FUNDING AGREEMENT 2015–19

between the

Commonwealth of Australia represented by the
Department of Agriculture
ABN 24 113 085 695

and the

Cotton Research and Development Corporation
ABN 71 054 238 316
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AGREEMENT DATE

Fourth / June / 2015

BETWEEN
The COMMONWEALTH OF AUSTRALIA, represented by the Department of Agriculture ABN 24 113 085 695 (Commonwealth).

AND
The COTTON RESEARCH AND DEVELOPMENT CORPORATION, ABN 71 054 238 316 a statutory authority having its registered office at 2 Lloyd Street, Narrabri NSW 2390 (CRDC).

(collectively, 'the parties')

RECITALS

A. The current Research and Development (R&D) Corporation model is enacted by the Primary Industries Research and Development Act 1989 (the Act).

B. Section 8 of the Act allows regulations to declare the establishment of a Research & Development Corporation in respect of a primary industry or class of primary industries.

C. CRDC was declared to be established from 1 October 1990 to co-ordinate or fund the carrying out of R&D activities including extension activities for the Australian cotton industry following passage of the Cotton Research and Development Corporation Regulations 1990.

D. Section 33(4) of the Act allows the Minister to enter into a funding agreement with CRDC.

E. The Commonwealth and CRDC have agreed to enter into a funding agreement (Agreement) on the terms and conditions set out in this Agreement.
PREAMBLE

Australia’s primary producers recognise the need to invest in rural research and development because it contributes to the profitability, productivity, competitiveness and long-term sustainability of their respective industry and business. The Australian Government provides public investment in rural R&D because profitable, competitive and sustainable rural industries provide benefits for the whole Australian community.

Industry and the government also recognise that creating and meeting demand for Australian produce is essential to the competitiveness and profitability of our primary industries.

Australia’s rural research and development corporations (RDCs) are the mechanism by which primary producers and the government co-invest in research and development for industry and community benefits. This partnership between industry and government is reflected in joint funding and in input to RDC priorities and planning processes.

The Australian Government has previously entered into agreements with the RDCs which are industry-owned companies as a means to define and govern aspects of their relationship. The Parliament of Australia has legislated to require similar negotiated agreements between the Australian Government and the statutory RDCs.

With a variety of participants and stakeholders, effective communication and coordination is crucial. This Agreement between the government and CRDC sets out expectations about performance, transparency and accountability to levy-payers, the government and to the public.

Review of the performance of all RDCs is important to ensure accountability and help foster a culture of continuous improvement. The Agreement between the government and CRDC establishes a framework for periodic, independent reviews.

The periodic renegotiation of this Agreement, informed by performance reviews, is designed to allow the government and CRDC the flexibility to reflect changing expectations about industry and government priorities for research and development and some aspects of governance without the need to change legislation.
The Agreement also reflects the fact that cross-sectoral research and development challenges in Australia often affect multiple or all rural industries. The Agreement therefore recognises CRDC’s role in cooperative R&D and the system for coordination and priority-setting of the national rural R&D effort.

The Parliament has also legislated to provide for statutory RDCs to undertake marketing, where the relevant industry requests this and agrees to raise a marketing levy. The agreement establishes governance arrangements that would apply to this function.
CORE REQUIREMENTS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

'Act' means the Primary Industries Research and Development Act 1989 and associated regulations.

'Activities' means tasks or projects performed as part of CRDC's Program.

'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 the Agreement on different dates, it is the latter of those dates.

'Agri-Political Activity' means engaging in or financing any form of external or internal political campaigning. Agri-political Activity does not include any of the following:

(a) CRDC, or an officer of CRDC, nominating a candidate for appointment to the Board of CRDC; or

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

(c) use by another person, engaged in Agri-Political Activity, of a report or other publication prepared or financed by CRDC in accordance with the Act and this Agreement; or

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

(e) the cost of consultation with, or a contribution towards consultation by CRDC's Representative Organisation.
Annual Operational Plan’ means a plan prepared by CRDC in accordance with section 25 of the Act and clause 10.13 of this Agreement.

Annual Report’ means a report prepared by the Directors of CRDC in accordance with section 46 of the Public Governance, Performance and Accountability Act 2013, section 28 of the Act and clause 11.8 of this Agreement.

Balanced Portfolio’ means a Research and Development investment portfolio incorporating issues of critical national importance based on government and Levy Payer priorities and balancing long-term, short-term, high and low risk, and strategic and adaptive research needs and includes consideration of regional variations and needs.

Board’ means CRDC’s Board of Directors.

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.

Commonwealth Matching Payments’ means funds paid to CRDC in accordance with section 30(1)(b) of the Act.

Compliance Assurance Report’ means a report prepared in accordance with clause 11.1.

Confidential Information’ means all information that the parties agree to treat as confidential by notice to each other after the Agreement Date or that the parties know, or ought to reasonably know, is confidential.

Cost Allocation Policy’ means CRDC’s policy for allocating direct and indirect costs across its Research and Development and Marketing programs.

Department’ means:

(a) the Department of Agriculture 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 for Agriculture – the Department of State administered by that Minister.

‘Director’ has the same meaning as in section 4 of the Act.

