



NVT RESOURCE SHARING LICENCE AGREEMENT

PARTIES

GRAINS RESEARCH AND DEVELOPMENT CORPORATION (ABN 55 611 233 291) of Level 4, 4 National Circuit, Barton ACT 2600 (**GRDC**)

AND

THE PARTY DETAILED IN ITEM 1 OF THE SCHEDULE (Licensee)

RECITALS

- A. GRDC established the National Variety Trials (**NVT**) program in 2005. The NVT program is the largest independent co-ordinated trial network in the world. Resources generated within the NVT program are of significant value to Australian grain growers.
- B. The Licensee is a person or organisation that has requested access to certain NVT resources for the purpose of undertaking research. Enabling third party researchers access to NVT resources will further help GRDC deliver on its purpose to invest in research, development and extension to create enduring profitability for Australian grain growers.
- C. GRDC agrees to provide the Licensee with access to requested NVT resources on the terms and conditions of this Agreement.

Operative provisions

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this Agreement.

Agreement means this Licence Agreement including its schedules, annexures and any other attachments.

Breeder means a breeder engaged by GRDC pursuant to a Breeder Participation Agreement to participate in the NVT program.

Business Day means a day that is not a Saturday, Sunday or bank or public holiday in the Australian Capital Territory.

Commencement Date means the date set out in Item 2 of the Schedule.

Commercial Use means, in relation to a NVT Resource:

- (a) to manufacture, sell, hire or otherwise exploit the NVT Resource for commercial gain;
- (b) if a product or process incorporates or is derived from the NVT Resource, to manufacture, sell, hire or otherwise use the product or process for commercial gain;
- (c) if a service uses NVT Resource, to provide that service for commercial gain; or
- (d) to licence a third party to do any of those things.

Confidential Information means all information:

- (a) which is indicated in writing by a Party to be confidential; or
- (b) which might otherwise reasonably be regarded by any of the Parties as confidential, including technical and commercial information and information the disclosure of which could prejudice the registration, exploitation or value of any Intellectual Property, but does not include information that:
 - (c) is in the public domain, or comes into the public domain, other than as a result of a breach of this Agreement; or
 - (d) is rightfully known by the receiving Party and is not subject to an obligation of confidentiality before the date of receipt; or
 - (e) has been independently developed or acquired by the receiving Party.

Data means information, including information in raw or unorganised form which may be used for analysis.

Expiry Date means the date set out in Item 3 of the Schedule.

GRDC Attribution Model means the attribution and logo to be used for different levels of GRDC investment in accordance with the GRDC Brand Style Guide in force from time to time and available from the GRDC Brand Centre <http://brand.grdc.com.au>.

Intellectual Property (IP) means any registered or unregistered intellectual property rights including any:

- (a) patents or rights concerning any discovery, invention, process, process improvement, procedure, manufacturing method, technique or information regarding the chemical or genetic composition of materials (whether patentable or not);
- (b) trade marks, business names or trading styles (whether registered or not);
- (c) copyright material and similar or neighbouring rights;
- (d) registered or registrable designs;

- (e) plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes;
- (f) trade secrets and know how; and
- (g) eligible layouts or protectable computer programs,

as well as any right to seek registration of, or to take action for infringement of, any such rights.

NVT Dataset includes:

- (a) publicly available NVT Data in a bulk format that cannot otherwise be accessed or retrieved via the NVT website (www.nvt.grdc.com.au);
- (b) non-publicly available NVT Data, or Data that is otherwise restricted for use such as confidential data, information about unreleased cultivars, information about unreleased NTV Trials and NVT Trial Data owned by GRDC that is not normally accessible by a member of the public; and
- (c) site characterisation Data including climatic, spatial, visual and any other Data collected as part of the NVT program.

NVT Manager means the person detailed in Item 6 of the Schedule.

NVT Protocols means the guidelines and protocols administered by GRDC as published at <https://nvt.grdc.com.au/trials/nvt-protocols> at the date of this Agreement or as modified from time to time.

NVT Resources means the specific resources detailed in Item 4 of the Schedule which may include:

- (a) the NVT Dataset;
- (b) access to the Trial Sites, for the purpose of:
 - (i) gathering of visual and/or physiological scores, measurements and Data from plots within Trial Sites (this includes all traits including, but not limited to, flowering notes, growth habit, disease resistance, maturity or any other Data recording of cultivar traits including digital Data capture (UAV imagery, NDVI, infrared etc.));
 - (ii) plant tissue sampling from a NVT trial;
 - (iii) soil sampling from within NVT trial sites; and
 - (iv) gathering of climatic, spatial, historical or geographical Data of the NVT trial site; and
- (c) NVT post-harvest grain samples.

