

**SERVICES AGREEMENT APPLYING FUNDS FROM CATTLE INDUSTRY
COMPENSATION FUND**

BETWEEN

THE STATE OF WESTERN AUSTRALIA acting through its **DEPARTMENT OF
AGRICULTURE AND FOOD**

AND

THE RECIPIENT

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THIS AGREEMENT is made the _____ day of _____ 20 _____

PARTIES

THE STATE OF WESTERN AUSTRALIA acting through its **DEPARTMENT OF AGRICULTURE AND FOOD** (ABN 18 951 343 745) of 3 Baron-Hay Court, South Perth, Western Australia (**DAFWA**), in its capacity as administrator of funds formerly in the Cattle Industry Compensation Fund, pursuant to section 58 *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*

and

WESTERN AUSTRALIAN AGRICULTURE AUTHORITY (ABN 86 611 226 341) a body corporate established under the *Biosecurity and Agriculture Management Act 2007* represented by the Chief Executive Officer of the Department of Agriculture and Food Western Australia of 3 Baron-Hay Court South Perth Western Australia (**RECIPIENT**)

BACKGROUND

- A. Pursuant to regulation 6 of the *Biosecurity and Agriculture Management Industry Funding Scheme (Cattle) Regulations 2010 (Regulation 6)*, the Director General of DAFWA maintains and administers the Cattle Industry Declared Pest Control and Compensation Account (**Account**) in consultation with the Cattle Industry Funding Scheme Management Committee (**CIFSMC**).
- B. Pursuant to section 58 of the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 (Section 58)* and Regulation 6, moneys formerly standing to the credit of the former Cattle Industry Compensation Fund (**Funds**) have been credited to the Account, and are to be applied for the purposes described in Section 58(2A), which purposes include in the payment of the costs of the provision of, or the promotion and encouragement of, scientific research for the improvement of cattle health and production.
- C. In 2012 the CIFSMC sought applications for Funds for purposes described in Section 58(2A).
- D. The Recipient's application for Funds is successful, and this Service Agreement contains the terms on which the Recipient agrees to provide the Services in consideration of receiving Funds in the form of the Contract Price.

AGREEMENTS

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following expressions have the following meanings when they commence with a capital letter:

Agreement means this agreement, including any recitals, schedules and annexures, and any amendment to it agreed in writing by the Parties;

Auditor General means the Auditor General of the State of Western Australia;

Business Day means any day except a Saturday, Sunday or a public holiday in Western Australia;

Commencement Date means the date set out in Item 1 of the Schedule;

Confidential Information means information (except information in or comprising Contract Material or Pre-existing Material) in respect of this Agreement that:

is by its nature confidential; or

- (a) is specified by DAFWA or the Recipient to be confidential; or
- (b) the recipient of the Confidential Information knows or ought to know is confidential;

Contract Material means all Services supplied under this Agreement, and any Intellectual Property Rights arising from the supply of the Services;

Contract Price means the price set out in Item 4 of the Schedule;

Copyright Act means the Copyright Act 1968 (Cth);

Corporations Act means the Corporations Act 2001 (Cth);

Event of Default means in relation to a Party the occurrence of any of the following events:

- (a) the Party breaches an obligation under this Agreement that cannot be remedied;
- (b) the Party breaches any other obligation under this Agreement and that breach is not remedied within 10 Business Days after the other Party gives a Notice requiring the breach to be remedied;
- (c) a representation or warranty made by the Party under this Agreement is or becomes materially untrue or is breached;
- (d) the Party or any of its Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention;
- (e) the Party or any of its officers, employees, agents, contractors or Specified Personnel is convicted of a criminal offence that relates to this Agreement;
- (f) an Insolvency Event occurs in relation to the Recipient;
- (g) the Recipient ceases to carry on the business or activities for which the Recipient is to provide the Services under this Agreement; or
- (h) the Recipient ceases to be registered or incorporated under the Corporations Act, the Associations Incorporation Act 1987 or any other law under which it is registered or incorporated at the date of this Agreement.

