

PORK CRC LTD

AND

AND

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POSTGRADUATE SCHOLARSHIP AGREEMENT

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THIS SCHOLARSHIP AGREEMENT is made the date last written below

BETWEEN

PORK CRC [ACN: 113 703 174] having its registered office at (Company)  
Eastick Building  
Roseworthy Campus  
University of Adelaide SA 5371

AND

THE UNIVERSITY OF: (University)

AND

(Student)

WHEREAS:

- A. The Company is the operating company for the Pork CRC and the Student is enrolled to undertake a postgraduate degree at the University
- B. The Pork CRC has agreed to award the Student a postgraduate research scholarship to carry out the Project
- C. The University has agreed to supervise the Student in carrying out the Project and to administer the Scholarship Funds in accordance with the terms and condition of this Agreement

NOW IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement including the Recitals:

**Activities** mean the activities of the Centre as set out in the Participant's Participants Agreement

**Agreement** means this scholarship agreement and includes the schedule and annexures and any amendment agreed to in writing by the Parties

## Participants Agreement

**CEO** means the chief executive officer of the Company

**Commencement Date** means the date specified in Item 1 of the Schedule

**Confidential Information** means the Company's or a CRC Party's trade all information that is not in the public domain that is by its nature confidential or that has been designated as confidential by the disclosing Party, including secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) including the interpretation, analysis and application of general information in the public domain

**CRC Parties** means the parties to the Participant's Agreement

**CRC Program** means the Commonwealth Government's Cooperative Research Centre Program

**Intellectual Property** includes all copyright, registered and unregistered trade marks (including service marks), all rights in relation to inventions, patents, registered designs, Confidential Information, plant variety rights and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields but does not include Moral Rights

**Moral Rights** means the following rights of an author of copyright material:

- (a) the right of attribution of authorship
- (b) the right of integrity of authorship
- (c) the right not to have authorship falsely attributed

**Participant's agreement** means the agreement entered into on or about August 2005, which established the Pork CRC

**Parties** mean the parties to this Agreement and "**Party**" means any of them

**Pork CRC** means the Cooperative Research Centre for the Australian Pork Industry

**Project** means the project to be undertaken by the Student described in Item 2 of the Schedule

**Schedule** means the schedule attached to this Agreement

**Scholarship Funds** means the funds set out in Item 3 of the Schedule

**Scholarship Intellectual Property** means Intellectual Property arising from the conduct of the Project

**Scholarship Period** means the period set out in Item 4 of the Schedule

**Special Conditions** means any special conditions set out in Item 6 of the Schedule

**Supervisor** means the person or persons appointed to act as a supervisor or supervisors of the work carried out by Student for the degree in which the Student is enrolled

**Term** means the term set out in Clause 2 of this Agreement

**Thesis** means the thesis submitted to the University for examination by the Student

1.2 In this Agreement, unless the context indicates to the contrary:

- (a) the expression "person" includes an individual, a body corporate, a joint venture, a trust, an agency, a partnership or other body
- (b) references to any Party will include the Party's legal successors (including executors and administrators) and permitted assigns
- (c) words importing the singular will include the plural (and vice versa) and words denoting a given gender will include all other genders
- (d) clause headings are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross reference
- (e) references to any document or agreement will be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time
- (f) references to any legislation or to any provision of any legislation will include any modification or re-enactment of such legislation or any legislative provision substituted for, and all legislation and statutory instruments issued under such legislation

- (g) all attachments to this Agreement will form part of this Agreement
  - (h) all monetary amounts referred to in this Agreement will be deemed to be in Australian currency
  - (i) all references to clauses, Schedules, Recitals, Appendices and Attachments are references respectively to clauses in, recitals of, schedules, appendices and attachments to, this Agreement
- 1.3 Unless a term is otherwise defined in Clause 1.1 it shall have the meaning given to it in the Participants Agreement.

## **2. TERM OF THE AGREEMENT**

This Agreement will commence on the Commencement Date and will remain in force until the expiration of the Scholarship Period.

## **3. SCHOLARSHIP FUNDS**

- 3.1 The Company will provide the Scholarship Funds to the University in the manner set out in the Schedule upon receipt of appropriate tax invoices.
- 3.2 The University shall pay the Scholarship Funds to the Student in accordance with its usual procedures for administering Scholarship Funds.
- 3.3 The University shall ensure that the Scholarship Funds are used only for the carrying out of the Project.

