

AGRICULTURAL PRODUCTION SYSTEMS SIMULATOR (APSIM)

AGREEMENT made on this _____ day of _____
BETWEEN

(collectively the “**Licensors**”)

(the “**Licensee**”)

- A. The Licensor has developed the Technology in conjunction with other parties and has sufficient rights in the Technology to license it to third parties on the terms of this Agreement.
- B. The Licensee wishes to license the Technology from the Licensor for the purposes of research and development, or education that may lead to Improvements to be owned by the Licensor.
- C. The Licensor may adopt Improvements and include these in the Technology, or not, at their absolute discretion.
- D. The Licensee may elect to join with other licensees of the Technology and interested third parties in the APSIM Community Source Framework. The APSIM Community Source Framework is a forum of interested persons and organisations that informs and interacts with the owners of the Technology, provides for distribution of modifications, promotes central control for quality assurance purposes, and considers structured innovation relevant to APSIM.

THE PARTIES AGREE:

1. DEFINITIONS

1.1 In this Agreement:

'Background IPR' means any IPR which the Licensor makes available to the Licensee for the purposes of exploiting the Technology, and includes at the date of this Agreement the Background IPR described in the Details;

'Confidential Information' of a Party (the **'Discloser'**):

(a) means any information that the Discloser has notified in writing is confidential to itself or which by its nature a reasonable person would consider to be confidential and/or commercially sensitive in nature;

and

(b) does not include information to the extent that information is:

- (i) independently developed or known by the receiving party (the **'Recipient'**) (including because it is in the public domain) otherwise than through breach of this Agreement or an obligation of confidentiality owed to the Discloser;
- (ii) information which the Recipient can prove by contemporaneous written documentation was lawfully known to them before the date of this Agreement on a non-confidential basis;
- (iii) information which the Recipient acquired from a source other than the Discloser where such source is entitled to disclose it; or
- (iv) required to be disclosed by law or any order of any court, tribunal, authority or regulatory body or in any emergency to prevent harm to any person, subject to clause 4.2(c);

'Input Data' means any input data used, or generated by, the Licensee in relation to the Licensee's use of the Technology including, for the avoidance of doubt, any soil, weather and management data necessary for the Technology to generate New Data and observations of crop, soil and animal data used to inform Improvements in the Technology.

'Details' means the provisions of **Schedule 1**;

'Intellectual Property Rights' or **'IPR'** means all intellectual property rights, including:

- (a) patents, plant breeders rights, copyright, rights in circuit layouts, registered designs, trade marks, know how, trade secrets and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a);

'Licensee BIP' means any IPR owned or held by the Licensee prior to the date of this Agreement;

'New Data' means data generated using the Technology with the Improvements; and

'Party' means a party to this Agreement including its officers and employees.

- 1.2 Other words starting with a capital letter have the meaning described in the Details.
- 1.3 In this Agreement, 'including' and similar expressions are not words of limitation.

2. GRANT OF NON-COMMERCIAL LICENCE

- 2.1 Subject to **clause 2.2**, the Licensor grants the Licensee:
 - (a) a non-transferable license of the Technology for the Term:
 - (i) of the License Type; and
 - (ii) in the Field in the Territory; and
 - (iii) for the Purpose
 - (b) a non-transferable, non-exclusive license to use the Licensor Confidential Information and Background IPR to the extent necessary for the Licensee to access the Technology for the purposes of producing the Outputs and Improvements.
- 2.2 The Licensee acknowledges that this Agreement does not restrict the Licensor's capacity to use, and license third parties to use, the Technology for any application, whether inside or outside the Field.
- 2.3 The Licensee grants to the Licensor a non-exclusive, irrevocable, perpetual world wide non transferrable free licence (excluding the right to grant sub licences) to use the New Data for the purpose of generating Improvements and/or producing Outputs. New Data identified as Confidential Information by the Licensee may be used by the Licensor in accordance with clause 4 (Confidential Information).