Expiry Date means the date set out in Item 2 of the Schedule;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in Western Australia;

Insolvency Event means the happening of any of the following events:

- (a) an application is made to a court for an order (and is not stayed, withdrawn or dismissed within 7 days) or an order is made that a body corporate be wound up;

- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate (and is not stayed, withdrawn or dismissed within 7 days), or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate while solvent on terms approved by DAFWA, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) except to reconstruct or amalgamate while solvent on terms approved by DAFWA, a body corporate is wound up or dissolved or resolves to wind itself up or dissolve itself or gives notice of intention to wind itself up or dissolve itself;
- (e) a body corporate is insolvent or states that it is insolvent;
- (f) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;
- (g) a body corporate is, or makes a statement from which it may be reasonably deduced by DAFWA that the body corporate is, the subject of an event described in section 459C(2) or section 585 of the Corporations Act;
- (h) a body corporate takes any step to obtain protection from its creditors or is granted such protection, under any applicable legislation, or an administrator is appointed to a body corporate;
- (i) a person becomes insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
- (j) a person dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

Intellectual Property Rights means all intellectual property rights (other than Moral rights) including:

- (a) patents, copyright, performance rights (as described in Part XIA of the Copyright Act), rights in circuit layouts, plant breeder's rights, registered designs, trade marks and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of those rights;

Minister means the Minister of the Government of Western Australia to whom the administration of the *Biosecurity and Agriculture Management Act 2007* is for the time being committed by the Governor of Western Australia;

Moral right has the same meaning as in the Copyright Act;

Party means the Recipient or DAFWA or both as the context requires, and Parties means both of them;

Personnel means all employees, agents and subcontractors of the Recipient, and all employees or agents of subcontractors, engaged in relation to the supply of the Services;

Pre-existing Material means a work (as defined in the Copyright Act), a product or any other material which satisfies all of the following criteria:

- (a) the work, product or other material was created other than in performance of this Agreement;

- (b) the Intellectual Property Rights in the work, product or other material are not owned by DAFWA or the Western Australian Agriculture Authority; and
- (c) the work, product or other material is required specifically for, or in connection with, the Services or Records;

Public Authority has the same meaning as in the State Supply Commission Act 1991;

Records means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded;

Services means the services set out in Item 3 of the Schedule;

Special Conditions means the conditions set out in Item 8 of the Schedule;

Specified Personnel means the Recipient's Personnel if any set out in Item 5 of the Schedule, subject to clause 4.4(e); and

Term means the period commencing on the Commencement Date and expiring on the Expiry Date.

1.2. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including a person taking by novation) and permitted assigns;
- (f) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (g) a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, DAFWA or the Recipient;
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Agreement;
- (i) all the provisions in any schedule, attachment or appendix to this Agreement are incorporated in, and form part of, this Agreement and bind DAFWA and the Recipient;
- (j) headings are included for convenience and do not affect the interpretation of this Agreement;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) no rule of interpretation is to be applied to disadvantage DAFWA or the Recipient on the basis that it was responsible for preparing this Agreement;

- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (n) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (o) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile and electronic mail transmission;
- (p) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (q) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (s) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day; and
- (t) a reference to a monetary amount means that amount in Australian currency.

2. ADMINISTRATION

The Recipient acknowledges that:

- (a) DAFWA enters this Agreement solely to exercise the role of its Director General to administer the Account pursuant to Regulation 6 and to apply the Funds pursuant to Section 58; and
- (b) All current or future liabilities or obligations of DAFWA or its Director General to pay moneys to the Recipient under or in relation to this Agreement are limited to obligations to pay those moneys from the Funds.

3. TERM

This Agreement is for the Term, unless it is terminated before the Expiry Date in accordance with clause 10.

4. SUPPLY OF SERVICES AND SPECIAL CONDITIONS

4.1. Supply of Services

The Recipient must supply the Services during the Term in accordance with this Agreement.

4.2. Scope and Quality of Services

The Recipient must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.