## **4. ACCOUNTING RECORDS**

- 4.1 The University shall keep full and accurate records of all receipts and expenditure of Scholarship Funds. Such records must be kept in a manner that allows them to be properly audited and must relate only to the Project.
- 4.2 The Company may at its own cost appoint a qualified person to audit the records referred to in Clause 4.1 and the University shall give such person access at all reasonable times to those records and such information as the person may reasonably request for the purposes of the audit.

## 5. UNIVERSITYS GENERAL OBLIGATIONS

- 5.1 The University shall appoint a Supervisor to supervise the carrying out of the Project by the Student in accordance with the usual administrative procedures of the University.
- 5.2 The University shall take all reasonable steps to ensure that the Student complies with all requirements of the University with respect to the postgraduate course in which he or she is enrolled, particularly those related to completion, submission, examination and assessment of the Thesis.
- 5.3 By each anniversary of the Commencement date in each year during which Student receives Scholarship Funds, the University shall provide the Company with a progress report on the Project including a statement from the Supervisor with respect to the progress the Student is making in fulfilling the requirements of the degree in which he or she is enrolled.
- 5.4 The University must, and must ensure that the Supervisor:
  - (b) promptly communicates details of any Scholarship Intellectual Property to the CEO
  - (c) does nothing to prejudice the interests of the Company or the CRC Parties in Scholarship Intellectual Property or the Confidential Information of the Company or a CRC Party.
- 5.6 The University must comply with any Special Conditions.
- 5.7 The University must ensure that the Supervisor obtains all necessary ethics approvals for the Project.

## 6. STUDENT OBLIGATIONS

- 6.1 The Student must:
  - a) enroll, pay all fees required for enrolment and maintain enrolment at the University
  - b) comply with University Rules and Codes of Practices
  - c) use his or her best endeavours to make satisfactory progress on the Project; promptly communicate details of all Scholarship Intellectual Property to the CEO; where appropriate, keep an up to date laboratory notebook witnessed by the Supervisor
  - d) abide by the National Health and Medical Research Council guidelines with respect to experiments on animals.

## 7. INTELLECTUAL PROPERTY

- 7.1 Subject to clause 7.3, Scholarship Intellectual Property will be owned by the Company.
- 7.2 The Company grants to the University and the Student the non-exclusive right to use, reproduce, adapt and exploit the Scholarship Intellectual Property for the purposes of enabling the Student to complete the degree for which he or she is enrolled.
- 7.3 The Student will own copyright in the Thesis to the extent that such copyright does not incorporate Centre IP or Background IP of a CRC Party and provided that the Student may only publish the Thesis in accordance with clause 9.2.
- 7.4 The Student grants to the Company and the CRC Parties a non-exclusive, royalty-free, perpetual and irrevocable licence (including the right to sub-license) to use and reproduce the Thesis for the purpose of the Activities.
- 7.5 The Student and the University agree to take such steps as necessary, including the signing of any documentation, to give effect to this clause.

## 8. CONFIDENTIALITY

- 8.1 Subject to clause 9, the Student and the University must:

- (a) keep confidential and not disclose the Confidential Information
- (b) only use the Confidential Information for the purposes of the Project

and the University must ensure that the Supervisors:

- (c) keep confidential and not disclose the Confidential Information
- (d) do not use the Confidential Information other than for the Project

except to the extent required by law.

- 8.2 The obligations imposed on a Party by this clause shall not apply to Confidential Information which:

- (a) prior to disclosure is in the public domain or in published literature or subsequent to disclosure to the Party becomes part

of the public domain or is published other than as a result of an unauthorised act or failure to act by that Party

- (b) is received by a Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from any Party
- (c) is independently developed by an employee or officer of the Party owing the obligation of confidentiality while having no knowledge of the other Party's Confidential Information or the Party claiming confidentiality has identified in writing as being released from the obligation of confidentiality

8.3 The University and or the Student have the onus of showing that any of the above exceptions apply.

8.4 A combination of information will not be taken to be in the public domain merely because it contains information in the public domain.

8.5 The Student and or University must not use the name or logo of the Company without the prior written consent of the Company.

