project necessarily incurred by the Grantee as a result of the early termination, but the Trust is under no obligation to do so.

# **6. FINANCIAL PROVISIONS**

## **6.1 Payments into Account**

The Grantee must pay all funds it receives from the Trust forthwith upon receipt into an account maintained by the Grantee with an Australian bank.

## **6.2 Books of Account**

The Grantee must maintain proper books of account in relation to the expenses of the Project. Such books of account must:

- (a) be complete and be maintained up to date;
- (b) record all expenses of the Project;
- (c) be kept in a manner that permits them to be conveniently and properly audited;
- (d) be drawn up in accordance with any applicable Australian accounting standards; and
- (e) relate only to the Project.

## **6.3 Retention of Records**

The Grantee must obtain invoices or receipts for all expenses relating to the Project and must retain such invoices and receipts for at least three years after the end of the Project Term.

## **6.4 Financial Reports**

The Grantee must forward to the Trust as soon as possible following the end of each Financial Year during which funds are received by the Grantee from the Trust (and in any event within 2 months of the end of each Financial Year):

- (a) a "Statement of Receipts and Expenditure" relating to the Project for the preceding Financial Year in the form of Form A, certified to be true and correct by an Accountant;
- (b) a "List of Transfers" relating to the Project for the preceding Financial Year in the form of Form B, detailing the transfers of expenditure (if any) made pursuant to **clause 3.4** of this agreement; and
- (c) a statement signed by an Accountant addressed to the Trust certifying that the Accountant is satisfied that all Trust funds expended during the course of the

Financial Year to which the statements referred to in paragraphs (a) and (b) above relate were expended on expenses of the Project.

### **6.5 Inspection by the Trust**

The Grantee must permit the Trust (including any agent of the Trust) from time to time and at all reasonable times:

- (a) to inspect work being carried out in connection with the Project, and
- (b) to examine and copy all accounts and other records required to be kept or maintained by the Grantee under this agreement (including all statements issued by the relevant bank for the account into which Trust funds are deposited) and all other documents relating to the Project (except for data provided to the Grantee by a third party on a confidential basis).

### **6.6 Audit**

The Trust may from time to time at its expense arrange for the accounts maintained by the Grantee in relation to this Project to be audited, and the Grantee must give all reasonable assistance to the Trust and its auditor in relation to any such audit.

## **7. REPORTING OBLIGATIONS**

### **7.1 Periodic Reports**

Each project will require a Progress Report by 31 January (unless otherwise advised) of year, outlining:

- (a) current progress;
- (b) the extent to which objectives have been achieved;
- (c) milestones or performance targets achieved, and not achieved
- (d) any discoveries made and conclusions reached
  
- (e) any changes in principle staffing
- (f) any Intellectual Property developed or discovered;
- (g) any difficulties encountered, and what remedial steps were taken or are proposed, and
- (h) a simple dot point summary of the project and findings, suitable as the basis for an item in the rural media.

### **7.2 Additional Information**

The Grantee must from time to time provide such information or reports to the Trust regarding the progress and results of the Project as the Trust may require.

### **7.3 Final Report**

Within 2 months after the end of the Project Term (usually 30 June), the Grantee must provide the Trust a Final Report relating to the Project. The Final Report must detail:

- (a) the Project objectives;
- (b) the extent to which the Project objectives and milestones were achieved;
- (c) the research results and benefits;

- (d) the difficulties encountered;
- (e) the application of the results of the Project to industry;
- (f) any Intellectual Property developed or discovered throughout the Project;
- (g) a list of scientific papers or publications resulting from the Project;
- (h) the Grantee's recommendations for any further research;
- (i) a simple dot point summary of the project and findings, suitable as the basis for an item in the rural media, and
- (j) such other details as may be prescribed by the Trust in the Trust's paper on final reports, as amended from time to time.

If a Final Report contains Confidential Information relating to Intellectual Property or any other matter, the Trust may require the Grantee to produce an edition of the Final Report in a form suitable for general distribution.