4.3. Variation of Services

- (a) If either Party at any time considers it appropriate that the Services, the Contract Price, the Instalments, the Payment Dates or the Milestones be varied, that Party must promptly give a notice to the other Party specifying the variations to the Services it considers appropriate and the reasons it does so.
- (b) Promptly after a notice is given under clause 4.3(b), the Parties must discuss the matters in the notice and ascertain whether they agree to vary any of the details described in that clause.

- (c) If the Parties agree to vary any of those details, they must promptly execute a legally-binding written variation of this Agreement to confirm the variations agreed.
- (d) DAFWA is not obliged to agree to vary any of those details, and will not do so unless so authorised by the CIFSMC.

4.4. Specified Personnel

- (a) The Recipient must use reasonable endeavours to ensure that all Specified Personnel are available to carry out, and do carry out, the Services.
- (b) If DAFWA reasonably requires the Recipient to remove any of the Specified Personnel from the supply of the Services, DAFWA must give notice to the Recipient naming those Specified Personnel and stating DAFWA's reasons for requiring the removal of them.
- (c) If any of the Specified Personnel become unavailable to carry out the Services, the Recipient must give notice to DAFWA naming those Specified Personnel.
- (d) If either Party gives to the other a notice under clause 4.4(b) or clause 4.4(c), the Parties must promptly negotiate in good faith to seek to agree in writing on removal of the persons named in the notice from the supply of the Services and replacement of them as Specified Personnel by additional Personnel of similar skills and experience. If after such negotiation the parties do not agree on replacement personnel, this Agreement will terminate and clause 10.2 will apply.
- (e) If Specified Personnel are replaced under clause 4.4(d) references to Specified Personnel are taken to include such additional Personnel and exclude those they replace.

4.5. Special Conditions

DAFWA and the Recipient agree the Special Conditions form part of the terms and conditions of this Agreement, and to the extent of any inconsistency between the Special Conditions and the rest of the Agreement, the Special Conditions will prevail.

5. PAYMENT

5.1. Contract Price

DAFWA must pay to the Recipient the Contract Price in accordance with this clause 5.

5.2. Payment

DAFWA must pay the Contract Price to the Recipient in the Instalments set out in the table in Item 4 of the Schedule, on the Payment Dates set out in that table or within 30 days after the applicable Payment Date has passed and all the following conditions precedent to that payment have been met, namely:

- (a) the Recipient has achieved the Milestones (if any) for that Instalment set out in the table in Item 4 of the Schedule; and
- (b) DAFWA has received a valid, correct tax invoice for that Instalment signed by an authorised officer of the Recipient; and
- (c) the Recipient has confirmed and demonstrated to the reasonable satisfaction of DAFWA that the Recipient has complied with all its obligations and undertakings arising out of or in connection with this Agreement to that date and that the warranties in clause 6.1 are then correct and not misleading.

5.3. Timing of Payment

For the purpose of determining the date of payment under clause 5.2:

- (a) if payment is by cash – payment is taken to be made immediately the cash is received by the Recipient;
- (b) if payment is by cheque – payment is taken to be made on the date on which the cheque is received by the Recipient, provided the cheque is subsequently honoured when first presented;
- (c) if payment is by electronic funds transfer – payment is taken to be made at the time the funds are sent electronically; or
- (d) if payment is by credit card – payment is taken to be made on the date on which DAFWA signs the credit card voucher, provided DAFWA promptly delivers the signed voucher and the payment is completed in cleared funds within a reasonable time thereafter.

5.4. GST and other duties, taxes and charges

- (a) In this clause 5.4 and in clause 5.2, the expressions “consideration”, “recipient”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the GST Act.
- (b) All sums payable, or consideration to be provided, under this Agreement are expressed exclusive of GST.
- (c) If GST is imposed on any supply made under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) The amount referred to in clause 5.4(c) must be paid in addition to, and at the same time as, payment for the taxable supply is required to be made under this Agreement.
- (e) If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- (f) All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Services are payable by the Recipient.