‘Eligible R&D Expenditure’ means expenditure on activities that qualify as Research and Development Activities.

‘Evaluation Framework’ means the framework to undertake rigorous and regular evaluation of Activities and programs as required by clause 10.3.

‘Financial Year’ means a period of 12 months commencing 1 July and ending 30 June the following year.

‘Fraud Control Plan’ means a plan prepared and maintained by CRDC under the PGPA Act.

‘Funds’ means each of the following:

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

‘Guidelines’ means each of the following:

(a) the Rural Research and Development Priorities;
(b) the Strategic Research Priorities;
(c) other guidelines or priorities which the Commonwealth notifies CRDC of from time to time; and
(d) the Levy Principles and Guidelines, being the guidelines relating to the introduction of new levies or changes to existing levies.
‘Industry’ means the Australian cotton industry.

‘Industry Representative Body’ means a peak body or a body established for the purpose of, or substantially engaged in, Advocacy and/or Agri-Political Activity.

‘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 circuit layout designs resulting from the intellectual activity in the industrial, scientific, literary and artistic fields.

‘Intellectual Property Management Plan’ means a plan prepared and maintained by CRDC specifying the procedures for management, adoption and commercialisation of Intellectual Property created by CRDC.

‘Levy’ has the same meaning as in section 4 of the Act.

‘Levy Payers’ means the persons who are liable to pay a Levy that is attached to the CRDC.

‘Marketing Activities’ has the same meaning as in section 4 of the Act.

‘Marketing Payments’ has the same meaning as ‘marketing component’ in section 4 of the Act.

Note: Guidance in relation to example activities which Marketing Payments may be used for can be provided once CRDC has obtained the function.

‘Minister’ means the Commonwealth Minister who from time to time has responsibility for the Act and includes a delegate of the Minister in accordance with the Act.

‘Performance Review’ means a review, conducted in accordance with clause 12 of this Agreement.

‘Performance Review Report’ means a report prepared in accordance with clause 12.1 of this Agreement.

‘PGPA Act’ means the Public Governance, Performance and Accountability Act 2013 and includes any rules made under that Act.
‘Program’ means a group of Activities that collectively deliver services or benefits to industry or the community in general with the aim of achieving a planned outcome.

‘Program Framework’ means the planning and budgeting framework applied by CRDC in accordance with clauses 10.1 and 10.2.

‘Proper’ has the same meaning as in section 8 of the PGPA Act.

‘R&D Plan’ means a plan prepared by CRDC in accordance with section 19 of the Act and clause 10.6 of this Agreement.

‘R&D Project’ has the same meaning as in section 4 of the Act.

‘RD&E Framework’ means the National Primary Industries Research, Development and Extension Framework.

‘Regulations’ means the Cotton Research and Development Corporation Regulations 1990.

‘Representative Organisation’ has the same meaning as in section 4 of the Act.

‘Research and Development’ has the same meaning as in section 4 of the Act.

‘Research and Development Activity’ has the same meaning as ‘R&D activity’ in section 4 of the Act.

‘Research and Development Payments’ has the same meaning as ‘research component’ in section 4 of the Act.

‘Risk Management Plan’ means the plan prepared and maintained by CRDC in accordance with section 16 of the PGPA Act.

‘Rural Research and Development Priorities’ means the priorities communicated to CRDC from time to time by the responsible Minister.

‘Strategic Research Priorities’ means the Australian Government’s overall priorities for investment in science and research (currently the Strategic Research Priorities, 2013) that are announced by the responsible minister and communicated to CRDC from time to time.
‘Voluntary Contribution’ means a payment contributed to CRDC for the purpose of funding Research and Development and Marketing Activities.

‘Wind-Up Plan’ means a plan prepared by CRDC which includes:

(a) any information reasonably requested by the Commonwealth that relates to the repealing or amending of the Regulations or the Act, such that CRDC no longer exists or no longer has any Levy attached; and

(b) if requested by the Commonwealth, a proposal from CRDC setting out how the operations of CRDC will cease or be transferred on repeal or amendment of the Regulations or the Act, including an estimate of the cost and timeframe for implementing the proposal.

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 In accordance with section 33(5) of the Act, CRDC must publish this signed Agreement and any variations to this Agreement on its public website.

2.3 The parties must, at least six months before the expiry of this Agreement, commence negotiation in good faith with a view to entering into a new Agreement either on the same terms and conditions or on varied terms and conditions as agreed by the parties.

2.4 If the parties are unable to agree on the terms of an extension to this Agreement or 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 unless one of the parties advises the other party in writing it does not wish to extend the Agreement.

2.5 In negotiating an extension of this Agreement, or entry into a new agreement, the parties may have regard to any information available to them, including the outcomes of the latest Performance Review.

2.6 If the parties do not agree to an extension of this Agreement or entry into a new agreement within the extended period set out in clause 2.4, the Commonwealth may request a Wind-Up Plan from CRDC.

2.7 If requested by the Commonwealth under clause 2.6 or 8.2 CRDC must develop and provide a Wind-Up Plan to the Commonwealth within 3 months of the request. The
Wind-Up Plan must be approved by the Commonwealth (with the Commonwealth able to request reasonable changes prior to providing any approval).

