

DEED OF VARIATION OF AGREEMENT

Dated

16th

December 2009

PARTIES

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION
ABN 41 687 119 230

DIRECTOR OF NATIONAL PARKS
ABN 13 051 694 963

DEED made

16th

December 2009

BETWEEN THE DIRECTOR OF NATIONAL PARKS AND WILDLIFE a body corporate established by the National Parks and Wildlife Conservation Act, 1975 and continued in existence by the Environment Protection and Biodiversity Conservation Act 1999 as a body corporate by the name Director of National Parks ABN 13 051 694 963,
of GPO Box 787 Canberra ACT 2601

("DNP")

AND COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION ABN 41 687 119 230 a body corporate established by the Science and Industry Research Act 1949,
of Limestone Avenue, CAMPBELL ACT 2612 acting through the Division of Plant Industry, GPO Box 1600 Canberra ACT 2601

("CSIRO")

INTRODUCTION

- A. DNP and CSIRO have made the agreement dated 14 April 2000 for the establishment and operation of the Centre for Plant Biodiversity Research as an unincorporated joint venture ('the Agreement').
- B. Clause 46.1 of the Agreement provides the Agreement may not be changed, modified or waived except by an instrument in writing signed by both Parties.
- C. The Agreement provides that it shall remain in force until 31 December 2009. CSIRO and DNP have conducted a review of the Centre for Plant Biodiversity Research ('the Centre') and have agreed in principle to the continued operation of the Centre under a new agreement. While the negotiation of the new agreement is taking place DNP and CSIRO wish to provide for the interim operation of the Centre by extending the Agreement in accordance with the terms and conditions of this Deed.

IT IS AGREED

1. Definitions and Interpretation

1.1 Terms in Agreement

Where a term is used in the Agreement it has the same meaning in this Deed unless the context does not permit.

1.2 Definitions

In this Deed:

- (1) **“Deed”** means this document, including any schedule or annexure to it.
- (2) **“Effective Date”** means the date the last party signing signs this Deed.
- (3) **“New Agreement”** means the new agreement for the operation of the Centre for an additional term of ten (10) years to be entered into by CSIRO and DNP, subject to approval by their respective authorised delegates pursuant to their governing legislation.

1.3 Interpretation

The following rules apply unless the context requires otherwise:

- (1) Where a defined term is used in the Deed, it has the same meaning as the Agreement.
- (2) The headings are for convenience only and do not affect interpretation.
- (3) A recital, schedule, annexure or a description of the parties forms part of this Deed.
- (4) A reference to:
 - (a) dollars or \$ is to an amount in Australian currency;
 - (b) a singular word includes the plural, and vice versa;
 - (c) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (d) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (e) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator and successor in law of the person and permitted assigns;
 - (f) a word which suggests one gender includes the other gender; and
 - (g) a clause or schedule is a reference to a clause of or a schedule to this Deed.
- (5) The meaning of general words is not limited by specific examples introduced by ‘including’, ‘for example’, or similar expressions.
- (6) No provision of this Deed will be construed adversely to a Party on the ground that such Party was responsible for the preparation of this Deed or that provision.

- (7) If the day on or by which a Party must do something under this Deed is not a business day, the person must do it by the next business day.

2. Variation of Agreement

- (1) Notwithstanding clause 5.1 and clause 32.1 of the Agreement, DNP and CSIRO agree that the Agreement shall, subject to its clause 29, remain in force until:

- (a) 30 April 2010;
- (b) the execution of the New Agreement by DNP and CSIRO; or
- (c) the Parties by written resolution agree to terminate the Centre
whichever first occurs.

- (2) This clause 2(1) of this Deed takes precedence over clause 5.1 and clause 32.1 of the Agreement.

2.2 The Agreement is varied with effect from the Effective Date.

2.3 Subject to the variations contained in this Deed, in all other respects the terms of the Agreement remain unaltered.

2.4 The Parties acknowledge that this Deed will be superseded by the terms and conditions to be agreed by the Parties under the New Agreement, and to the extent the New Agreement requires any adjustment of provisions or entitlements arising out of the operative period of this Deed, the Parties will do all things and sign all documents necessary to give effect to the New Agreement.

3. Further Assurance

3.1 Each Party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

4. Severability

4.1 If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

5. Costs and Outlays

5.1 Each Party is responsible for its own costs in relation to this Deed.

6. Governing Law and Dispute Resolution

- 6.1 The law of the Australian Capital Territory governs this Deed.
- 6.2 If there is any dispute or difference arising between the Parties to this Deed, clause 36 and clause 37 of the Agreement apply to this Deed as if each reference to "this Agreement" in clause 36 and clause 37 of the Agreement was a reference to this Deed.

7. Address for Notices

- 7.1 Any notice to be given by a Party in connection with this Deed must be in writing and hand delivered or sent by prepaid registered post or facsimile to the recipient's address:

(a) In the case of CSIRO:

CSIRO Plant Industry, Clunies Ross Street, Black Mountain ACT 2601

Fax: + 61 2 6246 5064

Attention: Chief

(b) In the case of DNP:

GPO Box 787 Canberra ACT 2601

Attention: Director of National Parks

- 7.2 Notice is deemed to be duly given by a Party:

(a) in the case of hand delivery, on the day of delivery;

(b) four days after the date of posting by pre paid registered post; or


(c) if sent by facsimile, when the sender's facsimile system generates a message confirms successful transmission of the total number of pages of the notice.

EXECUTED as a deed.

EXECUTED by **COMMONWEALTH
SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION**
ABN 41 687 119 230 in accordance with the
Science and Industry Research Act 1949 :

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CSIRO Delegate **JEREMY J BURDON**
CHIEF, CSIRO PLANT INDUSTRY

Name of CSIRO Delegate
(BLOCK LETTERS)

EXECUTED by **Director of National Parks**
ABN 13 051 694 963


Witness Signature
PAUL MINSGVE.

Name of Witness
(BLOCK LETTERS)

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Director of National Parks
Peter Cochrane