NVT Trial means an evaluation trial of commercially bred crops.

Research means the research utilising the NVT Resources to be undertaken by the Licensee, as further described in Item 5 of the Schedule.

Resource Request Form means the document completed by the Licensee and approved by GRDC, attached at Annexure A of the Schedule and forming part of the Schedule.

Term has the meaning defined in clause 2.1.

Trial Service Provider means a service provider engaged by GRDC to provide services in relation to the NVT Trials.

Trial Site means the location where a Trial Service Provider is undertaking NVT Trials.

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 corporation, partnership, joint venture, association, authority, trust or government;
- (c) a reference to any gender includes all genders;
- (d) a reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form has a corresponding meaning;
- (f) a reference to any organisation, committee or body includes a reference to any successor of that organisation, committee or body;
- (g) a reference to any legislation or regulation includes a reference to any amendment, modification or replacement to that legislation or regulation which may be made from time to time;
- (h) where the words "includes" or "including" are used they shall, if the context permits, be read to mean "includes, without limitation," or "including, without limitation,";
- (i) where any Party is constituted by more than one legal entity, they shall be, unless otherwise expressly stated, jointly and severally liable in respect of all obligations arising under this Agreement and jointly entitled to enjoy any rights granted by this Agreement; and
- (j) headings are for convenience only and do not affect interpretation.

2. **TERM**

2.1 **Term**

This Agreement takes effect from the Commencement Date and continues until the Expiry Date unless terminated in accordance with its terms (**Term**).

3. **LICENCE & RIGHTS TO ACCESS**

3.1 **Grant of licence and access rights**

Subject to and in recognition of the Licensee's continuing compliance with this Agreement, GRDC grants to the Licensee:

- (a) a non-exclusive, worldwide, royalty free, revocable licence to use the NVT Resources; and
- (b) all other rights necessary and required to access the NVT Resources,

for the sole purpose of undertaking the Research.

3.2 **Restrictions**

The Licensee must not:

- (a) use the NVT Resources for any purpose other than the Research;
- (b) undertake any research in relation to NVT Resources;
- (c) use the NVT Resources in any Commercial Use without prior written consent from GRDC, which consent may be conditional upon the Licensee agreeing to certain terms and conditions in respect of the Commercial Use;
- (d) undertake any research that differs from the Research without first seeking GRDC's prior written consent and agreeing to a formal variation to this Agreement which details the additional or different research;
- (e) publish, share or otherwise publicly disclose any NVT Data or any component of the NVT Dataset without GRDC's prior written consent;
- (f) use the NVT Dataset or any NVT Data contained within it to publish information that may be deemed contradictory to NVT and the results and information that the NVT program publishes;
- (g) edit, manipulate or present any NVT Data in a way that could be construed as misleading or biased or would otherwise detract from the value and reliability of the NVT Data; or
- (h) share or otherwise provide any NVT Resource to a third party without GRDC's prior written consent.

3.3 **Licensee's acknowledgements**

The Licensee agrees and acknowledges that:

- (a) the information in the Resource Request Form is true and accurate;
- (b) the NVT Manager must approve sampling protocols to be used by the Licensee prior to the Licensee visiting any Trial Site in order to access NVT Resources;
- (c) the Licensee must notify the relevant Trial Service Provider and the nominated grower/co-operator/landowner that the Licensee wishes to access a Trial Site and seek all necessary permissions prior to visiting and accessing that Trial Site;
- (d) Trial Service Providers and the nominated grower/co-operator/landowner can refuse the Licensee access to a Trial Site at any time;
- (e) if the Licensee accesses any Trial Site it will comply with all site access requirements stipulated in the NVT Protocols;
- (f) Trial Service Providers reserve the right to conduct sampling on behalf of the Licensee and charge the Licensee a fee for doing so;
- (g) Trial Service Providers are not obliged to access or compile NVT harvested grain samples to provide to the Licensee;
- (h) GRDC reserves the right to cancel previously-approved requests for NVT harvested grain samples if there is insufficient grain following harvest or for any other reason and the Licensee has no claim against GRDC whatsoever in relation to such cancellation;

- (i) neither GRDC nor the providing Trial Service Provider guarantees the quality and/or integrity of NVT harvested grain samples;
- (j) where NVT harvested grain samples are provided to the Licensee, they are provided 'as is' and neither GRDC nor the providing Trial Service Provider warrants that such samples can be used for any purpose, including the Research;
- (k) GRDC must review and approve all publications relevant to any Research before such publications are published; and
- (l) nothing in this Agreement assigns or transfers ownership of any of the NVT Resources to the Licensee or any other person.

