



**Australian Government**  
**Department of Agriculture**



**FRDC**  
FISHERIES RESEARCH &  
DEVELOPMENT CORPORATION

## **FUNDING AGREEMENT 2015–19**

between the

**Commonwealth of Australia represented by the  
Department of Agriculture**

ABN 24 113 085 695

and the

**Fisheries Research and Development Corporation**

ABN 74 311 094 913

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**AGREEMENT DATE**

2 / 6 / 2015

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

**AND** The **FISHERIES RESEARCH AND DEVELOPMENT CORPORATION**, ABN 74 311 094 913, a Commonwealth Government statutory authority having its registered office at 25 Geils Court Deakin, ACT 2600 (**FRDC**).

(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 an R&D Corporation in respect of a primary industry or class of primary industries.
- C. The FRDC was declared to be established from 2 July 1991 to co-ordinate or fund the carrying out of R&D activities including extension for the Australian Fishing and Aquaculture Sector, following passage of the *Fisheries Research and Development Corporation Regulations 1991*.
- D. Section 33(4) of the Act allows the Minister to enter into a written Funding Agreement with FRDC.
- E. The Commonwealth and the FRDC have agreed to enter into a Funding Agreement on the terms and conditions set out in this Agreement.
- F. The Parliamentary Secretary has also issued a direction on [Insert Date] under section 143 of the Act, to the effect that the Beddall Direction no longer applies, effective [Insert Date]. Any relevant matters previously provided for in the Beddall Direction have been incorporated into this Agreement, to the extent necessary and appropriate and are otherwise reflected in section 33B of the Act.

## **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 sector. The Australian Government provides public investment in rural R&D because profitable, competitive and sustainable rural industries provide benefits for the whole Australian community.

Primary producers 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 FRDC sets out expectations about performance, transparency and accountability to levy-payers and other contributors, 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 FRDC establishes a framework for periodic, independent reviews.

The periodic renegotiation of this agreement, informed by performance reviews, is designed to allow the government and FRDC 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 FRDC's role in cooperative R&D and the system for coordination and priority-setting of the national rural R&D effort.

The agreement also recognises that FRDC has some unique features among the RDCs. The Fishing and Aquaculture Sector draws on public resources with access allocated to private individuals or entities with the objective that they use it sustainably for the maximum net economic return to the Australian community. In recognition of this, FRDC must balance investment priorities between natural resource management and Fishing and Aquaculture Sector productivity and development by ensuring that appropriate investment addresses public good priorities.

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 the FRDC’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) the FRDC, or an officer of the FRDC, nominating a candidate for appointment to the Board of the FRDC; or
- b) the FRDC making statements or providing information to the Fishing and Aquaculture Sector on matters related to the FRDC's objects in the proper performance of the FRDC'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 the FRDC in accordance with the Act and this Agreement; or
- d) the use by an officer of the FRDC, or an employee of the FRDC, of his or her own funds to conduct a campaign for election to an any entity engaging in Agri-Political Activity; or

- e) the cost of consultation with, or a contribution towards consultation by, the FRDC's Representative Organisations; or;
- f) any other activity which the Commonwealth notifies the FRDC of in writing.

**'Annual Operational Plan'** means a plan prepared by the FRDC 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 the FRDC 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 and other Fishing and Aquaculture Sector stakeholder 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 the FRDC'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.

**'Collection Act'** has the same meaning as in section 4 of the Act.

**'Commonwealth Matching Payments'** means funds paid to the FRDC in accordance with section 30A (2) and 30B (3) 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 the FRDC'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.

**‘Fishing and Aquaculture Sector’** means any industry or activity conducted in or from Australia concerned with taking, culturing, processing, preserving, storing, transporting, marketing or selling fish or fish products, or as defined in the Regulations.

**‘Fraud Control Plan’** means a plan prepared and maintained by the FRDC 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 the FRDC 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 the FRDC from time to time in writing; and
- (d) the *Levy Principles and Guidelines*, being the guidelines relating to the introduction of new levies or changes to existing levies.