2.8 Prior to repealing or amending the Regulations or the Act such that CRDC no longer exists or no longer has any Levy attached, the Commonwealth will give sufficient notice to CRDC to allow CRDC to implement the approved Wind-Up Plan, as directed by the Commonwealth.

2.9 If preparing or implementing the Wind-Up Plan will require expenditure of Funds by CRDC beyond the expiry of the Agreement, the Commonwealth may, in its absolute discretion, notify CRDC of a revised expiry date for the agreement to provide additional time for the Wind-Up Plan to be prepared or implemented. If a new expiry date is notified under this clause, CRDC will only be able to spend Funds throughout this extended period for the purpose of preparing and implementing the Wind-Up Plan and in accordance with the Wind-Up Plan. The notice may also detail additional constraints on CRDC's expenditure throughout this period.

3. COMPLIANCE WITH LEGISLATION

3.1 CRDC must comply with all relevant laws, including its obligations under the Act, the Regulations and the PGPA Act.

4. CORPORATE GOVERNANCE AND BOARD PERFORMANCE

4.1 CRDC must comply with the corporate governance requirements in the PGPA Act and implement a framework of good corporate governance practice in managing and investing the Funds. In establishing and maintaining the framework CRDC should draw on better practice guidance as appropriate.

4.2 CRDC must report on steps taken to enhance corporate governance at the six-monthly meeting held under clause 14.1.

4.3 CRDC must ensure that up to date information on the following is available on its public website:

   (a) CRDC's R&D Plan, including information relating to its development and any changes;

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

   (c) an overview of CRDC's desired outcomes, key activities to achieve those outcomes and key achievements; and
(d) key Research and Development, extension and Marketing Activities which CRDC is funding.

4.4 The information to be published under the preceding subclause shall not include information of the following kinds:

(a) personal information as defined in the Privacy Act 1988, unless permitted by the Privacy Act 1988; or

(b) information about the business, commercial, financial or professional affairs of any person if it would be unreasonable to publish that information, such as Confidential Information; or

(c) information which would, or could reasonably be expected to damage:

(i) CRDC; or

(ii) the Industry; or

(iii) the national interest.

Committee and panel member’s disclosure of pecuniary interests

4.5 If a person is appointed as a member of a CRDC committee or panel concerned with the selection and funding of Research and Development Activities and/or Marketing Activities and has a pecuniary interest that relates to the affairs under consideration by the committee or panel, that person must disclose that interest in accordance with any instructions given by CRDC.

5. PAYMENT OF FUNDS

5.1 Payments to CRDC will be made in accordance with Part 2 Division 5 of the Act.

5.2 Notwithstanding any other provision of this Agreement, for the purposes of sections 33, 34 and 35 of the Act:

(a) the Commonwealth must invoice CRDC for amounts equal to the expenses incurred by the Commonwealth in relation to sections 34 and 35 of the Act;

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

(c) an amount to be paid by CRDC under this clause must be paid:

(i) from the Research and Development Payments to the extent that the amount relates to the Research and Development Payments; or
from the Marketing Payments to the extent that the amount relates to the Marketing Payments.

5.3 The Commonwealth must give CRDC, in accordance with an agreed timetable, an indicative estimate of the amount of the costs and amounts referred to in clause 5.2 for the Financial Year.

Timing and manner of making payments

5.4 The Commonwealth must pay the Research and Development and Marketing Payments to CRDC within two calendar months after the Commonwealth receives the amounts in cleared funds.

5.5 Subject to the applicable limits and certification the Commonwealth will pay the Commonwealth Matching Payments to CRDC within two calendar months after receiving from CRDC:

(a) a correctly rendered claim for payment or tax invoice; and

(b) evidence reasonably satisfactory to the Commonwealth that CRDC has already spent the amount that forms the basis of the claim on Research and Development Activities.

5.6 For the purposes of clause 5.5(b) a certificate signed by the Executive Director or the Chief Financial Officer (or equivalent) of CRDC, certifying that CRDC has spent a particular amount on Research and Development, is reasonably satisfactory evidence in the absence of any evidence to the contrary.

5.7 The final claim for a Financial Year must be supported by a certification from the Board, signed by the Chair of the Board and the Executive Director or equivalent of CRDC certifying:

(a) the amount of Eligible R&D Expenditure expended for the relevant Financial Year; and

(b) the claims for payment of Commonwealth Matching Payments under clause 5.5 and the declared Eligible R&D Expenditure are accurate and in accordance with the Act and this Agreement.

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

6.1 CRDC may only spend the Funds:
   (a) in accordance with the Act (in particular Part 2 Division 5) and the PGPA Act (in particular section 15) as it applies and this Agreement; and
   (b) in a manner that is consistent with:
       (i) the R&D Plan;
       (ii) the Annual Operational Plan; and
       (iii) the Guidelines.

6.2 CRDC may only spend Funds on Research and Development Activities if such expenditure is consistent with the functions and powers of CRDC under the Act, and to the extent possible within those constraints, ensure that those Research and Development Activities:
   (a) relate to the Industry and are for the benefit of Industry; and/or
   (b) are for the benefit of Industry and for the Australian community generally.

6.3 Marketing Payments may only be applied by CRDC for, or in relation to Marketing Activities related to the Industry, for the benefit of the Industry.