#### **7.4 Ownership of Reports**

All reports (including a Final Report) provided to the Trust by the Grantee pursuant to this clause will become the property of the Trust free from any encumbrance or obligation of confidentiality owed to the Grantee in respect of those reports. Subject to **clause 8** of this agreement, the Trust may use such reports in any manner it considers appropriate and may provide copies of such reports to any person.

## **8. INTELLECTUAL PROPERTY**

### **8.1 Reporting Discoveries**

- (a) The Grantee must inform the Trust promptly in writing of the discovery or production of any Intellectual Property. The Trust must treat such information as confidential and such information will form part of the Confidential Information.
- (b) The Grantee must keep a register detailing all financial inputs (including in-kind) and Intellectual Property developed or discovered through the Project, as well as any third party contributions to and interests in that Intellectual Property.
- (c) The Grantee must make the register available for inspection by the Trust at the premises at which the Project is carried out. The Trust will be entitled to inspect the register with reasonable notice to the Grantee and the Trust will be permitted to make copies of the register for its own use.

### **8.2 Ownership**

- (a) The Grantee and the Trust will be entitled to the ownership and any profits resulting from the exploitation of the Intellectual Property in the proportion of BRR or other IP revenue specified in Schedule 2 to this agreement.
- (b) If no proportion is specified in Schedule 2, during the Project Term and within 6 months after the end of the Project Term and in any event prior to any commercial exploitation of the Intellectual Property, the Trust and the Grantee must negotiate in good faith to agree each party's share of the ownership rights and any BRR or other IP revenue resulting from the exploitation of the Intellectual Property. In negotiating each party's share in the Intellectual Property, the parties must take into account the relevant considerations set out in Schedule 2.
- (c) If the Trust and the Grantee are unable to reach agreement through negotiations conducted in accordance with **clause 8.2(b)**, the Trust will be entitled to a proportion of the ownership and any BRR or other IP revenue resulting from the

exploitation of the Intellectual Property equal to the proportion of the total expenses of the Project that were paid by funds provided by the Trust.

### **8.3 Acts to Evidence, Register or Defend Intellectual Property**

- (a) Where the Grantee or the Trust reasonably considers that it would be appropriate to seek registration of the Intellectual Property, the Grantee or the Trust must notify the other of the type and jurisdiction of such registration.
- (b) The Grantee will as soon as possible apply for any form of registration notified in accordance with **clause 8.3** in the joint names of the Grantee and the Trust. The Grantee will use its best endeavours to ensure the timely and accurate registration of the Intellectual Property at its own expense with respect to all costs associated any application, registration and maintenance of that registration.
- (c) The Grantee and the Trust must, at the request of the other party, execute any documents or do any other act reasonably required to evidence ownership of the Intellectual Property, to effect registration or protection of the Intellectual Property, or to defend or maintain the Intellectual Property.

### **8.4 Limitation on Exploitation**

The Grantee must not commercially exploit any Intellectual Property, assign or license its interest in any Intellectual Property or register any interest in any Intellectual Property without the prior written agreement of the Trust. The Grantee and the Trust must negotiate in good faith in relation to any proposal for the commercial exploitation of the Intellectual Property, with a view to developing and implementing a program that will be of benefit to the Australian grains industry.

### **8.5 Internal Research**

- (a) Each party grants to the other a non-exclusive, non-transferable, irrevocable licence in perpetuity to utilise any Intellectual Property owned by that party relating to the Project (whether created through the conduct of the Project or prior to the commencement of the Project) for the purposes of internal research.
- (b) Where the use of the Intellectual Property for internal research purposes results in the development of further intellectual property, the Grantee and the Trust will negotiate in good faith to determine the proportion of each party's ownership in that intellectual property, in accordance with the principles set out in **clause 8.2**.

### **8.6 Publication with Trust's Consent**

While the Trust encourages the publication of articles of an academic, scientific and technical nature intended for learned journals, the Grantee must not, without the prior written consent of the Trust, publish any article in Australia or elsewhere or otherwise publicly disclose any information constituting or relating to any Intellectual Property, if the publication or disclosure may adversely affect the exploitation, protection or commercial value of the Intellectual Property or any part of the Intellectual Property.

