



AUSTRALIAN PORK LIMITED PROJECT AGREEMENT

THIS AGREEMENT dated 2017

BETWEEN THESE PARTIES

AUSTRALIAN PORK LIMITED (ABN: 83 092 783 278) of Level 2, 2 Brisbane Avenue, BARTON ACT 2600, a company established in accordance with the *Pig Industry Act 2001* ("**APL**")

AND

RESEARCH ORGANISATION DETAILS
("the Company")

THE PROJECT
No. 2017/XXXX
Title:

THE PARTIES AGREE

DEFINITIONS AND INTERPRETATION

1. Definitions

1.1 In this Agreement: -

"Adjustment Note" means a document issued upon the occurrence of an Adjustment Event as defined by the GST Act in a form which complies with the requirements of the GST Act including any ruling or determination issued in respect of the Act, such requirements being specified by APL to the Company;

"Agreement" means this agreement including the Schedules, and any other documents expressly annexed to this Agreement, as amended from time to time;

"APL Funds" means the money specified in the Project Plan that APL has agreed to pay to the Company to carry out the Project;

"Background Technology" means Intellectual Property, technology, know-how and Confidential Information belonging to a Party prior to the Scheduled Commencement Date or acquired or created by that Party independently of this Agreement and which is relevant or necessary to the performance of the Project and either identified in the Project Plan or at the time it is provided;

"Commercialisation Plan" means a plan for Commercialisation of Project Intellectual Property containing:

- (1) details of proposed method of Commercialisation;
- (2) benefit to the Australian pork industry and the respective industry of any organisations identified in Schedule I as Other Contributors;
- (3) minimum performance obligations;
- (4) proposed licence fees and royalties;
- (5) nature and extent of licence.

"Commercialise" in relation to the Project Intellectual Property means:

- (1) to manufacture, sell, hire or otherwise use the Intellectual Property for commercial purposes;
- (2) if a product incorporates or is derived from Intellectual Property, to use, manufacture, sell, hire, or otherwise dispose of that product for commercial purposes;
- (3) if a service uses Intellectual Property, to provide that service for commercial purposes; or
- (4) to licence any third party to do any of those things.

“Company Contribution” means the in-kind contribution the Company has agreed to contribute to the conduct of the Project;

“Company Funds” means the money specified in the Project Plan that the Company has agreed to contribute to the conduct of the Project;

“Company Material” means facilities, premises, equipment and organisms that are to be provided or obtained by the Company to carry out the Project including those specified in the Project Plan;

“Confidential Information” means all technical and commercial information relating to the Project, which might reasonably be regarded by any of the Parties to be confidential or which may be expressly stated as being Confidential Information including, but not limited to scientific formulae and Methodology, procedures, standards and specifications and:

- (1) includes in the case of the Company any confidential information in the Company Material;
- (2) includes all material in Milestone Reports where a Project is classified as Commercial in Confidence;
- (3) does not include information or products which:
 - (a) at the date of this Agreement is publicly available;
 - (b) subsequent to the date of this Agreement is publicly available without being in breach of this Agreement;
 - (c) was obtained from some third party without breach by that third party of any obligation of confidence concerning Confidential Information;
 - (d) was already in the possession of that Party (as evidenced by written records) when provided by or on behalf of the other Party; or
 - (e) a Party is obliged by law to disclose but only to the extent of any such required disclosure;

“Financial Statement” means a statement of all receipts, income (including APL funds and Company Funds), outgoings and expenditure received, derived or incurred in carrying out the Project and set out in the form required by APL;

“Financial Year” means the period between 1 July and 30 June each year;

“GST” has the same meaning as in 'A New Tax System (Goods And Services Tax) Act 1999';

“GST Act” means A New Tax System (Goods and Services Tax) Act 1999;

“Intellectual Property” means any rights in or relating to an invention, discovery or new process whether patentable or not, patent, copyright, trade mark, design, semi-conductor or circuit board layout rights, plant breeders rights, trade, business or company names, Confidential Information or other proprietary rights;

“IP Owners” means APL, the Company and any Other Contributor who own the Project Intellectual Property pursuant to clause 9.1 or is identified in Schedule 1 as owning a share of Project Intellectual Property;

"Key Person" means a person nominated in the Project Plan as a Key Person and includes any person approved in writing by APL and employed or engaged by the Company to replace that person under clause 16;

"Licence Agreement" has the meaning given to it in clause 10.1;

"Licence Terms" means the terms set out in Schedule 2;

"Methodology" means the methods and procedures for carrying out the Project specified in the Project Plan, as amended from time to time;

"Milestone", in relation to the carrying out of the Project, means a stage, specified in the Project Plan, at which specified parts of the Project must be completed;

"Milestone Achievement Criteria" means the criteria specified in the Project Plan for the achievement of a Milestone;

"Milestone Report" means a progress report or final report required pursuant to clause 5.1;