Other restrictions on spending the Funds

6.4 CRDC must not use the funds to engage in Agri-Political Activity or Advocacy. For example, the CRDC must not apply the Funds:
   (a) to act as an Industry Representative Body or to reference or provide information which implies to stakeholders that CRDC is an Industry Representative Body; or
   (b) for Advocacy of a particular Industry policy position; or
   (c) to encourage or support a campaign for the election of a candidate, person or party for public office.

6.5 Payments made by CRDC to its declared Representative Organisation for consultation costs are to be made in accordance with section 15 of the Act and the PGPA Act.

6.6 CRDC must not spend the Funds on making payments to Industry Representative Bodies, other than for:
   (a) payments by way of membership fees where that membership contributes to CRDC pursuing its objects; or
(b) payments to acquire goods or services or to fund Research and Development or Marketing Activities where all the following conditions are met:

(i) the acquisition or funding occurs in accordance with the PGPA Act, and, even if these obligations do not ordinarily apply, in accordance with the *Commonwealth Grant Rules and Guidelines* or the *Commonwealth Procurement Rules* (depending on whether the expenditure is considered granting or procurement);

(ii) the arrangement for services or funding includes measures that allow CRDC to assess the performance of the Industry Representative Body in undertaking the task. If requested by the Commonwealth, CRDC must rely on such measures and provide the assessment of performance to the Commonwealth.

6.7 CRDC may, at any time, seek consultations with the Commonwealth in relation to any matter connected with the Act or this Agreement, including whether a proposed expenditure would amount to engaging in Agri-Political Activity using the Funds, or whether a proposed activity is an eligible Research and Development or Marketing Activity.

6.8 CRDC must determine an appropriate Balanced Portfolio through the R&D Plan and the Annual Operational Plan and explain in CRDC’s R&D Plan the approach to give effect to this.

6.9 CRDC must contribute to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework as appropriate to its national leadership role in relevant Industry strategies and support role in other relevant strategies and consistent with CRDC’s R&D Plan.

6.10 CRDC must provide appropriate feedback on the outcomes of funding applications to all applicants.

7. **MANAGEMENT OF THE FUNDS**

7.1 CRDC must establish necessary accounting systems, procedures and controls in accordance with the PGPA Act and this Agreement, including a Cost Allocation Policy, to ensure:
(a) the Funds are spent only in accordance with the Act and this Agreement; 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 the Act and this Agreement.

8. BREACH OR TERMINATION OF THE AGREEMENT

8.1 Without limiting any other rights or remedies available to the Commonwealth under this Agreement, the Commonwealth may terminate this Agreement in whole or part effective immediately, by giving notice to CRDC if:

(a) an insolvency event occurs; or
(b) the Regulations establishing CRDC or the Act are repealed; or
(c) there has been a material breach of the Agreement, the Act or another law by CRDC.

8.2 Without limiting any other rights available to the Commonwealth, if:

(a) CRDC breaches this Agreement and fails to rectify a breach within 10 Business Days of receiving a notice from the Commonwealth to do so, or within such other period specified by the Commonwealth; and/or
(b) there has been a change in Commonwealth policy relating to raising or spending the Funds; and/or
(c) an event has occurred which would entitle the Commonwealth to terminate the Agreement under clause 8.1(c).

then subject to clause 8.3 the Commonwealth may:

(a) direct CRDC to deal with all or any of the Funds in a certain way; or
(b) require CRDC to provide a Wind-Up Plan to the Commonwealth in accordance with clause 2.7 and 2.8; or
(c) impose additional reporting requirements on CRDC; or
(d) take any other action, as specified in this Agreement.

8.3 Any notice the Commonwealth issues to CRDC in accordance with clause 8.2 will specify:
(a) the circumstances which give rise to the notice; and
(b) if the Commonwealth determines necessary, a reasonable time by which
CRDC must:

(i) provide a satisfactory report or explanation of the circumstances
giving rise to the notice; or
(ii) rectify any breach outlined in the notice; or
(iii) otherwise take action in relation to the circumstances giving rise
to the notice as directed by the Commonwealth; and
(c) the consequences of non-compliance with the notice.

9. EXTENSION OF RESEARCH

9.1 CRDC must carry out its functions under section 11 of the Act and contribute to the
implementation of relevant Industry sector and cross-sectoral strategies under the
RD&E Framework.

9.2 Without limiting the obligations set out in clause 9.1 and for the purposes of carrying
out its functions under subsection 11(e) of the Act, CRDC must demonstrate that
pathways to extension and adoption are incorporated into the planning and approval
process contemplated by this Agreement.

10. PLANNING

Program Framework

10.1 CRDC must develop and maintain a Program Framework to support its planning
performance and accountability requirements under the PGPA Act (Chapter 2,
Part 2-3) and this Agreement within six months of the Agreement Date.

Note: Where there is inconsistency between the PGPA Act or Rules and this
Agreement, the PGPA Act and the Rules prevail.