3.4 Acknowledgement requirements

The Licensee must:

- (a) prominently acknowledge GRDC at all reasonable and appropriate opportunities, including in any document published or any presentation or public statement made, by the Licensee in relation to the Research;
- (b) comply with the GRDC Attribution Model or any specific additional requirements provided by GRDC when referring to the Research; and
- (c) give GRDC reasonable opportunity (no less than 10 Business Days) to review and approve all publications relating to the Research prior to publication.

4. WARRANTIES AND UNDERTAKINGS

4.1 Reciprocal warranties

Each Party warrants to each other Party that it has the power and authority to enter into this Agreement.

4.2 Licensee warranties

The Licensee warrants to the best of its knowledge that all information provided by the Licensee to GRDC as required by this Agreement is, or will be, at the time it is provided, correct, complete and not misleading in any respect.

4.3 GRDC warranties excluded

GRDC gives no warranty, and makes no representation, in relation to the condition, suitability, quality or fitness for purpose or availability of any NVT Resource.

5. RECORDS

5.1 Record keeping

The Licensee must keep reasonable records of its use of the NVT Resources and provide GRDC with access to those records upon request.

6. TERMINATION

Termination by Notice

- 6.1 Either GRDC or the Licensee may terminate this Agreement by providing 90 days' written notice to the other.

Termination for Default

6.2 GRDC may terminate this Agreement with immediate effect by written notice to the Licensee if the Licensee:

- (a) breaches any provision of this Agreement and the breach continues unremedied for 28 days after the Licensee has been served with written notice of the breach;
- (b) breaches a material provision of this Agreement which is not capable of remedy;
- (c) persistently breaches a material provision of this Agreement despite notice of the breach;
- (d) comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or has an order made against it for the purpose of placing it under external administration; or
- (e) is unable to pay all its debts as and when they become due and payable, or it fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth).

6.3 Nothing in this Agreement limits a Party's rights at common law to terminate this Agreement.

6.4 Consequences of termination and expiry

- (a) Termination or expiry of this Agreement does not affect the enforceability of any rights or obligations accrued up to the date of termination or any other rights and obligations which under the terms of this Agreement are stated as surviving termination.
- (b) Upon termination or expiry of this Agreement, the Licensee must destroy all remaining NVT Resources, including all NVT Resources that were not used in the Research.

6.5 Survival

- (a) The provisions of clauses 1 (Interpretation), 5 (Records), 6.5 (Consequences of termination), 6.5 (Survival), 7 (Confidential Information), 8 (Liability), 9 (Notices), and 11.6 (Governing law and jurisdiction) survive the termination or expiry of this Agreement.
- (b) Any term which, by its nature, is intended to survive expiry or termination of this Agreement will survive expiry or termination of this Agreement.

7. CONFIDENTIAL INFORMATION

7.1 Subject to clause 7.2, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.

7.2 Each Party may disclose, and may permit any of its employees, agents and officers to disclose, any Confidential Information:

- (a) with the prior written consent of the other Party; or
- (b) to the extent it is required to do so:
 - i. by law;
 - ii. by any recognised stock exchange on which its or its holding company's shares are listed;
 - iii. by a government agency; or

- iv. in connection with legal proceedings relating to this Agreement;
- (c) to the other Party's employees, agents, officers and professional advisors (including financiers) who have a legitimate need to know the Confidential Information; and
- (d) is disclosed by each Party:
 - i. to meet a reporting obligation;
 - ii. to its responsible Minister;
 - iii. in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia; or
 - iv. to a Commonwealth department or agency.