6. RECIPIENT’S GENERAL UNDERTAKINGS

6.1. Recipient’s General Warranties

Except where the Recipient has otherwise disclosed in writing to DAFWA, and DAFWA has given its prior written consent to the matter disclosed, the Recipient warrants in favour of DAFWA that:

- (a) the Recipient has no conflict of interest arising out of this Agreement;
- (b) the Recipient is properly authorised and has the power to enter into this Agreement and perform the Recipient’s obligations under this Agreement;
- (c) all information provided by the Recipient to DAFWA in connection with this Agreement is true and correct;
- (d) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Recipient which could have a materially adverse effect on the Recipient’s ability to supply the Services in accordance with this Agreement;
- (e) neither the Recipient nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention; and

- (f) there is nothing that prevents the Recipient from complying with any obligation under this Agreement.

6.2. General Warranties Made Continuously

The warranties made by the Recipient under clause 6.1 are taken to be made continuously throughout the Term.

6.3. Recipient's Undertakings

The Recipient must:

- (a) properly provide for the care, safety, security and protection of all Records, whether created by the Recipient or DAFWA, in the custody or control of the Recipient and all property supplied by DAFWA to the Recipient in connection with this Agreement;
- (b) promptly notify DAFWA if any warranty under clause 6.1 is breached or becomes untrue;
- (c) always act ethically in connection with this Agreement and in accordance with good corporate governance practices;
- (d) comply with all State and Commonwealth laws relevant to this Agreement; and
- (e) cooperate fully with DAFWA in respect of the administration of this Agreement.

6.4. Recipient's Expenses and Equipment

The Recipient must:

- (a) pay all out-of-pocket expenses incurred by the Recipient in connection with this Agreement including travel expenses, accommodation and subsistence expenses; and
- (b) provide everything necessary to enable it to fully comply with all of its obligations under this Agreement.

6.5. Personnel

The Recipient must ensure that all Personnel:

- (a) are properly qualified and suitable for the tasks they are to do;
- (b) hold all necessary permits, licences and authorities required by law; and
- (c) act, in all circumstances and at all times, in a fit and proper manner.

7. ACCESS AND CONFIDENTIALITY

7.1. Access and Records

- (a) Subject to clause 7.1(c), the Recipient must allow DAFWA to have reasonable access to:
 - (i) those portions of premises used or occupied by the Recipient in connection with the Services; and
 - (ii) all Records in the custody or control of the Recipient.
- (b) Subject to clause 7.1(c), DAFWA may examine, audit, copy and use any Records in the custody or control of the Recipient and photograph, film or otherwise record anything done by the Recipient in supplying the Services.
- (c) The obligations of the Recipient under clause 7.1(a) and the rights of DAFWA under clause 7.1(b) are subject to:

- (i) any contrary legal obligations the Recipient has including in relation to the privacy and records of other persons under the Privacy Act 1988 (Cth); and
 - (ii) any rights of the Recipient arising from legal professional privilege.
- (d) The Recipient must keep accurate, complete and current written Records in respect of this Agreement for at least 7 years after:
- (i) final payment under this Agreement or after the expiry of the Term, whichever is later; or
 - (ii) termination of this Agreement, if this Agreement is terminated before the end of the Term.
- (e) The Recipient must use its best endeavours to obtain any third party consents which are required to enable DAFWA to have access to Records under this clause 7.1.

7.2. Agreement Disclosure

The Recipient acknowledges that:

- (a) this Agreement; and
- (b) information held or compiled by the Recipient in relation to this Agreement or the Services supplied under this Agreement,

are subject to the Freedom of Information Act 1992.

7.3. Confidentiality

Subject to this clause 7.3, each Party must keep the other Party's Confidential Information confidential. A Party ("the recipient") that receives Confidential Information of the other Party ("the disclosing party") must not use or disclose to any person the disclosing Party's Confidential Information except:

- (a) where necessary for the purpose of supplying the Services; or
- (b) as authorised in writing by the disclosing Party; or
- (c) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the recipient); or
- (d) as required by any law, judicial or parliamentary body or governmental agency; or
- (e) when appropriate (and only to the extent appropriate) to the recipient's professional advisers, and the recipient must ensure that such professional advisers are bound by the confidentiality obligations imposed on the recipient under this clause 7.3.