"Objectives" means the objective or objectives of the Project as specified in the Project Plan, as amended from time to time;

"Other Contributor" means an organisation identified in Schedule 1 as making a contribution to the Project of either cash, basefunding or an in-kind contribution as specified;

"Parties" means the parties to this Agreement being APL and the Company and 'Party' has a corresponding meaning;

"Personnel" of a Party means that Party's employees, agents and contractors;

"Product" means a product manufactured using the Project Intellectual Property;

"Project" means the development, testing and promotional activities to be carried out by the Company as described in the Project Plan;

"Project Income" means the income derived or arising from Commercialisation of Products less any reasonable direct expenses properly incurred in deriving such income;

"Project Intellectual Property" means any Intellectual Property created, resulting from or arising in the course of carrying out the Project, regardless of whether that Intellectual Property was an intended outcome of the Project, and includes Intellectual Property in any Milestone Report;

"Project Management Team" means the team made up of the representatives of each Party identified in the Project Plan;

"Project Plan" means the plan for carrying out the Project set out in Schedule 1 of this Agreement;

"Provider" means a Party who provides Background Technology for the Project;

"Report" means a Milestone Report, Financial Statement or any other report submitted to APL by the Company under this Agreement;

"Scheduled Commencement Date" means the proposed commencement date for the Project identified in the Project Plan;

"Scheduled Completion Date" means the scheduled date of completion of the Project as identified in the Project Plan;

"Tax Invoice" means a document that complies with the requirements of the GST Act including any ruling or determination issued in respect of that Act, such requirements being specified by APL to the Company;

"Term" means the term of this Agreement being the period beginning on the Scheduled Commencement Date and expiring, subject to earlier termination pursuant to the Agreement, when:

- (1) the Project has been completed;
- (2) the Financial Statement has been submitted to APL; and
- (3) APL has notified the Company that the Financial Statement is satisfactory; and

"Uncommitted Funds" means any APL Funds paid to the Company and not:

- (1) used for a purpose permitted under this Agreement; or
- (2) appropriated for expenditure already occurred and permitted under this Agreement.

2. Interpretation

2.1 Throughout this Agreement reference to:

- (1) one gender includes the other genders;
- (2) the singular includes the plural and the plural includes the singular;
- (3) a Party includes the Party's executors, administrators, successors and permitted assigns; and
- (4) a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes that Statutory Provision as amended or re-enacted from time to time and a statute, regulation or provision enacted in replacement of that Statutory Provision.

2.2 Throughout this Agreement:

- (1) Headings are for convenience only and do not affect the interpretation, or form part, of this Agreement;
- (2) words or expressions used which are defined in 'A New Tax System (Goods and Services Tax) Act' have the same meaning in this Agreement
- (3) "Including" and similar expressions are not words of limitation;
- (4) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day (a "Business Day" is a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where the act is to be performed or a payment is to be made).

THE PROJECT

3. Company to carry out Project

3.1 The Company must:

- (1) begin the Project promptly after the Scheduled Commencement Date (or, if no date is specified, promptly after the date on which this Agreement is executed); and
- (2) carry out the Project:
 - (a) with due care and skill and in accordance with generally accepted professional and scientific and ethical principles and standards;
 - (a) in accordance with the Project Plan so as to reach each Milestone by the date specified in the Project Plan and to complete the Project by the Scheduled Completion Date; and
 - (b) in compliance with all laws from time to time in force in each State or Territory in which the Project is to be carried out; and
- (3) provide or obtain, at no cost to APL, the Company Material for the purpose of carrying out the Project.

3.2 It is a condition of the Agreement that the Company:

- (1) provides the cash contribution identified in the Project Plan;
- (2) has disclosed to APL all other substantial sources of funding for the Project;
- (3) will not, with the involvement of any individual directly involved in the Project, start any substantially similar project to the Project during the Term whether or not that project is carried on with or for a third party; and
- (4) has the right to use the Company Material for the purposes of the Project and for the purposes of Commercialising any Project Intellectual Property.

3.3 The Company warrants that:

- (1) its conduct of the Project will not infringe any other person's Intellectual Property rights (excluding patent rights);
- (2) to the best of its knowledge and belief after due enquiry, its conduct of the Project will not infringe the patent rights of any other person; and

4. Project Management Team

4.1 The Project Management team must meet regularly during the Project to:

- (1) monitor achievement of the Objectives, Milestones, and expenditure against budget for the Project as set out in the Project Plan;
- (2) agree on variations to the matters referred to in paragraph (1);

- (3) select appropriate third parties to carry out components of the Project under subcontract to the Company with approval from APL or by APL; and
- (4) review the Commercialisation Plan.

REPORTING AND RESULTS

5. Milestone Reports

5.1 The Company must provide a Milestone Report to the Project Management Team:

- (4) on or before each date specified in the Project Plan for completion of each Milestone, even if the Milestone Achievement Criteria for the Milestone have not been met at that date; and
- (2) at other times within one month after receiving a request from the Project Management Team.

