

Service Provider Agreement – «NOTE: For Services \$22,000 or Above»

Parties:

AgriFutures Australia	RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION trading as AgriFutures Australia ABN 25 203 754 319 of Building 007, Charles Sturt University, Tooma Way, Wagga Wagga NSW 2650, Australia Attention: «Full Name» Telephone: «Phone Number» Title: «Title» Email: «Email»
Supplier	«Company Name» ABN «ABN» of «Address». Attention: «Full Name» Telephone: «Phone Number» Title: «Title» Email: «Email»

DETAILS

Commencement Date	The Commencement Date of this Agreement is «Day, Date Month Year»
Term	«Day, Date Month Year»
Services	«Description of the Goods / Services» «OR» «Scope of Goods / Services as detailed in the Specification set out in Clause 2 »
Rates	«Price or Refer to Scope of Services as set out in Schedule 1 »
Terms of Payment	14 Days
Nominated Person	«If Applicable»
Program Period	«Day, Date Month Year»
Email for Invoices to AgriFutures Australia	finance@agrifutures.com.au
Address for Notices to AgriFutures Australia	Building 007, Tooma Way Charles Sturt University Locked Bag 588 Wagga Wagga NSW 2650
Address for Notices to Supplier	«Address»

Insurances	<p>The Supplier must maintain the following insurances during the Term:</p> <ul style="list-style-type: none"> (a) Public liability insurance which covers the Supplier, AgriFutures Australia, any contractors or subcontractors employed by the Supplier or any other interested parties for their respective liabilities for loss of or damage to property (including loss of use of property which has not been physically damaged or destroyed) and death of or injury to any person for an amount of not less than \$10 million; (b) Professional Liability and Indemnity Insurance policy with an indemnity limit of not less than \$10 million in respect of any one claim. (c) workers' compensation insurance as required under law; and (d) comprehensive and third party motor vehicle insurance for an amount of not less than \$10 million covering personal injury and property damage arising from the use of any motor vehicle or other mobile equipment in the performance of the Goods and/or Services.
Special Terms	<p>«Any terms specific to the research of the arrangement e.g. IPR rights. If no special terms, insert Not Applicable»</p>
<p>Note: All capitalised terms in column one of the Details have the meaning provided in column two.</p>	

EXECUTED as an Agreement.

Signed for and on behalf of **RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION trading as AgriFutures Australia** ABN 25 203 754 319 by its authorised representative:

Signed for and on behalf of **«Insert Details»** ABN «ABN» by its authorised representative:

.....
Signature of Authorised Representative

.....
Signature of Authorised Representative

.....
Name of Authorised Representative
(BLOCK LETTERS)

.....
Name of Authorised Representative
(BLOCK LETTERS)

.....
Date

.....
Date

GENERAL TERMS

1 Term

Subject to any rights of early termination, this agreement will commence on the Commencement Date and continue for the Term.

2 Program of Services

2.1 Appointment of Supplier

The Supplier agrees to supply the Services to AgriFutures Australia on a non-exclusive basis in accordance with the Services and in accordance with this Agreement. The Supplier accepts the appointment.

2.2 Service Quality and Standards

The Supplier must ensure that:

- (a) the Services are provided in accordance the Details;
- (b) it complies with all Applicable Laws, regulations, ordinance and standards which relate to the supply of the Services under this Agreement; and
- (c) the Services are provided in accordance with any requirement or instructions provided by AgriFutures Australia from time to time.

3 Nominated Persons

3.1 The Supplier:

- (a) must, subject to the terms of this agreement, cause only the Nominated Persons to perform the work in respect of the Services on behalf of the Supplier;
- (b) undertakes that the Nominated Persons will perform this work to the best of their skill and ability; and
- (c) must provide each Nominated Person with a copy of this agreement and take all reasonable steps to explain it to them.

3.2 Sub-Contractors

The Supplier may only engage Sub-Contractors or third parties to assist in the supply of the Services with AgriFutures Australia prior written consent. If the Supplier engages a Sub-Contractor or third party for those purposes, the Supplier will remain responsible for the performance of all of its obligations under this Agreement and the Supplier will be liable to AgriFutures Australia for the acts and omissions of any such Sub-Contractor or third party as if they were the acts or omissions of the Supplier.

3.3 Liaison

The Supplier must, as required by AgriFutures Australia:

- (a) liaise with the person nominated by AgriFutures Australia in providing the Services;
- (b) participate in reviews; and
- (c) provide reasonable details of the Provider's proposed course of action and strategies in providing the Services.

4 Warranties

4.1 Authority

Each of the parties warrant that it has full power and authority to enter into this Agreement and to perform its obligations under it.