8. LIABILITY

- 8.1 The Licensee fully indemnifies and holds harmless GRDC, its personnel, consultants and contractors (which includes, but is not limited to, Trial Service Providers and Breeders participating in the NVT program) in respect of all loss, cost, expense, damage or liability suffered or incurred as a result of:
- (a) any breach of this Agreement or the licence or any warranty or representation in this Agreement by the Licensee;
 - (b) any negligent, reckless, unlawful or wrongful acts or omissions of the Licensee, or any of its personnel, contractors or consultants; and
 - (c) the Licensee's use of or access to any Trial Site (including any activities carried out by the Licensee or any of its personnel, contractors or consultants on or about a Trial Site),
- including without limitation:
- (d) personal injury, including death or disease, to any person caused by the breach of contract, tortious acts or omissions (including negligence) or breach of duty (whether statutory or otherwise) of Licensee or any of its personnel, contractors or consultants; and
 - (e) loss, damage, pollution or contamination to any Trial Site.
- 8.2 The indemnity in clause 8.1 will be reduced proportionately to the extent that GRDC caused or contributed to the loss or damage the subject of clause 8.1 (a) to (e) inclusive.
- 8.3 Notwithstanding any other clause of this Agreement, no Party will be liable to any other Party for any Consequential Loss. For the purposes of this clause 8.3, '**Consequential Loss**' means:
- (a) loss of business revenue or profit;
 - (b) loss of reputation or goodwill;
 - (c) loss of customers, business or any contract;
 - (d) loss of opportunity;
 - (e) loss of productivity;
 - (f) loss arising from exchange rate fluctuation; and
 - (g) special, exemplary, contingent, incidental or punitive damages.

9. NOTICES

9.1 Unless otherwise stated in this Agreement, all notices to be given under this Agreement must be in writing, and hand-delivered, posted or emailed to the relevant contact in Item 7 of the Schedule or as otherwise notified in writing.

9.2 The receiving Party will be deemed to have received the Notice as follows:

- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
- (b) if sent by regular post within Australia, from 10 Business Days after the day on which it is posted;
- (c) if emailed, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

provided that such time is before 5.00pm on a Business Day, otherwise it will be deemed to be received on the next Business Day.

10. DISPUTE RESOLUTION

10.1 If any dispute arises out of or in connection with this Agreement, the Parties involved in the dispute must first, before commencing any legal action, attempt to resolve the dispute through discussions between the Parties' senior officers. If the dispute is not resolved by the Parties within 30 days of the commencement of those discussions, the parties must refer the dispute to the Australian Disputes Centre Limited (**ADC**) for mediation in accordance with the Mediation Guidelines of ADC.

10.2 Nothing in clause 10.1 prevents a Party from seeking urgent interlocutory relief.

11. GENERAL

11.1 Relationship

This Agreement does not create any partnership, agency or trust relationship or confer on any Party the authority to bind any other Party in any way.

11.2 Amendment

Except as permitted by this Agreement, a term of this Agreement may not be varied except in writing and signed by the Parties.

11.3 Construction

This Agreement (or any term of it) is not to be construed to the disadvantage of one Party for the reason that that Party was responsible for its preparation or seeks to rely on it.

11.4 Entire agreement

This Agreement constitutes the entire Agreement between the Parties as to its subject matter.

11.5 Electronic execution and counterparts

This Agreement may be signed:

- (a) in accordance with the *Electronic Transactions Act 1999* (Cth); and
- (b) in any number of counterparts which taken together will constitute one instrument.

11.6 Governing law and jurisdiction

This Agreement is governed by the laws in force in the Australian Capital Territory and the Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts that may hear appeals from those courts.

11.7 Assignment

A Party must not assign or novate their obligations or interests under this Agreement without the prior written consent of the other Party.

11.8 Severance

If any provisions of this Agreement shall at any time be or become void, voidable or unenforceable, that provision shall be severed from the rest of this Agreement and shall not affect or invalidate the remaining provisions of this Agreement which shall continue in full force and effect.

THE SCHEDULE

Item	Description	Details	
1.	Licensee		
2.	Commencement Date	Upon execution of this agreement	
3.	Expiry Date	Two years from Commencement Date	
4.	NVT Resources		
5.	Research		
6.	NVT Manager		
7.	Details for Notices	GRDC	Name: Dianne Wright Position: Contracts Administrator E-mail: : Dianne.wright@grdc.com.au Postal address: Level 1, 187 Fullarton Road Dulwich SA 5065
		Licensee	Name: Position: E-mail: Postal address:

ANNEXURE A – RESOURCE REQUEST FORM