5.2 Each Milestone Report must be in writing and in a form and to a level of detail reasonably acceptable to APL and must include:

- (5) the progress of the Company in achieving the Objectives;
- (6) any discoveries made since the last Milestone Report in carrying out the Project;
- (7) any variation which the Company proposes to make to the Project or to the Project Plan;
- (8) if specifically requested by APL, details of persons who have worked on the Project, including the Key Persons, and the approximate time spent by each person on the Project; and
- (9) any other details reasonably required by APL from time to time.

* For information on reporting formats, view the Submitting Reports page on APL's website

5.3 The Company must keep a record of all technical and non-technical work and experiments carried out by the Company in the course of carrying out the Project in accordance with any guidelines issued by APL from time to time.

6. Publications and Media

6.1 The Company may not, without the prior written approval of APL, which approval will not be unreasonably withheld, publish, disclose or issue any article or material containing or referring to the Project Intellectual Property, Methodology, results achieved or conclusions reached in carrying out the Project.

6.2 The Company must in any publication or presentation acknowledge the use of APL Funds and must include a copyright or other notice in a form approved by APL, and must provide a copy of any such publication to APL.

7. Accounts and Audit

7.1 The Company must keep full and accurate accounting records, in accordance with generally accepted accounting principles, of:

- (1) all receipts of APL Funds;
- (2) all other money used or applied in carrying out the Project; and
- (3) all Project Income derived and outgoings and expenditure incurred in carrying out the Project.

7.2 The Company must:

- (1) provide the Project Management Team with up-to-date reports of expenditure against budget for APL Funds, funds paid to the Company by APL on behalf of Other Contributors and Company Funds at each meeting;
- (2) provide to APL a Financial Statement annually made up to 30 June in each Financial Year during which the Project is carried out as soon as possible after 30 June each year, but in any event not later than 31 August. In the final year of the Project, the Financial Statement will be made up to, and provided within 2 months after completion of the Project;
- (3) provide details of any tax concessions that relate to research and development in the Project which it has received or agrees to receive relating to the Project; and
- (4) whenever required by APL, promptly produce any additional information reasonably required by APL including any invoices, receipts or other evidence of the use and application of APL Funds and Company Funds.

7.3 If APL so requires, the Financial Statement provided will be audited by a qualified accountant recognised by the Australian Society of Certified Practising Accountants or Institute of Chartered Accountants or other person as approved by APL and accompanied by a certificate given by that person stating whether the Financial Statement is correct and whether APL Funds have been used and applied in accordance with this Agreement.

7.4 The Company must permit, on reasonable notice, any representatives of APL access to the documents and records required to be kept pursuant to this clause and must provide any explanations to those representatives as are necessary to verify any financial information provided by the Company pursuant to this Agreement.

7.5 APL may audit those of the Company's documents and records as are reasonably considered necessary by the auditor appointed, to verify any financial information provided by the Company pursuant to this Agreement. APL will bear the cost of the audit unless the audit reveals that the Company's accounts or records are inaccurate or in error to the extent of 5% or more of the amounts received or the amounts payable for the period covered, in which case the Company must bear the cost of the auditor's fees and expenses.

7.6 Except to the extent required by law, the Company must retain all records of account and technical records until at least 7 years after the end of the Term.

INTELLECTUAL PROPERTY AND INCOME

8. Background Technology

8.1 Background Technology will remain vested solely in the Party that provided that Background Technology ('**Provider**').

8.2 Each Provider warrants that:

- (1) it is the owner of its Background Technology and is authorised to license that Background Technology in accordance with the terms of this Agreement;
 - (2) the Parties and any Other Contributor will be entitled to use the Background Technology in accordance with this Agreement without the consent of any other person; and
 - (3) it will not dispose of or Commercialise the Background Technology so as to prejudice its use in accordance with this Agreement.
- 8.3 For the Term, each Provider grants to the other Party a royalty free, non-exclusive right to use the Provider's Background Technology to the extent necessary for carrying out the Project.
- 8.4 Each Provider must at all times indemnify, and defend the other Party and its Personnel (in this clause referred to as "those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of the infringement or an alleged infringement of the Intellectual Property of any person, which infringement or alleged infringement occurred by reason of the purchase, licence, sub-licence or possession or use of the Provider's Background Technology.
- 8.5 The Provider will not indemnify those indemnified if the infringement or alleged infringement referred to in clause 8.4 arises from:
- (1) use of the Provider's Background Technology in combination by any means and in any form with other technology not specifically approved by the Provider;
 - (2) use of the Provider's Background Technology in a manner or for a purpose not reasonably contemplated or not authorised by the Provider;
 - (3) modification or alteration of the Provider's Background Technology without the prior written consent of the Provider; or
 - (4) any transaction entered into by those indemnified relating to the Provider's Background Technology without the Provider's prior written consent.