7.4. Return of Confidential Information

Subject to DAFWA's obligations under the State Records Act 2000, each Party must return all Records containing the other Party's Confidential Information immediately at the expiration or termination of this Agreement.

7.5. Publicity

Unless DAFWA gives its prior written consent, the Recipient must not:

- (a) use this Agreement or DAFWA's name or logo; or
- (b) use the name or logo of the State of Western Australia; or
- (c) refer to the Recipient's association with the State of Western Australia or the Government of Western Australia which results from this Agreement; or

- (d) make any statement concerning this Agreement, the Services or the Contract Material in any publication, advertisement or media release.

8. AUDITOR GENERAL

The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Agreement, and the Recipient must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Recipient's Records concerning this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. Ownership of Intellectual Property Rights in Contract Material

- (a) The Recipient automatically assigns the Intellectual Property Rights in all Contract Material to DAFWA upon creation.
- (b) DAFWA hereby grants the Recipient an irrevocable, perpetual, royalty-free, non-exclusive licence to use the Contract Material for non-commercial internal research and training purposes.

9.2. Pre-existing Material – Licence

- (a) Nothing in clause 9.1 affects the ownership of any Intellectual Property Rights in any Pre-existing Material.
- (b) The Recipient grants, and the Recipient must ensure that any other owner of any Intellectual Property Rights (other than Moral rights) in any Pre-existing Material grants, to DAFWA in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence (including a right to sub-license) to use and adapt the Pre-existing Material to the extent the Pre-existing Material forms part of the Contract Material.
- (c) The Recipient must not commercialise the Pre-existing Material as part of the Contract Material except in accordance with the terms of any prior written consent the Recipient has obtained from DAFWA.

10. TERMINATION

10.1. Termination

Either Party may terminate this Agreement by notice at any time after an Event of Default occurs in relation to the other Party.

10.2. Consequences of Expiration or Termination

- (a) The expiration or termination of this Agreement does not affect any rights, liabilities or obligations of DAFWA or the Recipient as a result of anything occurring before the expiration or termination.
- (b) Subject to clause 10.2(c), on the expiration or termination of this Agreement, the Recipient must as soon as practicable:
 - (i) deliver to DAFWA all Records as required by DAFWA; and
 - (ii) allow DAFWA to use at DAFWA's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Recipient if required in connection with this Agreement, but DAFWA must pay the Recipient for any materials or consumables used by DAFWA as a result of using that property.
- (c) The obligations of the Recipient and the rights of DAFWA under clause 10.2(b) are subject to:

- (i) any contrary legal obligations the Recipient has, including under the Privacy Act 1988 (Cth) and under the State Records Act 2000; and
 - (ii) any rights of the Recipient arising from legal professional privilege.
- (d) Clauses 2, 5, 6, 7, 8, 9, 10.2, 11, 12, 14, 15 and 16 shall survive the termination of this Agreement.

11. REPRESENTATIVES

11.1. Appointment

Any person described as a representative of a Party in Item 7 of the Schedule may act as the representative of that Party in relation to this Agreement.

11.2. Variation of representative

A Party may by notice to the other Party at any time:

- (a) vary or terminate the appointment of their representative; and
- (b) appoint any other person to act as their representative in relation to this Agreement.

12. NOTICE

12.1. Giving notices

Each notice or other communication given under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer or solicitor of DAFWA or the Recipient (as applicable); and
- (c) must be:
 - (i) hand delivered or sent by prepaid post to the address of the recipient specified in Item 6 of the Schedule; or
 - (ii) sent by electronic mail to the email address of the recipient specified in Item 6 of the Schedule.

12.2. Receipt of notices

- (a) Subject to clauses 12.2(b) and 12.2(c), each notice or other communication given under this Agreement in compliance with clause 12.1 is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the 3rd Business Day after posting; and
 - (iii) in the case of electronic mail, on the date on which the electronic communication would be deemed to have been received under sections 14 and 21 and any other applicable sections of the Electronic Transactions Act 2011 (WA).
- (b) If a notice or other communication described in clause 12.2(a) is hand delivered after 5.00 pm or on a day other than a Business Day, it is taken to be received on the next Business Day.
- (c) If a notice or other communication described in clause 12.2(a) is sent by electronic mail and the time at which the electronic communication would be deemed to have been received under sections 14 and 21 and any other applicable sections of the Electronic Transactions Act 2011 (WA) is after 5.00 pm or on a day other than a Business Day, it is taken to be received on the next Business Day.