### **8.7 Grantee's Rights to Intellectual Property**

The Grantee must not, without the prior written consent of the Trust, assign or encumber any interest it may have in any Intellectual Property, or grant any rights to any Intellectual Property to any third party, that may adversely effect the commercialisation and exploitation of the Intellectual Property by the Trust or by any third party.

## 9. CAPITAL ITEMS

### 9.1 *Purchase*

The Grantee must not purchase a Capital Item unless details of the need for and cost of the Capital Item are included in the Application, and the Trust has approved the purchase in writing.

### 9.2 *Maintenance and Repairs*

The Grantee must maintain all Capital Items in good condition for the Project Term, and must affect all necessary repairs.

### 9.3 *Ownership*

Subject to **clauses 9.5 and 9.6**, the Grantee will own all Capital Items.

### 9.4 *No Securities to be Given*

The Grantee must not grant, or permit to arise, any security interest (including, without limitation, mortgages, charges or liens) over any Capital Item during the Project Term.

### 9.5 *Replacement*

The Grantee must promptly replace or repair any Capital Item that is lost, damaged or destroyed during the Project Term.

### 9.6 *Early Termination of Project*

If:

- (a) the Project is terminated pursuant to **clause 5.1** of this agreement; and
- (b) at the date of termination of the Trust's funding of the Project, any Capital Item has not been fully depreciated at the applicable Depreciation Rate,

the Grantee must, at the option of the Trust, either:

- (a) pay to the Trust within 28 days after the end of the Project Term an amount equal to the proportion of the undepreciated value of the Capital Item (calculated at the applicable Depreciation Rate) that is equivalent to the proportion of the purchase price of the Capital Item that was funded from Trust funds; or
- (b) sell the Capital Item for the best price reasonably obtainable and pay to the Trust within 28 days of the date of sale the proceeds of sale, less an amount equal to sum of the Grantee's contribution to the purchase price of the Capital Item and the Grantee's reasonable costs of disposal of the Capital Item.

### 9.7 *Sale of Capital Item During the Project Term*

If:

- (a) the Grantee sells or otherwise disposes of a Capital Item during the Project Term; and
- (b) at the time of the sale or disposal, the Capital Item has not been fully depreciated at applicable Depreciation Rates,

the Grantee must, at the option of the Trust, either:

- (a) pay to the Trust within 28 days of the date of the sale or disposal of the item an amount equal to the proportion of the undepreciated value of the Capital Item (calculated at the applicable Depreciation Rate) that is equivalent to the proportion of the purchase price of the Capital Item that was funded from Trust funds; or
- (b) pay to the Trust within 28 days of the date of the sale or disposal the proceeds of the sale or disposal, less an amount equal to sum of the Grantee's contribution to the purchase price of the Capital Item and the Grantee's reasonable costs of disposal of the Capital Item.

### **9.8 Pre July 1993 Capital Items**

This **clause 9** does not affect the rights or obligations of the Trust or the Grantee in relation to Capital Items acquired prior to 1 July 1993 by the Grantee with funds provided by the Trust. Upon the sale or disposal of such items by the Grantee, the Grantee must pay the proceeds of such sale or disposal to the Trust.

## **10. INSURANCE**

### **10.1 Workers Compensation**

The Grantee must maintain a workers compensation insurance policy that provides reasonably adequate cover for each Employee.

### **10.2 Third Party Liability**

The Grantee must maintain insurance with a reputable insurer covering any liability of the Grantee or of its employees to third parties that may arise as a result of carrying out the Project. Unless otherwise agreed in writing between the Grantee and the Trust, such insurance cover must not have any unusual exclusions, must not exclude liability arising from environmental damage and must not have a limitation of cover of less than \$5,000,000 for any one claim.

### **10.3 Capital Items**

The Grantee must maintain insurance with a reputable insurer covering the risks of loss, destruction and damage to all Capital Items for the full insurable value of the Capital Items.