9. Project Intellectual Property

- 9.1 The parties will own the Project Intellectual Property on the terms and in the proportions set out in the Project Plan.
- 9.2 The Company must in each Milestone Report notify APL of any Project Intellectual Property developed in the period to which the Milestone Report relates.
- 9.3 The Parties acknowledge that Project Intellectual Property may be Commercialised:
- (1) by the Company;
 - (2) by APL;
 - (3) by a third party; or
 - (4) by a combination.
- 9.4 Unless otherwise stated in the Schedule, the Company has a first right of refusal to obtain exclusive rights to Commercialise the Project Intellectual Property. If the Company wishes to obtain this right, it must provide APL with a Commercialisation Plan within 90 days after the end of the Term.

- 9.5 If APL accepts the Commercialisation Plan as submitted, or as varied after negotiations with the Company, APL must grant the Company exclusive rights to Commercialise the Project Intellectual Property in accordance with the provisions of clause 10. APL will not unreasonably withhold acceptance of the Commercialisation Plan.
- 9.6 If APL terminates this Agreement in accordance with clause 25.1 or clause 25.2 (other than in the case of a merger or machinery of government changes), the Company loses its rights to be offered a first right of refusal to Commercialise the Project Intellectual Property and its share of Project Intellectual Property is automatically assigned to APL.
- 9.7 Both APL and the Company may dispose of their share of Project Intellectual Property to a third party with prior written notification to the other.
- 9.8 To the extent that the Company owns any rights, including any Intellectual Property rights in Milestone Reports, the Company grants to APL a non-exclusive, perpetual and royalty free right to use that material in any form or manner as APL considers appropriate (including sublicensing these rights to Other Contributors). APL must seek the consent of the Company before any use of material that contains Confidential Information.
- 9.9 To the extent that APL owns any rights, including any Intellectual Property rights in Milestone Reports, APL grants to the Company a non-exclusive, perpetual and royalty free right to use that material in any form or manner as the Company considers appropriate. The Company must seek the consent of APL before any use of material that contains Confidential Information.

10. Commercialisation of Project Intellectual Property

- 10.1 If the Company gains the exclusive right to Commercialise Project Intellectual Property in accordance with clause 9.5, the IP Owners must negotiate in good faith to finalise the terms of a licence agreement, based on the Licence Terms (**'Licence Agreement'**).
- 10.2 APL may offer third parties the right to Commercialise Project Intellectual Property on terms no more favourable than the Licence Terms if;
- (1) the Company does not submit a Commercialisation Plan within the period set out in clause 9.4;
 - (2) the IP Owners through APL do not accept the Company's Commercialisation Plan after 30 day period of negotiation from submission;
 - (3) the Company does not execute a Licence Agreement within 6 months after the end of the Term;
 - (4) the Company does not comply with the executed Licence Agreement; or
 - (5) the term of any exclusivity period granted to the Company expires.
- 10.3 If APL does not grant the Company a right of first refusal as contemplated by clause 9.4, or the Company does not wish to obtain rights to Commercialise Project Intellectual Property, APL will arrange for preparation of a Commercialisation Plan and may offer third parties the right to Commercialise Project Intellectual Property, subject to ensuring that any income from that Commercialisation is shared in accordance with clause 12.
- 10.4 This clause remains valid during the Term and for 9 months after the end of the Term, unless the Company fails to pay any amounts committed for the Project, in which case the right to obtain exclusive rights to Commercialise lapses.

11. Non Disclosure of Confidential Information

- 11.1 Neither Party may copy or disclose to a third party or allow to be copied or disclosed to a third party any Confidential Information without the prior written consent of the other Party. The Parties must only disclose Confidential Information to their respective employees or persons directly involved in the conduct of the Project who are required to have access to the Confidential Information on a need to know basis for the purposes of carrying out the Project.
- 11.2 Each Party that discloses Confidential Information may at any time require the recipient of that Confidential Information to give, and to arrange for its Personnel, licensees and sub-licensees to give, a written undertaking in a form reasonably prescribed by the disclosing Party seeking the undertaking to ensure compliance with this clause and the recipient will promptly arrange for such undertakings to be given.

12. Income from Project

- 12.1 The Parties must share all Project Income in accordance with the royalty provisions in the Licence Agreement or, if a Licence Agreement is not executed or does not cover this issue, in proportion to their proportionate ownership of the relevant Project Intellectual Property.
- 12.2 Each Party must, within 90 days of receiving Project Income, account to the others for all Project Income and must pay to the other Party their share of all Project Income.
- 12.3 To the extent that the payment of Project Income under clause 12.1 and clause 12.2 is consideration for a taxable supply under the GST Act, the party paying the Project Income will increase the amount payable by the amount of the GST payable. The additional amount will be payable at the same time as the share of the Project Income.
- 12.4 If an additional amount is payable by a Party to another Party on account of GST pursuant to the above clause, the recipient will provide a Tax Invoice in respect of that payment.