10.2 The Program Framework should also inform the development of the key planning and
reporting documents such as the R&D Plan, the Annual Operational Plans and the
Annual Report must include specifications of:

(a) planned outcomes—results, consequences and impacts—from the
investment of Funds. An outcome statement should:

(i) be specific, focused and easily interpreted;
(ii) identify the intended outputs, with the level of achievement against the intended outcomes being measurable;

(iii) specify the target groups (where these groups can be identified) for the outcomes;

(iv) specify the Programs, sub programs (if any), key deliverables and Activities to be undertaken that contribute to the achievement of the intended outputs and outcomes; and

(v) be agreed by key stakeholders and the Commonwealth as part of developing the R&D Plan.

(b) for each Program, identify key performance indicators that provide an accurate and succinct story of performance. Key performance indicators should:

(i) in the R&D Plan, be strategic in nature and linked to the planned outputs and outcomes;

(ii) in the Annual Operational Plan, link to the deliverables;

(iii) in the Annual Report, bring the key performance indicators under (i) and (ii) above together and demonstrate how the deliverables funded advanced the outcomes;

(iv) be clear, unambiguous and measurable with appropriate timeframes for achievement;

(c) the expected total cost (direct and indirect) of activities and resources attributable to the delivery, policy development and associated costs of each Program; and

(d) an Evaluation Framework designed in accordance with clause 10.3.

*Evaluation Framework*

10.3 CRDC must develop an Evaluation Framework within six months of the Agreement Date. The Evaluation Framework must:

(a) support the Program Framework;

(b) ensure that key performance related information is generated by the Program Framework and is routinely collected and monitored;

(c) include a structured plan for the systematic evaluation of the efficiency, effectiveness and impact of CRDC's key investments; and
(d) include a means of publishing and disseminating relevant Research and Development outcomes and the outcomes of evaluations undertaken under subclause 10.3(c).

10.4 CRDC must:

(a) consult with the Commonwealth in preparing the evaluation plan;
(b) participate in any evaluation project relevant to CRDC’s operations which is established for all RDCs; and
(c) demonstrate CRDC’s commitment to provide adequate expenditure for this purpose.

10.5 The Evaluation Framework must be published on the CRDC’s public website within 30 days of being adopted by the CRDC.

R&D Plan

10.6 CRDC must:

(a) prepare an R&D Plan in accordance with sections 19 to 24 of the Act and this Agreement;
(b) ensure the R&D Plan is consistent with CRDC’s Program Framework; and
(c) publish the R&D plan and any amended R&D Plan on its public website within 30 days of approval by the Minister.

10.7 In addition to the matters in clause 10.6 the R&D Plan must also cover matters including, but not limited to, the following:

(a) an assessment of CRDC’s operating environment including its strengths, weaknesses, threats and opportunities, and including current and future trends and implications;
(b) collaboration with other RDCs on priority Research and Development issues;
(c) a broad overview of the priorities and outcomes from stakeholder consultation, as more fully described in the stakeholder consultation plan required under clause 10.8;
(d) consultation with Industry and an explanation on the extent to which Industry priorities are reflected in the R&D Plan;
(e) key strategies, objectives, investment priorities and outcomes planned for the period of the R&D Plan;
the Research and Development Activities and Marketing Activities that CRDC 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 Research and Development and Marketing Activities to be funded align with, and give effect to, the Guidelines;

(j) how CRDC addresses extension, technology transfer, and commercialisation of Research and Development and demonstrate that extension and adoption are incorporated into the planning and approval process;

(k) estimates of income and expenditure for the life of the R&D Plan including broad estimates of expenditure separately for each of the Research and Development Activities and Marketing Activities for the life of the R&D Plan; and

(l) an explanatory statement of CRDC’s approach to ensuring a Balanced Portfolio appropriate to the Industry.

10.8 In developing the R&D Plan, or varying an existing R&D Plan, CRDC must develop a consultation plan including details of proposed consultations with:

(a) the Commonwealth; and

(b) CRDC’s Representative Organisation; and

(c) other stakeholders as appropriate, including, but not limited to, other RDCs.

10.9 For minor variations to an existing R&D Plan, consultation must be undertaken in accordance with section 24 of the Act. However CRDC may request approval from the Commonwealth not to develop a consultation plan.

10.10 The consultation plan must be agreed with the Commonwealth before consultation commences.

10.11 The consultation plan must be published on CRDC’s public website prior to consultation commencing.

10.12 The Commonwealth must treat the R&D Plan, and each amendment of the R&D Plan, as Confidential Information until the R&D Plan or amendment is publicly released by CRDC.
Annual Operational Plan

10.13 CRDC must prepare an Annual Operational Plan in accordance with section 25 of the Act and this Agreement.

10.14 The Annual Operational Plan must be provided to the Commonwealth by 1 July each year and in addition to the matters set out in clause 10.13 it must set out:

(a) how and to what extent Research and Development and Marketing Activities to be funded give effect to the R&D Plan and its objectives and the Guidelines;
(b) the key Research and Development and Marketing Activities to be funded by CRDC during the Financial Year under each program of the Program Framework;
(c) key deliverables arising from the Research and Development and Marketing Activities planned;
(d) performance indicators, timetables and milestones relating to CRDC’s proposed Research and Development and Marketing Activities and expenditure which enable the progress being made towards achieving planned outcomes to be monitored and reported upon;
(e) a statement on how CRDC intends to implement and operationalise a Balanced Portfolio appropriate to the Industry for the Financial Year referred to in the plan.