13. FORCE MAJEURE

13.1. Event

- (a) If a Party (Affected Party) becomes wholly or partly unable, by any event beyond its reasonable control, including in the case of DAFWA a cessation or reduction of its funding, (Force Majeure) to carry out any obligation it has under this Agreement, the Affected Party must promptly notify the other Party of:
- (i) reasonable particulars of the Force Majeure; and
 - (ii) its best estimate of the extent to which the Affected Party will be unable to perform or be delayed in performing the obligation.
- (b) An event will not be within the reasonable control of DAFWA merely because DAFWA is part of the government that has the legal capacity to perform an act or omission, or influence an event, that may otherwise constitute a Force Majeure.

13.2. Effect

- (a) Subject to compliance with clause 13.1, the relevant obligation will, to the extent it is affected by Force Majeure, be suspended during but no longer than the term of the Force Majeure. In the case of a cessation or reduction of DAFWA's funding, DAFWA may by notice to the Recipient terminate this Agreement.
- (b) The Affected Party must use all reasonable diligence to overcome or remove the Force Majeure as quickly as possible (except in the case of a cessation or reduction of DAFWA's funding). The Affected Party is not required to settle any dispute creating the Force Majeure on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation or decree by legal proceedings.
- (c) If the Force Majeure has not ceased within 30 days after a notice was received under clause 13.1(a), the Parties must, in good faith, discuss the situation and endeavour to reach a mutually satisfactory resolution.

14. INSURANCE

14.1. Insurance Requirements

The Recipient must take out and maintain at its own expense during the Term such insurance as a prudent and responsible entity would effect in respect of the conduct of its business and the Services.

14.2. Evidence of Insurance

The Recipient must give to DAFWA reasonable evidence of the insurance under clause 14.1 and provide a certificate of currency of insurance as requested by DAFWA at any time.

14.3. Failure to Prove Insurance

At all times while the Recipient is not in compliance with clause 14.1 or 14.2, DAFWA may withhold payment of any money otherwise due to the Recipient under this Agreement.

14.4. Reputable and Solvent Insurer

Any policy of insurance taken out by the Recipient must be taken out with a reputable and solvent insurer carrying on business in Australia which is authorised by the Australian Prudential Regulation Authority.

15. INDEMNITY

15.1. Indemnity

The Recipient indemnifies and keeps indemnified DAFWA and all DAFWA's officers, employees and agents (Indemnified) against all costs, losses, expenses, claims, damages and other liabilities (including reasonable legal fees on a full indemnity basis) suffered, incurred or sustained by any of the Indemnified as a result of:

- (a) any breach of this Agreement (including material breach of any warranty given under this Agreement) by the Recipient;
- (b) any act or omission by the Recipient or any of its officers, employees, agents or contractors arising out of or in connection with this Agreement; or
- (c) any use of Contract Material, Pre-existing Material, Intellectual Property or Intellectual Property Rights by the Recipient or any of its officers, employees, agents or contractors under this Agreement.

15.2. Contributory Negligence

The Recipient's liability under the indemnities in clause 15.1 will be reduced proportionately to the extent that any costs, losses, expenses, claims, damages or other liabilities result from:

- (a) any breach of this Agreement by any of the Indemnified;
- (b) any wilful misconduct or unlawful or negligent act or omission by any of the Indemnified; or
- (c) any use of Contract Material, Intellectual Property or Intellectual Property Rights by any of the Indemnified under this Agreement.