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 The Licensee acknowledges that this Agreement does not transfer to the Licensee any IPR in the Technology, Background IPR or Confidential Information made available by the Licensor. The Licensee acknowledges that this Agreement operates to vest ownership of IPR in Improvements in the Licensor from creation.
- 3.2 The Licensor acknowledges that this Agreement does not transfer to the Licensor any IPR in the Input Data, New Data, Licensee BIP or Confidential Information made available by the Licensee. The Licensor acknowledges that this Agreement operates to vest ownership of IPR in Input Data and New Data in the Licensee from creation.
- 3.3 The Licensee:
 - (a) must keep the Licensor reasonably informed of any Improvements the Licensee makes to the Technology and provide the Improvements and associated details as reasonably requested by the Licensor;
 - (b) agrees that IPR in Improvements vests in the Licensor on and from creation;
 - (c) warrants that the Improvements do not and will not infringe any third party IPR rights; and
 - (d) without charging the Licensor a fee will do all things and execute all documents that may be necessary to complete the vesting of ownership of the IPR in Improvements in the Licensor.
- 3.4 The Licensee may not take any action to challenge the validity of any IPR licensed to them by the Licensor under this Agreement.

- 3.5 The Licensee must advise the Licensor immediately on becoming aware of:
- (a) any suspected or actual infringement by any person of the IPR in the Technology, Outputs, or Improvements; and
 - (b) any person claiming that the Technology, Outputs, or Improvements infringe the rights of any person.
- 3.6 Notwithstanding anything to the contrary in this Agreement, the Licensee acknowledges the right of the Licensor to adopt and use the Improvements in any way, including a right to not adopt and/or not use the Improvements whilst retaining ownership of IPR in the Improvements.
- 3.7 The Licensee may not institute or defend proceedings against a third party in relation to the Technology or Licensor owned Improvements unless it first obtains written consent from the Licensor.

4. CONFIDENTIAL INFORMATION

- 4.1 Each Party ('**Recipient**') must in relation to the Confidential Information of the other Party ('**Discloser**'):
- (a) keep it confidential;
 - (b) use it only as permitted under this Agreement and only disclose it to employees, contractors and agents who have a need to know, having first taken appropriate steps to ensure that those persons are made aware of the confidential nature of the Confidential Information and are also required to keep such Confidential Information confidential;
 - (c) not copy it or any part of it that is in material form other than as strictly necessary and must mark any such copy 'Confidential - (Discloser)'; and
 - (d) promptly comply with any request by the Discloser to return or destroy any or all copies of Confidential Information, unless required by law to be retained.
- 4.2 The Recipient must:
- (a) take all reasonable steps to protect the Confidential Information and keep it safeguarded from unauthorised access, copying, use or disclosure (whether that disclosure is oral, in writing or in any other form);
 - (b) immediately notify the Discloser if the Recipient becomes aware of any unauthorised copying, use or disclosure of Confidential Information in any form;
 - (c) to the extent possible before disclosure of Confidential Information required by law or any order of any court, tribunal, authority or regulatory body or in any emergency to prevent harm to any person:
 - (i) give notice to the Discloser with full details of the circumstances of the proposed disclosure and of the relevant information to be disclosed; and
 - (ii) give the Discloser a reasonable opportunity to challenge the disclosure in a court of law or other appropriate body; and
 - (d) cooperate with the Discloser in any reasonable action it takes to protect the Confidential Information.

5. WARRANTIES AND EXCLUSIONS

- 5.1 The Licensor does not warrant that either the Technology or the Background IPR does not infringe any third party's IPR but the Licensor will advise the Licensee if it becomes aware of any infringement.

6. LIABILITY AND INSURANCE

- 6.1 The Licensee acknowledges that it exercises its rights to use the Technology at its own risk. The Licensor acknowledges that it exercises its rights to use any Improvements at its own risk but is not so obliged to use any Improvements.