10.15 CRDC must submit all Annual Operational Plans developed in accordance with clause 10.13, and all material variations or updates to the Commonwealth within 30 days of the Annual Operational Plan or variations being adopted by CRDC.

10.16 The Commonwealth must treat a plan or an amended plan provided to it as Confidential Information until it is publicly released by CRDC.

Other Plans

10.17 CRDC must develop, maintain and implement:

(a) risk management and internal control systems consistent with the PGPA Act. This includes a Fraud Control Plan and Risk Management Plan; and
(b) an Intellectual Property Management Plan.

10.18 CRDC must review the Intellectual Property Management Plan at intervals of no more than four years.
10.19 CRDC must provide the Commonwealth with a copy of the plans required under clause 10.17(a) and (b), or amendments to the plans, within 30 days of their approval by the Board.

10.20 The Commonwealth must treat a plan or an amended plan as Confidential Information until it is publicly released by CRDC.

11. **REPORTS**

*Compliance Assurance Report*

11.1 CRDC must, within five months after the end of each Financial Year, give the Commonwealth a Compliance Assurance Report regarding compliance with its obligations under the Act and this Agreement during the relevant Financial Year.

11.2 A Compliance Assurance Report must include a statement from an independent auditor which provides an opinion on whether the CRDC has complied with its obligations under clauses 6 and 7 of this Agreement during the relevant Financial Year. The independent auditor’s statement must:

(a) be prepared in accordance with relevant Australian Auditing and Assurance Standards;

*Note: this work can be completed with reference to ASAE 3100.*

(b) include a statement that CRDC has complied with clause 6.6 of this Agreement;

(c) include a statement that the accounting systems processes and controls comply with clause 7.1;

(d) include a review of the amounts spent on Research and Development Activities and Marketing Activities and verify that the claims made for Commonwealth Matching Payments under clause 5.5 are consistent with the amount of Eligible R&D Expenditure;

(e) state any limitations to which the Compliance Assurance Report is subject; and

(f) indicate any incidences of non-compliance and assess and report on the impact of those incidences of non-compliance.

11.3 A Compliance Assurance Report must also include a certification from the Board, signed by the Chairperson of the Board and the Executive Director or equivalent of CRDC certifying whether, in the Board’s opinion, CRDC has;
(a) materially complied with its obligations under the Act and this Agreement during the relevant Financial Year; or
(b) not materially complied with its obligations under the Act and this Agreement during the relevant Financial Year and giving an explanation of the non-compliances.

11.4 The Compliance Assurance Report must also include a statement that the Compliance Assurance Report has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that the Compliance Assurance Report will be relied upon by the Commonwealth.

11.5 A Compliance Assurance Report need not include an opinion on whether the Funds have been applied for the benefit of Industry, or have been spent in a Proper manner or on Advocacy or Agri-Political Activities.

Other Audit Reports

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

11.7 If the Commonwealth requests an audit report or opinion under clause 11.6 CRDC must at its own expense:
   (a) obtain the audit report or opinion from an independent auditor; or
   (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by the independent auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
   (c) give a copy of the audit report or opinion to the Commonwealth within 14 days after CRDC receives it.

Annual Reports

11.8 CRDC must prepare its Annual Report in accordance with the Act, section 46 of the PGPA Act and the requirements of this Agreement.

11.9 Additional information beyond the requirements of the Act and the PGPA Act, required to meet the requirements of this Agreement can be provided to the Commonwealth separately if so desired by the CRDC.
11.10 The Annual Report must include, in respect of the relevant Financial Year:

(a) a report on CRDC’s contribution to the implementation of relevant Industry sector and cross-sectoral strategies under the RD&E Framework;
(b) the rationale for the mix of projects included in the Balanced Portfolio;
(c) a report on CRDC’s research extension activities;
(d) collaboration with Industry and other research providers;
(e) sources of income allowing for separate identification of Research and Development Payments, Commonwealth Matching Payments and any other forms of income and, if applicable Marketing Payments and Voluntary Contributions;
(f) the full cost of the Research and Development and Marketing programs, with costs being allocated in accordance with the Cost Allocation Policy;
(g) progress made in implementing R&D Plans, including progress against key performance indicators and the achievement of key deliverables and associated outcomes specified in the plans;
(h) an assessment of the efficiency and effectiveness of CRDC’s investments;
(i) progress in implementing the Guidelines;
(j) consultation with the corporation’s Representative Organisation on its R&D and Annual Operational Plans, Research and Development and extension Activities and Marketing Activities; and
(k) other relevant matters notified to CRDC by the Commonwealth.

Other Reports

11.11 In addition to the reports required under clauses 11.8 and 11.9, on notice CRDC must give the Commonwealth, within such period as the Commonwealth specifies any other report or explanation relating to management and expenditure of the Funds.

11.12 When giving the reports or explanations referred to in clause 11.11, CRDC must consult with the Commonwealth as to the nature of any action required and must take that action within a timeframe agreed with the Commonwealth.