### **10.4 Documentation**

The Grantee must, on demand, provide to the Trust copies of current:

- (a) policies of insurance (including all endorsements); and
- (b) certificates of currency,

for all insurance policies required to be maintained by the Grantee pursuant to this clause.

## **11. EMPLOYEES**

### **11.1 Not Employees of the Trust**

No Employee or contractor engaged by the Grantee will be considered to be in the service of the Trust.

### **11.2 Funding of Long Service Leave Entitlements**



The Grantee must not use Trust funds to fund any long service leave of any Employee unless:

- (a) the Application contains full details of the proposed leave, including;
  - (i) the total employment period upon which the long-service leave is based;
  - (ii) the proportion of the total employment period during which the salary of the Employee was:
    - (A) fully funded; and
    - (B) partly funded, by the Trust; and
  - (iii) the period of leave;
- (b) the long service leave is taken during the Project Term; and
- (c) the proportion of the long service leave of the Employee funded from Trust funds does not exceed the proportion in paragraph (a) (ii) above.

### **11.3 Funding of Recreation Leave Entitlements**

The Grantee must not use Trust funds to fund recreation leave to any Employee unless:

- (a) the Application contains full details of the proposed leave;
- (b) the leave accrues during the Project Term; and
- (c) the leave is taken during the Project Term.

### **11.4 Funding of Other Leave Entitlements**

Except as provided above, the Grantee must not use Trust funds to fund any leave of any Employee.

## **12. WARRANTIES AND UNDERTAKINGS**

### **12.1 Capacity**

The Grantee warrants that it has:

- (a) the power to enter into this agreement and to carry out the Project; and
- (b) all necessary approvals, consents and authorisations to enable it to carry out the Project.

### **12.2 Legality**

The Grantee warrants to the best of its ability in carrying out of the Project it will not knowingly breach any relevant laws nor knowingly infringe the legal rights of any person.

### **12.3 Misrepresentations**

The Grantee warrants that all information provided by the Grantee to the Trust in relation to the Project is correct, complete and not misleading in any respect.

### **12.4 Acknowledgment**

The Grantee must prominently acknowledge the contribution of the Trust to the Project in any document published or presentation made by the Grantee detailing the methods, results or conclusions of the Project.

### **13. CONDUCT OF RESEARCH**

#### **13.1 Animals**

If the Project involves the use of animals, the Grantee must comply with all requirements set out in the national "Code of Practice for the Care and Use of Animals for Experimental Purposes" endorsed by the Australian Agricultural Council, as amended from time to time.

#### **13.2 Recombinant RNA and DNA**

If the Project involves the use of recombinant RNA and DNA techniques, the Grantee must comply with the safety guidelines established from time to time by the Recombinant DNA Monitoring Committee (RDMC) and Genetic Manipulation Advisory Committee (GMAC) established by the Commonwealth Government.

### **14. LIABILITY OF THE TRUST**

#### **14.1 No Liability**

The Trust will not be responsible for:

- (a) any loss, damage, injury, costs or penalty incurred by the Grantee, any agent, employee, contractor, associate or officer of the Grantee or any other person; or
- (b) any loss, damage or destruction to, or any loss of use of, any property or equipment owned by the Grantee, any agent, employee, contractor, associate or officer of the Grantee or any other person,

in connection with the performance of this agreement or the carrying out of the Project.

#### **14.2 Indemnity**

The Grantee must indemnify and keep the Trust and its agents, employees and officers indemnified against:

- (a) all liabilities, costs, damages and expenses relating to the Project that may be incurred by the Trust or its agents, employees or officers (including, without limitation, liability or damages arising from environmental damage) as a consequence of any negligent or wrongful act or omission of the Grantee or of any agent, employee, contractor, associate or officer of the Grantee; and
- (b) unless otherwise agreed in writing between the parties, all liabilities, costs, damages and expenses that may be incurred by the Trust or its agents, employees or officers (including, without limitation, liability or damages arising from environmental damage) as a consequence of any commercialisation or exploitation of any Intellectual Property by the Grantee or of any agent, employee, contractor, associate or officer of the Grantee;
- (c) without limitation to paragraphs (a) and (b), all legal costs (on a solicitor/solicitor basis) and other costs incurred in defending any action or claim relating to the Project brought against the Trust or its agents, employees or officers as a consequence of any act or omission, or alleged negligent or wrongful act or

omission of the Grantee or of any agent, employee, contractor, associate or officer of the Grantee.