INPUTS TO THE PROJECT

13. APL Funds and GST Requirements

- 13.1 Subject to the Company performing and complying with the provisions of this Agreement, APL will pay the APL Funds in accordance with and up to the total amount specified in the Project Plan.
- 13.2 Where a supply is made under this Agreement by a Company that is GST registered, the Company must issue to APL a Tax Invoice for the instalment amounts as agreed to in the Project Plan.
- 13.3 Where a supply is made under this Agreement by a Company that is not GST registered, the Company must issue to APL an invoice for the instalment amounts as agreed to in the Project Plan.
- 13.4 No payments by APL to the Company can be made without the issuance of either a completed Tax Invoice, or if relevant, an Adjustment Note in the case of a GST registered Company or the issuance of an invoice in the case of a non-GST registered Company
- 13.5 If the Company supplies a Tax Invoice which states that the total amount payable includes GST then the Company warrants that at the time that the supply is made under this Agreement that it is registered under the GST legislation. If APL requests evidence of that registration the Company will promptly produce satisfactory evidence.

- 13.6 If APL is required to reimburse the Company for any expense or liability incurred, the amount of the reimbursement payment must be reduced by the amount of any input tax credit claimed in connection with that expense or liability.
- 13.7 The Company must use APL Funds only for the purpose of carrying out the Project and if any heads of expenditure for the use or application of APL Funds are specified in the Project Plan, the Company agrees to use and apply the APL Funds only for those heads of expenditure, unless otherwise agreed by the Project Management Team.

14. Withholding APL Funds

- 14.1 Without limiting any other remedies available to APL, APL will not pay any instalment of APL Funds unless the Company has:
- (1) provided to the reasonable satisfaction of APL, details of receipt of APL Funds and expenditure of APL Funds and Company Funds to date pursuant to clause 7;
 - (2) reached each Milestone to the reasonable satisfaction of APL by the date specified in the Project Plan;
 - (3) fully complied with its obligations to deliver Milestone Reports in respect of each Milestone;
 - (4) delivered the Financial Statement to the satisfaction of APL;
 - (5) fully complied with its obligations regarding use of APL Funds;
 - (6) supplied a Tax Invoice in the case of a GST registered Company or an invoice in the case of a non-GST registered Company covering the instalment; and
 - (7) provided its Australian Business Number to APL.

15. Uncommitted APL Funds

- 15.1 The Company must specify any Uncommitted Funds in each Financial Statement to be provided under clause 7.
- 15.2 Any Uncommitted Funds will be a debt due and payable to APL and must be repaid to APL on request or at the end of the Term.

16. Key Persons

- 16.1 The Company must:
- (1) employ or engage the Key Persons in such a way as to enable those persons to undertake the roles and functions required to achieve the Objectives; and
 - (2) ensure that each Key Person assigns to the Company their rights in any Project Intellectual Property.
- 16.2 If any Key Person is not available, or the Company becomes aware that that person will not be available, to perform their specified role or function:

- (1) the Company must, within 14 days of the unavailability or awareness of unavailability, whichever is the earlier, notify APL giving particulars of that person including the reasons for their not being available;
- (2) within 3 months of the Key Person becoming unavailable, employ or engage a person approved in writing by APL to replace that person in that role or function provided that such approval will not be unreasonably withheld.

17. Sub-contracting

- 17.1 Sub-contracting any of the Project must first be agreed in writing between the Parties and will be managed by APL unless agreed otherwise.
- 17.2 Where APL is managing a sub-contract, the Company must pay its contribution to the sub-contractor via APL, to enable APL to pay the sub-contractor.
- 17.3 If the Company engages any agent or contractor to work with the Company in conducting the Project or otherwise assist the Company in performing its obligations under this Agreement, the Company will remain liable for the acts or omissions of the contractor as if those acts or omissions were those of the Company.

PROJECT ADMINISTRATION

18. Access to the Project

- 18.1 Given reasonable notice by APL the Company must allow APL or its representatives access during normal business hours to those parts of their premises which may be used for purposes directly associated with this Agreement and will render all reasonable and necessary assistance to allow APL and its representatives to:
 - (1) speak to any persons who may be associated with the Project;
 - (2) examine, copy and otherwise inspect any technical or financial records relating to the Project;
 - (3) view any activities necessary to assess progress; and
 - (4) make any other inquiries of any person who may be associated with the examination of any Intellectual Property which may be derived from the Project.

19. Conflict of Interest

- 19.1 The Company represents and warrants to APL that:
 - (1) except as disclosed in writing to APL before this Agreement was made, the Company does not, and its Personnel do not, at the date on which this Agreement was made, hold any rights or property or have any obligations; and
 - (2) except as disclosed under clause 19.1(1) it will not, and its Personnel will not, at any time during the Term, acquire any rights or property or undertake any obligations

whereby interests or obligations exist or might be created in conflict with the interests or obligations of APL under this Agreement.