## 9. PUBLICATIONS

9.1 Where the publication is not the Thesis, then:

- (a) prior to any publication the University must forward a request in writing to the CEO seeking permission to publish the material
- (b) the Company must notify the University whether permission has been granted or delayed, within 32 days of the CEO's receipt of a request
- (c) if the Company decides that the benefits of publication outweigh the potential loss of commercially valuable Intellectual Property rights, the Company will notify the Requesting Party that permission to publish has been granted
- (d) If the CEO decides that the benefits of publication do not outweigh the potential loss of commercially valuable Intellectual Property rights, the CEO will either:
  - (i) suggest alterations to the publication so that it does not disclose information affecting the commercially valuable Intellectual Property rights
  - or

- (ii) if altering the publication is impractical, delay publication for a stipulated period not exceeding 18 months from the date of the request
- (e) If the CEO does not notify the University of the decision within 32 days of receipt of the University's request, the University will be entitled to proceed to publication

9.2 Where the publication is the Thesis, then:

- (a) the Thesis may be submitted for examination in accordance with the normal procedures of the University provided that:
  - (i) the CEO is first notified by the University that the Thesis is to be submitted for examination
  - (ii) the examiners are subject to written obligations of confidentiality
  - (iii) the CEO is provided with a copy of the thesis
- (b) the University must comply with any reasonable request of the CEO including a request necessary to protect Centre IP and any Commercialisation strategy with respect to that Centre IP, to place the Thesis on restricted availability for a period not exceeding that stipulated in the University's rules.

9.3 A Party must not make any public announcement in relation to the Scholarship or this Agreement without obtaining the approval of the CEO.

## 10. INDEMNITY

10.1 Each of the University and the Company ('the indemnifying Party') irrevocably and unconditionally indemnifies and agrees to keep indemnified the other and the other's respective directors, officers, employees, agents and representatives ('the indemnified') from and against any and all direct liability, loss, harm, damage, cost or expense (including legal fees) arising that the indemnified may suffer, incur or sustain as a result of any direct act or omission of, or any purported assumption of any obligation or responsibility by, the indemnifying Party or any of its directors, officers, employees, agents or representatives, done or omitted to be done, or undertaken, or apparently done or omitted to be done or undertaken, on behalf of those indemnified in

connection with this Agreement and not authorised by or under this Agreement except to the extent that such liability, loss, harm, damage, cost or expense arose due to the negligence, default or unauthorised action of those indemnified.

10.2 Nothing in this clause 10 makes a Party liable for the acts and omissions of another Party.

## **11. SETTLEMENT OF DISPUTES**

11.1 The Parties shall without delay and in good faith attempt to resolve any dispute or difference which may arise between.

11.2 Any dispute or difference between the Parties must be resolved in accordance with the following procedure:

(a) the Party claiming that a dispute exists shall notify the other Parties that a dispute exists and where the other Parties are the University and or Company submit such dispute to the senior representatives of the disputing Parties for resolution

(b) if the dispute or difference is not resolved by the persons referred to in clause 11.2(a), within such time as they agree but not being more than sixty (60) days, the parties shall refer the dispute or difference for mediation by the Australian Commercial Dispute Centre Limited (ACDC) for resolution in accordance with the Mediation Rules of ACDC. Each Party will bear its own costs of the mediation

11.3 Nothing in this clause shall not preclude any Party from seeking urgent interlocutory relief in a court of competent jurisdiction.

## **12. DELAY IN PERFORMANCE**

If for any reason the Student is unable to commence or continue carrying out the Project at an adequate level, the University must immediately advise the Company in writing.

## **13. RELATIONSHIP**

Nothing in this Agreement is to be treated as creating a partnership, joint venture, employment or agency relationship between the Parties.

#### 14. CLAUSE SEVERANCE

Any provision of this Agreement that is held void by a court of competent jurisdiction or is voidable by a Party or is or becomes at that time unlawful or unenforceable will, to the extent to which it is void or voidable or is unlawful or unenforceable, be deemed to be excised from and not form part of this Agreement, without affecting the validity or enforceability of the remaining provisions to the fullest extent permitted by law or in equity.