- (d) The Grantee's liability under the indemnity in this clause 14 will be reduced proportionately to the extent that any act or omission (whether negligent or not) of the Trust or its agents, employees, contractors, and associates or officers (not being the Grantee) contributed to the relevant liability, cost, damage or loss.

## 15. CONFIDENTIAL INFORMATION

### 15.1 *Information to be kept Confidential*

Each party must keep confidential any information relating to this agreement or any of the parties to this agreement. No party may use or disclose the confidential information of any other party for any purpose other than that which the information was disclosed.

### 15.2 *Authorised Disclosure*

Each party may only disclose another party's confidential information to those of its employees, contractors or professional advisers who need to know the information and who are aware of the confidential nature of the information.

### 15.3 *Exclusions*

The obligations of confidence under this document do not apply to any information that:

- (a) is in the public domain (other than through any breach of this document);
- (b) the receiving party can prove was known to it at the time of disclosure by the disclosing party, free from any obligation of confidence;
- (c) a party is required to disclose in order to obtain the approval or consent of any government body, authority or agency in connection with the purpose for which that information was disclosed; or
- (d) a party is required to disclose at law.

### 15.4 *Return of Confidential Information*

On written notice of the owner of any Confidential information, the recipient of that information will immediately destroy or deliver to the owner all confidential information in a recorded form (including any copies of that information) that is in the recipient's possession or control.

### 15.5 *Public Statements*

No party may make any public statement or make any representation in relation to the Project, this agreement or any of the parties to this agreement without the prior written consent of all of the parties, if to do so may adversely affect the exploitation, protection or commercial value of the Intellectual Property or any part of the Intellectual Property.

### 15.6 *No Transfer of Ownership*

Unless otherwise provided in this agreement, no party will acquire any title to any Confidential Information or other Intellectual Property of any other party.

### **15.7 Survival**

The obligations of confidentiality under this document will survive the expiration or termination of this agreement.

## **16. FORCE MAJEURE**

### **16.1 Delay**

- (a) Neither party will be liable for any delay nor failure to perform its obligations pursuant to this agreement if that delay or failure to perform is due to Force Majeure.
- (b) If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

### **16.2 Termination**

- (a) If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the document on providing notice in writing to the other party.
- (b) If this agreement is terminated pursuant to this **clause 16**, the Grantee will refund any funds previously paid to the Grantee by the Trust unless those funds have been expended prior to the commencement of the Force Majeure, or after the commencement of the Force Majeure with the approval of the Trust.

## **17. RELATIONSHIP BETWEEN PARTIES**

### **17.1 No Partnership**

This agreement does not give rise to any partnership relationship between the parties.

### **17.2 No Agency**

Neither party to this agreement has any right to act on behalf of, represent itself as agent for, or otherwise bind the other party.

## **18. NOTICES**

### **18.1 Writing**

All notices or communications given pursuant to this agreement must be in writing, must be signed by the party giving the notice and must be delivered, sent by pre-paid post, transmitted by facsimile to the other party, or by e-mail to the nominated e-mail address of the other party.

### **18.2 Address**

All notices or communications to be given to a party to this agreement pursuant to this agreement may be sent to the address of that party set out in the description of the parties to this agreement, or such other address as may be advised by that party in writing from time to time. Notices and communications to the Trust should normally be addressed to the Project Manager.

## **19. GENERAL**

### **19.1 *Assignment***

Subject to clause 17.2 of this agreement, neither party may assign its rights under this agreement without the prior written consent of the other party.

### **19.2 *Delegation by Trust***

The Trust may delegate the exercise of its rights or the performance of its functions under this agreement to any person.

### **19.3 *Waiver***

The non-exercise of or delay in exercising any power or right conferred on the Trust by this agreement does not operate as a waiver of that power or right.