19.2 The Company must give notice to APL of any matter, event or circumstance by reason of which any such conflict of interest is created, or might reasonably be expected to be created, within 14 days of becoming aware of the matter, event or circumstance.

19.3 The obligations of the Company under clause 19.1 in relation to its Personnel are limited to Personnel engaged on or reasonably having knowledge of the Project.

20. Compliance with Acts, Codes of Practice, Contracts, Licences etc.

20.1 The Company must comply with all applicable acts, ordinances, rules, regulations and by-laws and with all applicable codes of conduct and guide-lines (whether or not legally binding) in carrying out the Project.

20.2 If the Company requires any licence or other approval in order to be authorised to carry out any part of the Project, then the Company must advise APL of such licence or approval and at its cost obtain, comply with and maintain such licence or approval.

21. Insurance

21.1 The Company must throughout the term effect and maintain with reputable and substantial underwriters:

- (1) public liability insurance to an amount that would be reasonably considered adequate for the purpose of the conduct of the Project, but in any event not less than \$10,000,000; and
- (2) product liability insurance; and
- (3) any other insurance reasonably required by APL or stated in the Project Plan;

with such insurance to be against all usual risks and any other risks as reasonably required by APL.

21.2 The Company must, within 14 days after being requested in writing by APL, provide to APL copies of the policies, certificates of currency and any other evidence reasonably required in relation to those policies referred to in clause 21.1.

21.3 Any amount recoverable by APL under a policy in clause 21.1 must not extinguish the right of APL to recover from the Company the full value of any loss.

22. Taxes and Duties

22.1 The Company must pay any taxes, duties and charges imposed or levied in connection with the performance of this Agreement.

22.2 If there is any amendment to Australian taxation laws including the GST Act, the Parties will negotiate in good faith for any adjustment to the Project funding or share of Project Income which may be required to take into account the amendments.

23. Infringement in Third Party Proceedings

23.1 Each Party must give the other Party notice of:

- (1) any claim or allegation that the exercise of any rights under this Agreement constitute an infringement of the rights of any third party; and

- (2) any third party's infringement or threatened infringement of any party's Intellectual Property, that it becomes aware of.
- 23.2 The Parties will confer as to what steps, if any, are to be taken against any person infringing any Project Intellectual Property. If only one of the Parties decides to commence legal proceedings:
- (1) it will be solely responsible for legal costs and other costs, damages and expenses incurred pursuing such proceedings and will be solely entitled to any damages, profits or other compensation recovered by such proceedings; and
- (2) the other Party will provide reasonable assistance at the expense of the Party commencing proceedings.
- 23.3 No Party will commence any legal proceedings without the prior written consent of the other Party, such consent not to be unreasonably withheld. This clause does not prevent any Party from obtaining any urgent injunctive, declaratory or other interlocutory relief from a court.

24. Disputes

- 24.1 A Party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement (**'Dispute'**) unless it has complied with this clause.
- 24.2 A Party claiming that a Dispute has arisen must notify the other party or parties to the Dispute giving details of the Dispute (**'Notification'**).
- 24.3 On receipt of a Notification each Party must negotiate in good faith to resolve the Dispute and, if necessary to resolve the Dispute, involve the Chief Executive Officers or other senior officers of the parties directly in those negotiations.
- 24.4 If the Dispute involves technical matters and has not been resolved by negotiations under the previous clause within 30 days (or longer period agreed between the Parties), the Parties will refer the Dispute for determination by an independent expert with expertise in the technical field which is the subject of the Dispute. The independent expert must be agreed to by all Parties and the cost of such independent expert must be paid by the Parties in equal shares.
- 24.5 If the Dispute is not resolved under clause 24.3 or clause 24.4 within 30 days (or longer period agreed between the Parties), the Parties must refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited ('ACDC') for resolution in accordance with the Mediation Rules of ACDC.
- 24.6 If the Dispute is not resolved under clause 24.5 within 60 days after referral (or longer period agreed between the parties) any Party may initiate proceedings in a court.
- 24.7 Notwithstanding the existence of a dispute each Party must continue to perform its obligations under the Agreement.

25. Termination

- 25.1 A Party may terminate this Agreement by notice effective immediately to the other Party if:
- (1) the other Party breaches any provision of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- (2) the other Party breaches a material provision of this Agreement where that breach is not capable of remedy.