- 6.2 The Licensee assumes all risk for, and must indemnify the Licensor against, all liabilities, expenses, losses, damages and costs (including legal costs on a solicitor and own client basis and whether incurred by or awarded against the Licensor) that the Licensor may sustain or incur as a result, whether directly or indirectly of:

- (a) any breach of this Agreement by the Licensee, including a breach in respect of which the Licensor exercises an express right to terminate this Agreement;
- (b) any negligent act or omission or willful misconduct of the Licensee or its officers or employees in connection with this Agreement; or
- (c) any use, including exploitation, of the Technology and/or any Improvements by the Licensee, provided that the Licensee's obligation to indemnify the Licensor will be reduced proportionally to the extent that the liabilities, expenses, losses, damages or costs were directly caused by:
- (d) any breach of this Agreement by the Licensor; or
- (e) any negligent act or omission or willful misconduct of the Licensor or its officers or employees.

- 6.3 The Licensor assumes all risk for, and must indemnify the Licensee against, all liabilities, expenses, losses, damages and costs (including legal costs on a solicitor and own client basis and whether incurred by or awarded against the Licensee) that the Licensee may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of this Agreement by the Licensor, including a breach in respect of which the Licensee exercises an express right to terminate this Agreement; or
- (b) any negligent act or omission or willful misconduct of the Licensor or its officers or employees in connection with this Agreement;

provided that the Licensor's obligation to indemnify the Licensee will be reduced proportionally to the extent that the liabilities, expenses, losses, damages or costs were directly caused by:

- (c) any breach of this Agreement by the Licensee; or
- (d) any negligent act or omission or wilful misconduct of the Licensee or its officers or employees.

- 6.4 Each Party:

- (a) must take out and maintain insurances adequate to cover its obligations under this Agreement;
- (b) must comply with the terms of its insurance policies; and
- (c) may act as its own insurer if it has written agreement from the other Party to that effect.

7. DISPUTE RESOLUTION

- 7.1 A Party must not start court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement ('**Dispute**') unless it has complied with this **clause 7**.
- 7.2 A Party claiming that a Dispute has arisen must notify the other Party to the Dispute giving details of the Dispute ('**Notification**').
- 7.3 On receipt of a Notification each Party must negotiate in good faith to resolve the Dispute and, if necessary to resolve the Dispute, involve the Chief Executive Officers or other senior officers of the Parties directly in those negotiations.
- 7.4 If the Dispute involves technical matters and has not been resolved by clause 7.3 negotiations within 28 days of the date of the Notification, the Parties will refer the Dispute for determination by an independent expert agreed by the Parties in the technical field the subject of the Dispute.
- 7.5 If the Dispute involves matters other than technical matters and has not been resolved by clause 7.3 negotiations within 28 days of the date of the Notification, the Parties will refer the Dispute for mediation by a mediator agreed on by the Parties or nominated by the Australian Commercial Dispute Centre Limited if the Parties are unable to agree within 7 days.
- 7.6 If the Dispute is not resolved under either of **clauses 7.4 or 7.5** within 60 days after referral (or longer period agreed between the Parties) either Party may initiate proceedings in a court.

8. TERM AND TERMINATION

- 8.1 Unless the Parties agree otherwise this Agreement will end on the expiry of the Term.
- 8.2 Either Party may end this Agreement by giving 30 days written notice to the other Party.

9. POST TERMINATION/EXPIRATION

- 9.1 After the expiration or termination of this Agreement for any reason, unless otherwise agreed in writing:
- (a) revocable licences granted under this Agreement cease;
 - (b) the Licensee must immediately:
 - (i) stop using the Technology and Improvements;
 - (ii) if requested by the Licensor, return to the Licensor all copies of all, or any part, of the Confidential Information of the Licensor in the Licensee's possession or control; and
 - (iii) if requested by the Licensor, confirm by letter signed by an authorised person of the Licensee that it has complied with all of its obligations under this **clause 9**;
 - (c) the following clauses continue: 4 (Confidential Information) (but not the rights to use, disclose and copy), 5 (Warranties and Exclusions), 6 (Liability and Insurance), 7 (Dispute Resolution), this **clause 9** (Post Termination/Expiration) and **10** (Use of Names and Publication); and
 - (d) accrued rights and remedies of either Party are not affected.