**‘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 the FRDC specifying the procedures for management, adoption and commercialisation of Intellectual Property created by the FRDC.

**‘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 FRDC.

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

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

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

**‘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 the Fishing and Aquaculture Sector or the community in general with the aim of achieving a planned outcome.

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

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

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

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

**‘Regulations’** means the *Fisheries Research and Development Corporation Regulations 1991*.

**‘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 the FRDC in accordance with section 16 of the PGPA Act.

**‘Rural Research and Development Priorities’** means the priorities communicated to the FRDC 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 the FRDC from time to time.

**‘Voluntary Contribution’** means a payment contributed to the FRDC for the purpose of funding Research and Development or Marketing Activities, including any such payment from a State or Territory Government.

**‘Wind-Up Plan’** means a plan prepared by the FRDC which includes:

- (a) any information reasonably requested by the Commonwealth that relates to the repealing or amending of the Regulations, such that FRDC no longer exists or no longer has any Levy attached; and
- (b) if requested by the Commonwealth, a proposal from FRDC setting out how the operations of FRDC will cease or be transferred on repeal or amendment to the Regulation 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 the FRDC must publish this signed Agreement and variations to this agreement on its public website.
- 2.3 The parties will, at least six months before the expiry of this Agreement, commence negotiation in good faith with a view to extending this Agreement or 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 extended or 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 extension to this Agreement or the terms of or entry into a new agreement within the extended period set out in clause 2.4 or if a party does not wish to extend the Agreement, the Commonwealth may request a Wind-Up Plan from the FRDC.
- 2.7 If requested by the Commonwealth under clause 2.6 or clause 8.2 the FRDC 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 Act or Regulations such that FRDC no longer exists or no longer has any Levy attached, the Commonwealth will give sufficient notice to FRDC to allow FRDC 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 the FRDC beyond the expiry of the Agreement, the Commonwealth may in its absolute discretion, notify the FRDC 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, the FRDC 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 the FRDC's expenditure throughout this period.

### **3. COMPLIANCE WITH LEGISLATION**

- 3.1 The FRDC must comply with all relevant laws, including their respective obligations under the Act, the Regulations, and the PGPA Act.

### **4. CORPORATE GOVERNANCE AND BOARD PERFORMANCE**

- 4.1 The FRDC 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 the FRDC should draw on better practice guidance as appropriate.

- 4.2 Consistent with a commitment to better practice and continued improvement, the FRDC must report on steps taken to enhance corporate governance at the six-monthly meeting held under clause 14.1.
- 4.3 The FRDC must ensure that up to date information on the following is available on its public website:
- (a) the FRDC's R&D Plan, including information relating to its development and any changes;
  - (b) the priorities used by the FRDC to determine which projects it will fund;
  - (c) an overview of the FRDC's desired outcomes, key activities to achieve those outcomes and key achievements; and
  - (d) key Research And Development, extension and Marketing Activities which the FRDC 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 authorised by the Act; 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) the FRDC; or
    - (ii) the Fishing and Aquaculture Sector; 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 an FRDC committee or panel concerned with the selection and funding of Research and Development Activities and Marketing Activities with 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 the FRDC.

## **5. PAYMENT OF FUNDS**

- 5.1 Payments to the FRDC will be made in accordance with Part 2 Division 5 of the Act, and in particular, section 30A and 30B of the Act, as applicable.
- 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 the FRDC for amounts equal to the expenses incurred by the Commonwealth in relation to collecting, recovering and/or administering any amounts of the kind referred to in section 30A(1)(a), 30B(2)(a) or 30B(4) that are receivable by the Commonwealth under the Collection Act for that Levy;
  - (b) the FRDC 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 the FRDC 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
    - (ii) from the Marketing Payments to the extent that the amount relates to the Marketing Payments.
- 5.3 The Commonwealth must give the FRDC, 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 Payments and Marketing Payments to the FRDC within two calendar months after the Commonwealth receives the amounts in cleared funds. Where the funds are collected by Australian Fisheries Management Authority, the Commonwealth will pay within two calendar months of verification by the Department, in accordance with the Fisheries Research and Development Corporation Regulations 1991, of the amount to be passed through to the FRDC.
- 5.5 Subject to the applicable limits and audit review, the Commonwealth will pay the Commonwealth Matching Payments to the FRDC within two calendar months after receiving from the FRDC:

- (a) a correctly rendered claim for payment or tax invoice; and
  - (b) evidence reasonably satisfactory to the Commonwealth that the FRDC 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 the FRDC, certifying that the FRDC 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 an independent audit report which includes verification that:
  - (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 legislation 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 The FRDC may only spend the Funds:
  - (a) only in accordance with the Act (in particular Part 2 Division 5), 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 The FRDC may only spend Funds on Research and Development Activities if such expenditure is consistent with the functions and powers of the FRDC under the Act, and to the extent possible within those constraints, ensure that those Research and Development Activities:
  - (a) relate to the Fishing and Aquaculture Sector and are for the benefit of sector; and/or

(b) are for the benefit of Fishing and Aquaculture Sector and for the Australian community generally; and/or

(c) address Fisheries related public good priorities.

6.3 Marketing Payments may only be applied by the FRDC for, or in relation to Marketing Activities related to the Fishing and Aquaculture Sector, for the benefit of the sector.

*Note: the FRDC does not receive Marketing Payments as at the Agreement Date.*

***Other restrictions on spending the Funds***

6.4 The FRDC must not use the funds to engage in Agri-Political Activity or Advocacy. For example, the FRDC must not apply the Funds:

(a) to act as an Industry Representative Body or to reference or provide information which implies to stakeholders that the FRDC is an Industry Representative Body; or

(b) for Advocacy of a particular Fishing and Aquaculture Sector 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 the FRDC to its declared Representative Organisation for consultation costs are to be made in accordance with section 15 of the Act and PGPA Act.

6.6 The FRDC 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 the FRDC 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 the FRDC to assess the performance of the Industry Representative Body in undertaking the task. If requested by the Commonwealth, the FRDC must rely on such measures and provide the assessment of performance to the Commonwealth.

6.7 The FRDC must determine an appropriate Balanced Portfolio through the R&D Plan and the Annual Operational Plan, and explain in the FRDC's R&D Plan the approach to give effect to this.

6.8 The FRDC 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.

6.9 The FRDC must contribute to the implementation of relevant Fishing and Aquaculture Sector and cross-sectoral strategies under the RD&E Framework as appropriate to its national leadership role in relevant strategies and support role in other relevant strategies and consistent with the FRDC's R&D Plan.

6.10 The FRDC must provide feedback on the outcomes of funding applications to all applicants.

## **7. MANAGEMENT OF THE FUNDS**

7.1 The FRDC 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 the FRDC if:

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

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

- (a) the FRDC 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:

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

8.3 Any notice the Commonwealth issues to the FRDC 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 the FRDC 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 The FRDC must carry out its functions under section 11 of the Act and contribute to the implementation of relevant Fishing and Aquaculture 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, the FRDC 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 The FRDC 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 PGPA Act or Rules and this Agreement, the PGPA Act and the Rule prevail.*

- 10.2 The Program Framework should also inform the development of key planning and reporting documents such as the R&D Plan and Annual Operational Plans and the Annual Report and 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 The FRDC 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 the FRDC's key investments; and
  - (d) include a means of publishing and disseminating relevant Research and Development outcomes and outcomes of evaluations undertaken under subclause 10.3(c).
- 10.4 The FRDC must:
- (a) consult with the Commonwealth in preparing the evaluation plan;
  - (b) participate in any evaluation project relevant to the FRDC's operations which is established for all RDCs; and

- (c) demonstrate the FRDC's commitment to provide adequate expenditure for this purpose.