- 25.2 APL may terminate this Agreement by notice effective immediately to the Company if;
- (1) APL becomes aware of any misrepresentation made by the Company in any application to APL in relation to the Project;
 - (2) where the Company is a body (corporate or otherwise) established by statute, or under or by the authority of any Government, it ceases to exist or is merged with any other body or its functions or powers are materially altered;
 - (3) an order is made for the winding up of the Company, a receiver or receiver and manager of any property of the Company is appointed, a provisional liquidator or liquidator or official manager of the Company is appointed, the Company is or is deemed by law to be unable to pay its debts, or the Company makes any arrangement or compromise with its creditors or members or with any class of its creditors or members; or
 - (4) there is in the opinion of APL any change in the direct or indirect ownership or control of the Company that would adversely affect its ability to comply with this Agreement.

25.3 APL may terminate this Agreement by 30 days notice to the Company if:

- (1) in the absolute discretion of APL the Project has not been or has ceased to be relevant to the Objectives or otherwise has ceased to be of value to the Australian pig industry or the respective industry of an organisation identified as Other Contributor; or
- (2) the reduction in APL's overall industry or Government funding prevents it from performing its obligations under this Agreement, but in this case APL will meet its financial obligations for the then current Financial Year and the Agreement will terminate with effect from 30 June in that Financial Year.

25.4 When forming the opinion referred to in clause 25.3 APL may have regard to any consideration, including:

- (1) the achievement of any of the Objectives by any other person (whether in Australia or anywhere else in the world);
- (2) any other research and development project work (whether in Australia or anywhere else in the world) having the same or similar or related objectives to any of the Objectives; and
- (3) any other research and development in relation to the functions of APL.

26. Effect of Termination

26.1 On termination of this Agreement:

- (1) APL will cease to be liable to pay to the Company any further APL Funds other than APL Funds committed by the Company in accordance with this Agreement prior to the date of termination and not yet paid by APL;
- (2) the Company agrees to promptly repay to APL any Uncommitted Funds;
- (3) APL may nominate another person to take over part or all of the Project (except if the Company has terminated for breach by APL or APL has terminated under clause 25.3);
- (4) the Company must disclose to APL and to any person or persons nominated by APL to take over part or all of the Project, all information and documents about the Project, including Methodology used and results and conclusions reached in carrying out the

Project, and must also allow APL and those persons access to its records relating to the Project and give to them all information and explanations that they require about the Project, except if the Company has terminated for breach by APL or APL has terminated under clause 25.3.

- (5) the following clauses survive: clause 6 (Publications and Media), 8.4 (IP indemnity), 10 (Commercialisation of Project Intellectual Property), 11 (Non Disclosure of Confidential Information), 11.2 (Income from Project), 23 (Infringement in Third Party Proceedings);
 - (6) each Party must return to each Provider all documents relating to the Provider's Background Technology, including any copies; and
 - (7) a Party's accrued rights and remedies are not affected.
- 26.2 If APL has terminated this Agreement by reason of a breach of clause 3.2 then the Company must within 30 days of termination reimburse to APL all APL Funds paid to the Company.
- 26.3 With the prior written approval of APL and subject to any conditions imposed by APL, the Company may continue the Project and to the extent that any Intellectual Property is developed by the Company entirely after the date of termination, that Intellectual Property will be owned solely by the Company provided that in developing any such Intellectual Property no use was made of any Background Technology or Project Intellectual Property owned or jointly owned with APL or any Other Contributor without their prior written consent, such consent not to be unreasonably refused.
- 26.4 If APL nominate another person to take over the Project or any part of the Project pursuant to clause 26.1(3), the licence of Background Technology granted by the Company to APL pursuant to clause 8.3 will survive the termination of this Agreement and continue for the period necessary to complete the Project and APL have the right to sub-licence to such nominated person their rights under that licence.

27. Notices

- 27.1 Any notice, approval, consent, report, statement or other communication under this Agreement ("Notice") must be given by a Party to the other Party either:
- (1) in writing and delivered by hand, sent by pre-paid post, or facsimile transmission; or
 - (2) by electronic mail provided that such notice will not be effective unless acknowledged in writing or return electronic mail by the intended recipient
- to the address for notices in the Project Plan or any subsequent address notified in accordance with this clause.
- 27.2 A Notice is deemed given and received:
- (1) if delivered, upon delivery;
 - (2) if sent by post, on the 7th Business Day (at the address to which it is posted) after posting; or
 - (3) if sent by facsimile, or by email, before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 27.3 Despite clause 27.2(3) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

28. Term

28.1 This Agreement will begin on the Scheduled Commencement Date and end on completion of the Term.

29. Unexpected Events

29.1 **'Unexpected Event'** affecting a party means anything outside that party's reasonable control, including but not limited to, acts or omissions of another party, fire, storm, flood, earthquake, war, transportation embargo, industry-wide strike or failure or delay in transportation, act or omission or delay of any third person (including but not limited to governments or government agencies).