#### 15. WAIVER

A waiver by a Party of any rights arising from a breach or non-observance by another Party of a term of this Agreement will not be taken to operate in any way as a waiver of any rights arising from any subsequent continuation of that breach or non-observance, or any further or other breach or non-observance of the same or any other term

#### 16. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the law for the time being in force in New South Wales

#### 17. NOTICES

17.1 Any notice, request, consent or other communication in connection with this Agreement:

- (a) must be in writing
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in Item 5 of the Schedule

17.2 A notice, request, consent or other communication takes effect from the time it is received unless a later time is specified in it.

17.3 A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting

- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the Student PROVIDED THAT where transmission is completed after 5.00 p.m. on a Business Day or is sent on a day that is not a Business Day, the message will not be deemed to have been received until the next Business Day

## 18. ENTIRE AGREEMENT

This Agreement records the entire agreement between the parties with respect to its subject matter.

## 19. AMENDMENTS

This Agreement may only be amended in writing signed by all the Parties

## 20. GOODS AND SERVICES TAX

20.1 If, by operation of the GST Law, any Supply under this Agreement is regarded as a taxable supply and the Consideration for that Supply is not stated to be inclusive of GST, the Supplier will be entitled to recover from the Recipient, an amount equivalent to the GST payable by the Supplier in relation to the Supply.

20.2 If GST is payable, the Supplier will provide the Recipient with a tax invoice or a document adequate to entitle the Recipient to claim an input tax credit.

20.3 In this clause:

“Consideration” bears the meaning attributed to that term in the GST Law

“GST Law” means A New Tax System (Goods and Services Tax) Act 1999 and any substantially similar legislation when it is passed into law and which may operate at any time during the term of this Agreement

“Recipient” means a person that has received a Supply

“Supplier” means a person that has made or provided a Supply

“Supply” bears the meaning attributed to that term in the GST Law

## 21. COUNTERPARTS

21.1 This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

- 21.2 A facsimile transmission or other document produced by mechanical or electronic means under the name of the authorised signatory of the Party (the "Representative") and with the Representative's authority is deemed to be an original counterpart of an agreement for the purpose of this Clause 20.

## 22. TERMINATION

- 22.1 The Company may terminate this Agreement by notice in writing to the University and the Student on the happening of any of the following events:

- (a) The Participant's Agreement is to terminate and the Company to dissolve
- (b) the University breaches any provision of this Agreement and such breach continues unremedied for 14 days after service on the University of written notice specifying the breach and requiring its remedy
- (c) if in the reasonable opinion of the Company the Project is not being carried out by the Student in accordance with this Agreement, including without limitation because the University deems the Student's academic progress or performance to be unsatisfactory
- (d) the University fails to provide information concerning any administrative, technical or financial matter related to the provision of the Scholarship Funding or the carrying out of the Project in response to a reasonable request of the Company within 28 days of its receipt of a written request for that information from the Company
- (e) the Student is, in the reasonable opinion of the University and the Company unable to carry out the Project at an acceptable level

- 22.2 The University shall repay the Company any Scholarship Funds that have not been expended or irrevocably committed for the carrying out of the Project within 90 days of receipt of written notice from the Company that this Agreement has been terminated.

## 23. SURVIVAL OF OBLIGATIONS

Clauses 7, 8, 9 and 10 shall survive the expiration or earlier termination of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates set out below.

Signed for and on behalf of  
**PORK CRC LTD**  
by its duly authorized officers

.....  
Signature

.....  
Name and Title

in the presence of

.....Date:  
Witness Signature

Signed for and on behalf of  
**[UNIVERSITY]**  
by its duly authorised officer

.....  
Signature

.....  
Name and Title

in the presence of

.....Date:  
Witness Signature

Signed by  
[STUDENT]

.....  
Signature

.....  
Name

in the presence of

.....Date: .....  
Witness Signature

## SCHEDULE

1. **COMMENCEMENT DATE**

2. **PROJECT**

3. **SCHOLARSHIP FUNDS**

The Company will forward payments to the University upon receipt of an appropriate tax invoice, according to the following table. The University will make a payment to the student for the same amount within 60 days.

Due Payment Date	Amount

4. **SCHOLARSHIP PERIOD: Three years**

5. **CONTACT DETAILS FOR NOTICES**

Pork CRC Ltd  
 PO Box 466  
 Willaston, SA 5118

Uni address

Student's address

6. **SPECIAL CONDITIONS**