12. REVIEW OF PERFORMANCE

12.1 CRDC 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 of the Performance Review six months prior to the commencement of the Performance Review process with the Commonwealth to ensure that the Performance Review will meet the requirements of the Act and this Agreement; and

(c) provide the Commonwealth with a copy of the draft Performance Review Report and any comments made by the Board within 7 days of the Board considering the draft; and

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

(e) 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

(f) provide the Commonwealth with the response developed under clause 12.1(e) within 30 days of the Board accepting the response; and

(g) report to the Commonwealth in the meetings required under clause 14.1 on progress implementing the Performance Review Report recommendations; and

(h) publish the Performance Review Report and CRDC’s response to the Performance Review Report recommendations on CRDC’s public website.

12.2 The independent organisation engaged to carry out the Performance Review must be an organisation that has not, within the term of the Agreement, carried out any corporate governance activity or reviews, performance audit or similar reviews of CRDC.

12.3 The terms of reference for the Performance Review must take into account:

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

(b) CRDC’s development and implementation of its R&D Plan, Annual Operational Plan, Risk Management Plan, Fraud Control Plan and Intellectual Property Management Plan, and CRDC’s effectiveness in meeting the priorities, targets and budgets set out in those plans; and
(c) the efficiency with which CRDC carried out those plans; and
(d) the efficiency and effectiveness of CRDC's investments;
(e) the delivery of benefits to the Industry foreshadowed by those plans,
   including an assessment of the degree to which CRDC’s investments have
   met the needs of Industry; and
(f) any other matters required to be covered by the Minister.

12.4 The Commonwealth must treat any draft or final Performance Review Report as
Confidential Information until it is publicly released by the CRDC.

13. PERFORMANCE MANAGEMENT

13.1 Notwithstanding any other provision in this Agreement, the Commonwealth may
review the CRDC’s performance and compliance with this Agreement, at any time
during the Term of this Agreement.

13.2 In reviewing the CRDC’s performance and compliance with this Agreement for the
purposes of clause 13.1, the Commonwealth may have regard to any information
available to it.

13.3 Where, following completion of a review under clause 13.1, the Commonwealth
considers that CRDC’s performance and compliance with this Agreement is less than
satisfactory, the Commonwealth will consult with CRDC prior to exercising any
rights it may have under this Agreement including those set out in clause 8 where
appropriate.

13.4 In reviewing CRDC’s performance and compliance with this Agreement the
Commonwealth may:
   (a) request information from CRDC, including the provision of additional
       reports including audit reports to inform its consideration; and
   (b) request CRDC develop and provide a work plan for CRDC to improve its
       performance or compliance with this Agreement to the Commonwealth for
       approval.
14. CONSULTATIONS

Consultation with the Commonwealth

14.1 The Chairperson of CRDC, or in their absence, their Board nominee, must meet with the Commonwealth at not more than six-monthly intervals from the Agreement Date or at any other time requested by the Commonwealth on reasonable notice, to brief the Commonwealth on CRDC’s performance of its functions including:

(a) progress on implementing CRDC’s Annual Operational Plan and R&D Plan;
(b) progress on the implementation of the relevant sectoral and cross-sectoral strategies under the RD&E Framework;
(c) consultation with other RDCs and the corporation’s Representative Organisation;
(d) measures taken to enhance corporate governance in accordance with clause 4 of this agreement;
(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 7.1 of this Agreement.

Consultation with Industry

14.2 CRDC must comply with section 29 of the Act and meet with its declared Representative Organisation at not more than six-monthly intervals to:

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

Guidelines

14.3 The Commonwealth may vary the Guidelines provided that the Commonwealth:

(a) consults with CRDC prior to the variation; and
(b) gives CRDC a reasonable period to implement the variation.
14.4 Where the Commonwealth consults with CRDC in accordance with clause 14.3 and the Board considers that the proposed Guidelines may, if issued:
   (a) require the Directors to act, or omit to act, in a manner that may breach any duty owed by the Directors to any person;
   (b) cause the contravention of any law;
   (c) be likely to prejudice commercial activities carried on by or on behalf of CRDC; or
   (d) be contrary to the public interest

then the Directors must notify the Commonwealth.

15. ACCESS TO RECORDS AND USE OF INFORMATION

15.1 The Minister and the Finance Minister are entitled to access to the accounts and records of CRDC in accordance with section 41 of the PGPA Act.

15.2 In addition to access under the PGPA Act, the Commonwealth, and any duly authorised representative may, for the purpose of monitoring compliance by CRDC with the Act and this Agreement, have access to:
   (a) premises occupied by or under the control of CRDC; and
   (b) data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of CRDC.

15.3 Unless otherwise agreed between the parties, CRDC 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 CRDC and marked for the attention of the Executive Director of CRDC.

15.4 CRDC must provide access to all its accounts and records relating to the Act and this Agreement (other than any legally privileged material) and otherwise co-operate fully with the Commonwealth, or any duly authorised representative for the purposes of clause 15.2.

15.5 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 the Act or this Agreement; 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.

15.6 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.

15.7 The Commonwealth will not be in breach of clause 15.5 in respect of Confidential Information given by CRDC 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.

15.8 CRDC grants the Commonwealth a permanent, irrevocable, royalty-free worldwide non-exclusive licence to use, reproduce, modify, adapt, distribute, communicate and publish all or part of any report or plan provided to the Commonwealth under this Agreement, excluding:

(a) any Confidential Information; and

(b) any material, including any image or text, identified by CRDC as being material in which a third party owns all or part of the copyright.