29.2 If an Unexpected Event affecting a party precludes that party (**'Precluded Party'**) partially or wholly from complying with its obligations under this Agreement then:

- (1) as soon as reasonably practicable after that Unexpected Event arises, the Precluded Party must notify the other party of the Unexpected Event; and
- (2) to the extent and for the period that the Precluded Party is precluded by the Unexpected Event from complying with its obligations under this Agreement, those obligations will be suspended.

29.3 Any Party may terminate this Agreement if an Unexpected Event continues for more than 3 months.

30. General

30.1 **Relationships:** This Agreement does not create a relationship of employment, agency or partnership between the Parties or between any Party and another Party's Personnel.

30.2 **Severable Rights:** Except where specifically provided otherwise, the rights and obligations of each party under this Agreement are severable, not joint nor joint and several.

30.3 **Further Action:** Each party must do or cause to be done all things necessary or desirable to give effect to, and refrain from doing things that would hinder performance of, this Agreement.

30.4 **Assignment:** No party may assign the benefit of any of its rights under this Agreement including any rights in the ownership of any Project Intellectual Property to any person without the prior written approval of the other Party.

30.5 **Waiver:** The failure of a party at any time to insist on performance by another party of any obligation under this Agreement is not a waiver of its right:

- (1) to insist on provision of, or to claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (2) at any other time insist on performance of that or any other obligation of another party under this Agreement.

30.6 **Severability:** If part or all of any clause of this Agreement is illegal or unenforceable it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.

30.7 **Currency:** Unless specifically stated as otherwise, all payments are to be made in Australian dollars.

30.8 **Entire Agreement:** This Agreement:

- (1) is made up of these terms and the Schedules;
- (2) records the entire Agreement between the Parties and supersedes all earlier agreements and representations by the Parties about its subject matter;
- (3) may only be altered in writing signed by the Parties.

30.9 **Governing Law:** This Agreement is governed by the laws of the Australian Capital Territory.

30.10 **Public Disclosure:**

- (1) The Company may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form and either generally to public or to a particular person as a result of a specific request.
- (2) Nothing in this clause derogates from:
 - i. APL's obligations under any other provisions of this Agreement, or
 - ii. the provisions of a current Freedom of Information Act in the State or Territory in which the Project is being conducted.

30.11 **Auditor-General's Powers:** Nothing in this Agreement derogates from the powers of the Auditor-General under a current Public Finance and Audit Act in the State or Territory in which the Project is being conducted.

30.12 **Counterparts:** This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by facsimile or email.

Signed as an Agreement for and on behalf of the Parties:

SIGNED for and on behalf of)
AUSTRALIAN PORK LIMITED)
by)
Name:)
Title:) (Signature)
in the presence of:)
Name:)
Title:) (Signature)

SIGNED for and on behalf of)
RESEARCH ORGANISATION)
by)
Name:)
Title:) (Signature)
in the presence of:)
Name:)
Title:) (Signature)
Date:)

SCHEDULE I

PROJECT PLAN

Project	2017/XXXX		
	PROJECT TITLE		
Address for Notices	APL PO Box 4746 KINGSTON ACT 2604	Company	
APL Funds (All amounts are Ex GST)	\$		
Company Funds	\$		
Company Contribution	\$		
Other Contributor	N/A	Funds: N/A	
Budget (including payment schedule)	<i>In attached R&D Plan</i>		
Members of project management team	APL	Company	
Key Persons			
Scheduled Commencement Date	XX/XX/2017		
Scheduled Completion Date	XX/XX/201X		
Background Technology	<i>In attached R&D Plan</i>		
Company Material	<i>In attached R&D Plan</i>		
Principal Investigator			
Methodology	<i>In attached R&D Plan</i>		
Objectives	<i>In attached R&D Plan</i>		
Milestones (<i>In attached R&D Plan</i>)	Description	Due Date	Milestone Acceptance Criteria
Ownership of Project Intellectual Property			

Proportionate shares of Project Intellectual Property	APL: % Company: %
Company's rights to Commercialise Project Intellectual Property (if different from clause 9.4)	
Additional Insurance Requirements	

SCHEDULE 2

LICENCE TERMS

1. Exclusivity

- 1.1 Unless otherwise agreed during negotiations, the Licence is exclusive for a specified period (the '**Exclusivity Period**') subject to the Licensee meeting the minimum performance obligations set out in the Commercialisation Plan.

2. Obligations

- 2.1 The Licensee must:

- (1) carry out Commercialisation:
 - (a) in accordance with the Commercialisation Plan;
 - (b) at its sole risk; and
 - (c) to ensure maximum benefit to the Australian pork industry;
- (2) pay royalties based on the Licensee's and APL's proportionate ownership of the relevant Project Intellectual Property;
- (3) meet agreed minimum performance obligations during the Exclusivity Period;
- (4) release APL from and indemnify APL against all risks and liabilities arising from Commercialisation;
- (5) protect and maintain the Project Intellectual Property;
- (6) put in place all necessary insurance policies from the date of the licence.

ATTACHMENT

R&D Plan