16. MISCELLANEOUS

16.1. No Dealing or Subcontracting

- (a) Unless the Recipient obtains DAFWA's prior written consent, the Recipient must not:
 - (i) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under this Agreement; or
 - (ii) subcontract any of its rights or obligations under this Agreement.
- (b) Any consent given by DAFWA under clause 16.1(a) to subcontract this Agreement is taken to be subject to the following terms and conditions unless otherwise stated in the consent:
 - (i) the Recipient must include in any subcontract provisions consistent with clause 9 and this clause, as if references in those clauses to the Recipient referred instead to the subcontractor;
 - (ii) the engagement by the Recipient of a subcontractor in no way relieves the Recipient from its obligation to perform the Recipient's obligations under this Agreement; and
 - (iii) the Recipient must, if requested by DAFWA, supply to DAFWA a copy of any such subcontract, which copy may exclude commercially sensitive information but must indicate that the Recipient has complied with this clause 16.1(b).

16.2. Further Assurance

DAFWA and the Recipient must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.

16.3. Relationships – No Partnership

- (a) The Recipient is an independent contractor, and nothing in this Agreement may be construed to make the Recipient a partner, agent, employee or joint venturer of DAFWA.
- (b) The Recipient must not represent that the Recipient or any of its Personnel are the employees, agents, partners or joint venturers of DAFWA.
- (c) DAFWA must not represent that DAFWA or any of its employees, agents and subcontractors are the employees, agents, partners or joint venturers of the Recipient.

16.4. Rights and Remedies

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

16.5. Entire Agreement

This Agreement supersedes all prior negotiations, understandings and agreements between the Parties relating to the matters covered by this Agreement, and constitutes the full and complete agreement between the Parties relating to those matters.

16.6. Execution

This Agreement may be executed in counterparts by the respective Parties, each of which when so executed so shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

16.7. Variations

This Agreement may only be varied in writing executed by DAFWA and the Recipient.

16.8. Waiver

- (a) Any waiver by DAFWA or the Recipient must be in writing and signed by the Party waiving the right.
- (b) Any waiver by DAFWA or the Recipient does not affect its rights in respect of any other breach of this Agreement by the other Party.
- (c) Subject to clause 16.8(a), any failure by DAFWA or the Recipient to enforce any right under this Agreement will not be construed as a waiver of their respective rights under this Agreement.

16.9. Costs

Unless otherwise stated, each Party must pay their own legal and other costs in connection with the preparation and signing of this Agreement.

16.10. Governing Law

This Agreement is governed by the laws of the State of Western Australia. DAFWA and the Recipient irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

SCHEDULE

Item 1 Commencement Date (clause 1.1)

1 July 2012.

Item 2 Expiry date (clause 1.1)

30 June 2015.

Item 3 Services (clause 1.1)

Delivery of the Project described in the Recipient's Application for Grant, a complete copy of which is Annexure A below, in the manner and times described in that Application for Grant and with the aims, outputs, milestones and delivery dates described in that Application for Grant.

Item 4 Contract Price, Payment Dates and Milestones (clauses 1.1 & 5.2)

The Contract Price is \$150,000. It is (subject to clause 5.2) payable in the Instalments and on the Payment Dates set out in the table below, subject to the Recipient having achieved the Milestones if any for each Instalment set out in the table.

Instalment	Payment Date	Milestones
\$50,000	1 July 2012	
\$50,000	1 July 2013	<p>Audited annual financial statement, plus an audit report by an internal or external auditor due within 60 days of the end of the financial year.</p> <p>Annual report comprising information on:</p> <ul style="list-style-type: none"> • achievements and/or progress to date on activities; and • any issues impacting on the progress of the project, and proposed measures to mitigate anticipated delays in project implementation. <p>within 60 days of the end of the financial year.</p> <p>A brief summary of achievements and/or progress suitable for inclusion in the Cattle Industry Funding Scheme annual report and website within 60 days of the end of the financial year.</p> <p>Project milestones, as per Application for Grant (Annexure A)</p>
\$50,000	1 July 2014	<p>Audited annual financial statement, plus an audit report by an internal or external auditor due within 60 days of the end of the financial year.</p>