10. USE OF NAMES AND PUBLICATION

- 10.1 The Licensee must obtain written consent from the Licensor before it:

- (a) uses the names, trademarks or logos of the Licensor ; or
- (b) makes a public statement about this Agreement.

11. NOTICES

- 11.1 A Party notifying or giving notice under this Agreement must give notice in writing, addressed to the other Party's contact specified in the Details.

12. GENERAL

- 12.1 **Relationships:** This Agreement does not create a relationship of employment, agency or partnership between the Parties.
- 12.2 **Severel Rights:** The rights and obligations of each Party under this Agreement are several, not joint or joint and several.
- 12.3 **Further Action:** Each Party must do or cause to be done all things necessary or desirable to give effect to, and refrain from doing things that would hinder performance of, this Agreement.
- 12.4 **Assignment:** The Licensee must not assign or attempt to assign or otherwise transfer any right arising out of this Agreement.
- 12.5 **Waiver:** The failure of a Party at any time to insist on performance by the other Party of any obligation under this Agreement is not a waiver of its right:
- (a) to insist on performance of, or to claim damages for breach of, that obligation unless that Party acknowledges in writing that the failure is a waiver; and
 - (b) at any other time insist on performance of that or any other obligation of the other Party under this Agreement.
- 12.6 **Severability:** If part or all of any clause of this Agreement is illegal or unenforceable it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.
- 12.7 **Costs:** Each Party must pay its own legal costs associated with preparing and finalising this Agreement.
- 12.8 **Entire Agreement:** This Agreement:
- (a) is made up of the Details and these **clauses 1 to 12 and all Schedules**;
 - (b) records the entire Agreement between the Parties and supersedes all earlier agreements, arrangements and understandings between the Parties about the Technology; and
 - (c) may only be altered in writing signed by both Parties.
- 12.9 **Inconsistency:** If there is any inconsistency between provisions then the order of precedence shall be:
- (a) the Details; and
 - (b) clauses 1 to 12.
- 12.10 **Acknowledgement:** Installing the software indicates that the "Licensee" has read and understood this agreement, and agrees to be bound by its terms and conditions.

[These terms are 'click wrap' and agreed on installation of the software – no signing blocks are required.]

SCHEDULE 1

DETAILS	
Licensor Contact	Name: APSIM Initiative Address: 203 Tor Street, Toowoomba, Qld 4340, Australia Contact Person: Chris Murphy Telephone: +61 7 4688 1596 Fax: +61 7 4688 1193 E-mail: apsim@daff.qld.gov.au
Licensee Contact	Details as provided on the www.apsim.info APSIM software registration web page.
Technology	Science modules and infrastructure software in the Agricultural Production Systems Simulator (APSIM).
Licence Type	Non-exclusive licence for use of the Technology, and Improvements made to, or used to employ, the Technology, in the Field and Territory.
Purpose	For R&D in the Territory in the Field.
Field	For use in Research and Development to produce Improvements to, or Outputs from, the Technology. Intellectual property in Improvements vests in the Licensor on creation.
Outputs	Outputs includes New Data, publications, reports, look up tables (electronic or paper), demonstrations or presentations, decision support systems, produced using the Technology, provided they do not contain the Technology or parts of the Technology or require the Technology to work/run.
Research and Development (R&D)	Research and Development (R&D) means scientific, educational and technical work conducted to create and/or apply and/or disseminate knowledge.
Improvements	Improvements means any developments, additions, alterations, reduction or compaction made to the Technology.
Territory	The Licensee may use the Technology for R&D anywhere in the world within the Field.
Licensor Confidential Information	Project methodologies and procedures that resulted in the Technology.
Background IPR	Science modules and infrastructure software in the Agricultural Production Systems Simulator (APSIM).
Term	3 years from the date this Agreement is made (date as provided on the www.apsim.info web site).
Sub-Licence Rights	Not entitled to sub-license
Governing Law	This Agreement is governed by the law of the State of Queensland, Australia.