16. NOTIFICATION OF SIGNIFICANT ISSUES

16.1 In addition to the duties of CRDC under section 19(1) of the PGPA Act, CRDC must also give the Commonwealth reasonable notice if it becomes aware of any significant issues that may affect or have affected CRDC or any of its subsidiaries.

17. ACKNOWLEDGEMENT OF FUNDING

17.1 Unless otherwise agreed with the Commonwealth, CRDC must ensure that all significant publications and publicity by CRDC in relation to matters on which Funds are expended must acknowledge the provision of the Australian Government funding.

18. AUTHORISATION OF PERSONS TO ACT

18.1 The rights, functions and powers of the Commonwealth under the Act or this Agreement may be exercised and performed on behalf of the Commonwealth by the Minister or a delegate of the Minister (who may be an officer of the Department).
18.2 Performance of an obligation of the Commonwealth under the Act or this Agreement by the Minister or a delegate of the Minister is taken to be performance of the obligation by the Commonwealth.

19. RELATIONSHIP

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

20. FURTHER ACTION

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

21. RESOLUTION OF DISPUTES

21.1 Except where a party seeks urgent interlocutory relief, the parties agree not to commence any legal proceedings in respect of any dispute arising under the Act and this Agreement which cannot be resolved by informal discussion ("Dispute") until the procedures set out in this clause 21 have been followed.

21.2 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 as may be agreed to in writing by the parties to the Dispute) from the date of service 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.

21.3 If the Dispute is not resolved by the parties at the meeting referred to in clause 21.2(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 to the extent that such
rules conflict with this clause 21, in which case this clause 21 shall prevail to the extent of the inconsistency.

21.4 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 21.3;

(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.

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

21.6 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.

21.7 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 the Act and this Agreement.

21.8 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.

22. ASSIGNMENT

22.1 CRDC must not assign or novate this Agreement or any right or obligation under this Agreement unless CRDC:

(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 CRDC’s obligations under this Agreement.
23. **ENTIRE AGREEMENT**

23.1 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.

24. **VARIATION**

24.1 Except as expressly permitted under this Agreement, this Agreement may be varied only by agreement in writing signed by each party.

25. **WAIVER**

25.1 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.

26. **SEVERABILITY**

26.1 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.

27. **GOVERNING LAW AND JURISDICTION**

27.1 The interpretation of this Agreement is governed by the law applicable in the Australian Capital Territory.

27.2 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.
28. **NOTICE**

28.1 A party giving notice or notifying under this Agreement must do so in writing or by electronic communication as defined in the *Electronic Transactions Act 1999 (Cth)*:

(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.

28.2 The parties’ addresses are:

<table>
<thead>
<tr>
<th>Commonwealth</th>
<th>Mr Peter Ottesen</th>
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<tbody>
<tr>
<td></td>
<td>Assistant Secretary</td>
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<td></td>
<td>Agricultural Industries Branch</td>
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<td>Agricultural Policy Division</td>
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<td>Department of Agriculture</td>
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<td></td>
<td>GPO Box 858</td>
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<td></td>
<td>CANBERRA ACT 2601</td>
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<tr>
<td></td>
<td>Email: <a href="mailto:peter.ottesen@agriculture.gov.au">peter.ottesen@agriculture.gov.au</a></td>
</tr>
<tr>
<td></td>
<td>Cc: RDC <a href="mailto:Governance@agriculture.gov.au">Governance@agriculture.gov.au</a></td>
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<thead>
<tr>
<th>CRDC</th>
<th>Mr Bruce Finney</th>
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<tr>
<td></td>
<td>Executive Director</td>
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<tr>
<td></td>
<td>Cotton Research and Development Corporation</td>
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<td></td>
<td>PO Box 282</td>
</tr>
<tr>
<td></td>
<td>NARRABRI NSW 2390</td>
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<tr>
<td></td>
<td>Fax: 02 6792 4400</td>
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<tr>
<td></td>
<td>Email: <a href="mailto:bruce.finney@crdc.com.au">bruce.finney@crdc.com.au</a></td>
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<td></td>
<td>Cc: <a href="mailto:finance@crdc.com.au">finance@crdc.com.au</a></td>
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28.3 A notice given in accordance with clause 28.1 is taken to be received:

(a) if hand delivered - on delivery; or

(b) if sent by prepaid post - 3 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 notice 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)*.

29. **INTERPRETATION**

29.1 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.
29.2 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.

29.3 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.

29.4 Any Schedules are provisions of this Agreement, but notes and headings are not provisions of this Agreement.
SIGNING PAGE

EXECUTED as an agreement

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
by
the Hon. Barnaby Joyce MP
Minister for Agriculture

in the presence of

............................................
Signature of witness

............................................
Name of witness

27 MAY 2015
Date signed

SIGNED for and on behalf of the
COTTON RESEARCH AND
DEVELOPMENT CORPORATION
by

............................................
Name of signatory

............................................
EXECUTIVE DIRECTOR
Position of signatory

in the presence of

............................................
Signature of witness

............................................
Name of witness

4 JUNE 2015
Date signed