		<p>Annual report comprising information on:</p> <ul style="list-style-type: none"> • achievements and/or progress to date on activities; and • any issues impacting on the progress of the project, and proposed measures to mitigate anticipated delays in project implementation. <p>within 60 days of the end of the financial year.</p> <p>A brief summary of achievements and/or progress suitable for inclusion in the Cattle Industry Funding Scheme annual report and website within 60 days of the end of the financial year.</p> <p>Project milestones, as per Application for Grant (Annexure A).</p>
N/A	30 June 2015	<p>Audited annual financial statement, plus an audit report by an internal or external auditor due within 60 days of the end of the financial year.</p> <p>Final report within 60 days of completion of the project.</p> <p>A brief summary of research results, benefits and their practical application that is suitable for publication in the rural press, and for inclusion in the Cattle Industry Funding Scheme annual report and website within 60 days of completion of the project.</p> <p>Project milestones, as per Application for Grant (Annexure A).</p>

Item 5 Specified Personnel (clause 1.1)

The Participating Personnel described as such in the Recipient's Application for Grant.

Item 6 Addresses for Notices and email addresses (clause 12.1)

The Recipient – the postal address and email address of the Administration Contact described as such in the Recipient's Application for Grant.

DAFWA – Rebecca Heath, PO Box 483, NORTHAM WA 6401, email address rebecca.heath@agric.wa.gov.au.

Item 7 Parties' Representatives (clause 11.1)

The Recipient – the Administration Contact described as such in the Recipient's Application for Grant.

DAFWA – Rebecca Heath, Executive Officer Cattle Industry Funding Scheme, DAFWA, email rebecca.heath@agric.wa.gov.au, phone 08 9690 2171.

Item 8 Special Conditions (clause 1.1)

- (a) The Recipient must ensure the Services are examined by an animal experimentation ethics committee of an institution to which DAFWA has given its prior written consent, and must only supply the Services in accordance with an approval from that ethics committee.
- (b) The Recipient must in supplying the Services comply fully with the Australian Code of Practice for the Care and Use of Animals in Research in Australia.
- (c) To the extent that the Services involve the use of recombinant DNA techniques, the Recipient must comply fully with the safety guidelines established by the Australian Government's Recombinant DNA Monitoring Committee.
- (d) The Recipient must before receiving any part of the Contract Price accurately complete, execute and deliver to DAFWA a Goods and Services Tax Status and Recipient Created Tax Invoice Agreement in a form acceptable to DAFWA.
- (e) On the Expiry Date, the Recipient must repay to DAFWA any parts of the Contract Price the Recipient has not applied to supply the Services in accordance with this Agreement.
- (f) If the Recipient receives any income or other payment, apart from the Contract Price, as a result of supplying the Services, the Recipient must pay or reimburse to DAFWA the full amount of that income or other payment, or a part of the Contract Price equalling that full amount, within 30 days after the Recipient received the income or other payment. DAFWA will promptly credit any such payments or reimbursements it receives to the Account.
- (g) (i) In this special condition **Department** means the Department of the Government of Western Australia principally assisting in the administration of the *Biosecurity and Agriculture Management Act 2007*, and at the commencement of this agreement is DAFWA.
(ii) In this special condition **Minister** means the Minister of the Government of Western Australia to whom the administration of the *Biosecurity and Agriculture Management Act 2007* is for the time being committed by the Governor of Western Australia.
(iii) DAFWA acknowledges that as the Recipient is governed by the Minister, acts of the Recipient pursuant to this Agreement may be performed by the Department on behalf of the Recipient.

ANNEXURE A - RECIPIENT'S APPLICATION FOR GRANT

SAMPLE

EXECUTED AS AN AGREEMENT

Signed on behalf of the **STATE OF WESTERN AUSTRALIA** by a duly authorised officer of the Department of Agriculture and Food Western Australia in the presence of:

.....
Signature of authorised person

.....
Signature of witness

.....
Full name of authorised person (print)

.....
Full name of witness (print)

.....
Office held by authorised person
(print)

Signed on behalf of the **WESTERN AUSTRALIAN AGRICULTURE AUTHORITY** by a duly authorised officer in the presence of:

.....
Signature of authorised person

.....
Signature of witness

.....
Full name of authorised person (print)

.....
Full name of witness (print)

.....
Office held by authorised person
(print)