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

### ***R&D Plan***

10.6 The FRDC must:

- (a) prepare an R&D Plan in accordance with sections 19-24 of the Act and this Agreement;
- (b) ensure the R&D Plan is consistent with the FRDC'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 the FRDC'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 Fishing and Aquaculture Sector and an explanation on the extent to which Fishing and Aquaculture Sector 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;
- (f) the Research and Development Activities and Marketing Activities that the FRDC 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 the FRDC 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 the FRDC's approach to ensuring a Balanced Portfolio appropriate to the Fishing and Aquaculture Sector.

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

- (a) the Commonwealth; and
- (b) the FRDC's Representative Organisation; and
- (c) Fisheries management agencies and Fishing and Aquaculture sectors; and
- (d) other stakeholders as appropriate, including, but not limited to, other RDCs.

10.9 For minor variations to an existing R&D Plan, FRDC must consult in accordance with section 24 of the Act but FRDC 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 the FRDC'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 the FRDC.

### ***Annual Operational Plan***

10.13 The FRDC 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 the FRDC 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 the FRDC'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 the FRDC intends to implement and operationalise a Balanced Portfolio appropriate to the Fishing and Aquaculture Sector for the Financial Year referred to in the plan.

10.15 The FRDC 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 the FRDC.

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

### ***Other Plans***

10.17 The FRDC 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 The FRDC must review the Intellectual Property Management Plan at intervals of no more than four years.

10.19 The FRDC must provide the Commonwealth with a copy of the plans in paragraph (a) to (b) above, or amendments to the plan, 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 the FRDC.

## 11. REPORTS

### *Compliance Assurance Report*

11.1 The FRDC 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 FRDC 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 the FRDC 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 and Marketing Activities and verify the claims made for Commonwealth Matching Payments under clause 5.5 are consistent with the amount of Eligible R&D Expenditure; and

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

(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 the FRDC certifying whether, in the Board's opinion, the FRDC 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 giving an explanation of the non-compliances.

11.4 The Compliance Assurance Report must also include a statement that it has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgement that it 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 the Fishing and Aquaculture Sector, 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, the FRDC is in 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 the FRDC's compliance with the Act and/or this Agreement.

11.7 If the Commonwealth requests an audit report or opinion under clause 11.6, the FRDC 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 the FRDC receives it.

### ***Annual Reports***

11.8 The FRDC 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 FRDC.

11.10 The Annual Report must include, in respect of the relevant Financial Year:

- (a) a report on the FRDC's contribution to the implementation of relevant Fishing and Aquaculture 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 the FRDC's research extension activities;
- (d) collaboration with Fishing and Aquaculture 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 the FRDC'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 the FRDC by the Commonwealth.

### ***Other Reports***

11.11 In addition to the reports required under clauses 11.8 and 11.9, on notice the FRDC 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, the FRDC 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 The FRDC 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 the FRDC's response to the Performance Review Report recommendations on the FRDC'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 the FRDC.

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

- (a) the performance of the FRDC in meeting its obligations under the Act and this Agreement; and
- (b) the FRDC's development and implementation of its R&D Plan, Annual Operational Plan, Risk Management Plan, Fraud Control Plan and

Intellectual Property Management Plan, and the FRDC's effectiveness in meeting the priorities, targets and budgets set out in those plans; and

- (c) the efficiency with which the FRDC carried out those plans; and
- (d) the efficiency and effectiveness of the FRDC's investments;
- (e) the delivery of benefits to the Fishing and Aquaculture Sector foreshadowed by those plans, including an assessment of the degree to which the FRDC's investments have met the needs of Fishing and Aquaculture Sector; 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 FRDC.

### **13. PERFORMANCE MANAGEMENT**

13.1 Notwithstanding any other provision in this Agreement, the Commonwealth may review the FRDC's performance and compliance with this Agreement, at any time during the term of this Agreement.

13.2 In reviewing the FRDC's performance and compliance with this Agreement for the purposes of clause 13.1, the Commonwealth may:

- (a) have regard to any information available to it;
- (b) request information from the FRDC, including the provision of additional reports including audit reports to inform its consideration; and
- (c) request the FRDC develop and provide a work plan for the FRDC to improve its performance or compliance with this Agreement to the Commonwealth for approval.