### **19.4 *Amendment***

This agreement may only be amended or supplemented in writing, signed by both parties.

### **19.5 *Governing Law***

This agreement is governed by the laws in force in South Australia.

### **19.6 *Submission to Jurisdiction***

The parties submit to the non-exclusive jurisdiction of the courts of South Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with this agreement.

### **19.7 *Auditor-General***

Nothing in this Agreement derogates from the powers of the Auditor-General under the Public Service and Finance Act (1987)

**EXECUTED BY THE PARTIES AS AN AGREEMENT**

**SIGNED** for and on behalf of  
Michael Treloar, Bryan Smith and  
Maxwell Young

)  
)  
)  
)  
)

**as trustees for**  
**THE SOUTH AUSTRALIAN**  
**GRAIN INDUSTRY TRUST FUND**

by an authorised delegate in the  
presence of:

.....  
Witness  
Name (printed): .....

.....  
Delegate  
Name (printed): .....

**SIGNED** for and on behalf of

by an authorised signatory in the  
presence of:

.....  
Witness  
Name (printed): .....

.....  
Authorised Signatory\*  
Name (printed): .....

\*In the case of companies, the signatory must be a director who has been authorised to execute this agreement by a resolution of the board of directors of the company. In the case of organisations other than companies, the signatory must be a person with authority to bind the organisation to major contracts.

## **SCHEDULE 1**

### **APPLICATION AND PROJECT PLAN**

**Applications, Plans and Payment Schedules are as attached and form part of this Agreement**

**Schedule of Payments:**

## SCHEDULE 2

SAGITF CRITERIA FOR EQUITY AND ACKNOWLEDGMENTS
--

**Major consideration** - Proportion of cost contribution, including in kind inputs of all parties.

**Other considerations, especially in acknowledgments** -

- The leveraging opportunity provided by the funding - this is frequently important where funding bodies will match industry contributions but not government.
- Timeliness - did they put in **when** others weren't prepared to?
- Risk - did they put in **where** others weren't prepared to?
- What contribution did the project make to broader research outcomes eg the CCN assay work?
- What publicity benefits did the project generate for the parties?



## ANNEXURE A

# SOUTH AUSTRALIAN GRAIN INDUSTRY TRUST FUND

Statement of Receipts and Expenditure for the Year Ending 30th June, 20.....

**Form A**

	<b>FUNDS ALLOCATED \$</b>
Project No: .....	Salaries .....
Grantee: .....	Travel .....
Title of Project: .....	Operating .....
.....	Capital .....
.....	Total Funds .....

EXPENDITURE											
		Salaries		Travel		Operating		Capital		Total	
		\$	c	\$	c	\$	c	\$	c	\$	c
A	Uncommitted (c/f 1st July)										
B	Outstanding Commitments (c/f 1st July)										
C	Refunds of Monies										
D	Cash Received from Trust										
E	Approved Transfers (from Form C)										
F	Cash Available (A+B-C+D±E)										
G	Expenditure										
H	Outstanding Commitments (30th June)										
I	Total Funds Committed (G+H)										
J	Uncommitted (30th June) (F-I)										
K	Other Income (Paid to GRDC)										

NOTE: Row B should be the same as Row H from the previous year and Row A the same as Row J from the previous year.

Accounting Officer				
				...../...../20.....
(Signature)	(Printed Name)	(Position)	(Phone No)	(Date)

# SOUTH AUSTRALIAN GRAIN INDUSTRY TRUST FUND

LIST OF TRANSFERS

**Form B**

Attachments to the Statement of Receipts and Payments as at 30th June, 20.....)

Grantee: .....

Project: .....

Transfers within Project

Project Number	Head of Expenditure		
	Transferred From	\$	Transferred To
Total			

Net Effect on Project Allocation of all Transfers

Salaries	Travel	Operating	Capital	Total

Certificate of Accounting Officer

I hereby certify that this statement is correct			
.....	.....	.....	...../...../20.....
(Signature)	(Printed Name)	(Phone No)	(Date)