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

## 14. CONSULTATIONS

### *Consultation with the Commonwealth*

- 14.1 The Chairperson of the FRDC, 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 the FRDC's performance of its functions including:
- (a) progress on implementing the FRDC'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 4.1;
  - (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 The FRDC must ensure that section 29 of the Act is complied with and in addition, that it meets with its declared Representative Organisation(s) at not more than six-monthly intervals to:
- (a) review Fishing and Aquaculture Sector priorities for Research and Development investments and Marketing investments, including any regional equity considerations; and
  - (b) report on the FRDC's performance against the R&D Plan and the Annual Operational Plan.
- 14.3 The FRDC must meet periodically with fisheries management agencies and Fishing and Aquaculture sectors to:

- (a) review Fishing and Aquaculture Sector priorities for Research and Development investments and Marketing investments, including any regional equity considerations; and
- (b) report on the FRDC's performance against the R&D Plan and the Annual Operational Plan.

### ***Guidelines***

- 14.4 The Commonwealth may vary the Guidelines provided that the Commonwealth:
- (a) consults with the FRDC prior to the variation; and
  - (b) gives the FRDC a reasonable period to implement the variation.
- 14.5 If the Commonwealth becomes aware of a proposal to vary the Guidelines:
- (a) the Commonwealth agrees to use reasonable endeavours to inform the FRDC of the proposal.
- 14.6 Where the Commonwealth provides notice in accordance with clause 14.3 and the Board of the FRDC 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 the FRDC; or
  - (d) be contrary to the public interest.

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 the FRDC 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 the FRDC with the Act and this Agreement, have access to:
- (a) premises occupied by or under the control of the FRDC; and
  - (b) data, records, accounts and other financial material and any property of the Commonwealth in the possession or under the control of the FRDC.

- 15.3 Unless otherwise agreed between the parties, the FRDC must grant this access, on request:
- (a) during Business Hours – at any time on reasonable notice in writing; and
  - (b) outside Business Hours – on 48 hours’ notice given to the FRDC and marked for the attention of the Executive Director of the FRDC.
- 15.4 The FRDC 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 the FRDC 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 The FRDC 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 the FRDC as being material in which a third party owns the copyright.

**16. NOTIFICATION OF SIGNIFICANT ISSUES**

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

**17. ACKNOWLEDGEMENT OF FUNDING**

17.1 Unless otherwise agreed with the Commonwealth, FRDC must ensure that all significant publications and publicity by the FRDC in relation to matters on which Funds are expended must acknowledge the provision of 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 The FRDC must not assign or novate this Agreement or any right or obligation under this Agreement unless the FRDC:

- (a) is not in breach of this Agreement; and
- (b) obtains the prior written consent of the Commonwealth; and
- (c) ensures that the assignee agrees to be bound by all of the FRDC'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 an 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:

Commonwealth	Mr Gordon Neil Assistant Secretary Fisheries Branch Sustainability and Biosecurity Policy Division Department of Agriculture GPO Box 858 CANBERRA ACT 2601 Email: gordon.neil@agriculture.gov.au Cc: RDCGovernance@agriculture.gov.au
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Fisheries Research and Development Corporation	Dr Patrick Hone Executive Director Fisheries Research Development Corporation Locked Bag 222, Deakin West ACT 2600 Email:patrick.hone@frdc.com.au Cc:john.wilson@frdc.com.au
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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 The 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  
**Senator the Hon. Richard Colbeck**  
Parliamentary Secretary to the Minister for  
Agriculture

  
.....  
*Signature*

in the presence of

  
.....  
*Signature of witness*

  
.....  
*Name of witness*

  
.....  
*Date signed*

SIGNED for and on behalf of the  
**FISHERIES RESEARCH AND  
DEVELOPMENT CORPORATION**

by

  
.....  
*Name of signatory*

  
.....  
*Position of signatory*

  
.....  
*Signature*

in the presence of

  
.....  
*Signature of witness*

  
.....  
*Name of witness*

  
.....  
*Date signed*