4.2 Supplier Warranties

The Supplier warrants and represents to AgriFutures Australia that:

- (a) it has the necessary expertise, plant, equipment and facilities to provide the Services in accordance with this Agreement;
- (b) any Services supplied will conform to the Services description set out in [Schedule 2](#) and will comply with all Applicable Laws;
- (c) it will adhere to the AgriFutures Australia Supplier Code of Conduct, available at <https://www.agrifutures.com.au/wp-content/uploads/2019/08/Supplier-Code-of-Conduct.pdf> as amended from time to time;
- (d) all Personnel engaged to perform the Services will be suitably qualified and experienced and the Services will be performed with due care, diligence and skill and in a timely and professional manner;
- (e) it holds all necessary licences, authorisations and consents to perform and provide the Services;
- (f) if applicable, the Supplier's Equipment is suitable and in good, safe and serviceable condition; and
- (g) the performance of its obligations under this Agreement will not infringe the Intellectual Property Rights of any third party.

4.3 The Supplier acknowledges that AgriFutures Australia has entered into this Agreement in reliance on the warranties set out in [Clause 4.2](#).

4.4 Anti-Bribery

The Supplier shall comply with all applicable laws, rules and regulations relating to anti-bribery laws. The Supplier agrees that it will not corruptly make any offer, payment, promise of gifts or money or any other thing of value to any government official or employee, political party or political candidate ("Government Official") for the purpose of influencing any act or decision of such Government Official, inducing such Government Official to act in violation of their lawful duty or securing any improper advantage in relation to the Services or this Agreement.

4.5 Business Ethics Laws

The Supplier represents and warrants to AgriFutures Australia that it will comply with the Business Ethics Laws during the term of this agreement in relation to the Services or this agreement.

5 Provision of the Services

5.1 Deliverables

Property and title in the Deliverables will pass to AgriFutures Australia upon delivery without prejudice to any rights of rejection that AgriFutures Australia may have.

5.2 Capacity to Supply

- (a) The Supplier shall give AgriFutures Australia notice of its inability to supply any Services, such notice to be given as far in advance as practicable.
- (b) Where the Supplier is unable to supply the Services to AgriFutures Australia requirements:
 - i. AgriFutures Australia may cancel any outstanding Services that are or may be affected by the notice provided under [Clause 5.2\(a\)](#) without any Liability to the Supplier;
 - ii. the Supplier will reimburse AgriFutures Australia for any Liability, Cost, charge or expense incurred by AgriFutures Australia as a result of the purchase of Services from an alternative source, to the extent that such Liability, Cost, charge or expense exceeds the applicable Rates, except if the inability to supply is caused by a Force Majeure Event; and
 - iii. where applicable, such quantities are to be deducted from any guaranteed minimum quantities for that period.

6 Rates and Payment

6.1 Rates and Fees Payable for the Services

In consideration for the provision of the Services by the Supplier, AgriFutures Australia will pay the Supplier the Rates.

6.2 Supplier to Submit Invoices

- (a) Unless otherwise agreed, the Supplier shall invoice AgriFutures Australia at the end of each month for the Services delivered in that month.
- (b) Invoices submitted by the Supplier must be a valid tax invoice in accordance with [Clause 7](#), addressed to AgriFutures Australia to the address stated in the Details.

6.3 Payment

- (a) AgriFutures Australia will make payment of invoices issued in accordance with this [Clause 6.3](#) within the period stated in the Details.
- (b) If an amount is payable by the Supplier to AgriFutures Australia under this Agreement, AgriFutures Australia is entitled to set-off that amount against any amount payable by AgriFutures Australia to the Supplier under this Agreement.

7 Goods and Services Tax

- 7.1 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 7.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 7.3 A party's right to payment under [Clause 7.2](#) is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.
- 7.4 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- 7.5 To the extent that any consideration payable to a party under this Agreement is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

8 Insurance

8.1 Insurances to be Maintained

The Supplier must, from the Commencement Date of this Agreement for the duration of the Term effect and maintain current, the insurance policies specified in the Details.

8.2 Notify Claims

The Supplier must provide to AgriFutures Australia at its request a certificate of currency or the policy for such insurances and inform AgriFutures Australia immediately if the Supplier becomes aware of any actual, threatened or likely claims under any of the insurances referred to above if they relate to the provision of the Services.

9 Funding and Compliance

9.1 Unavailability of Funds

AgriFutures Australia may rely on either or both of funds from the Commonwealth and industry levy funds in order to perform its obligations under this agreement.

9.2 Payment Obligations

AgriFutures Australia is not obliged to make any payment under this agreement unless:

- (a) the Minister for Agriculture has approved AgriFutures Australia's Research and Development Plan (**R&D Plan**) and, if Ministerial approval is required, AgriFutures Australia's Annual Operational Plan (**AOP**) under Part 2 of the *Primary Industries Research and Development Act 1989* in relation to the Financial Year in which the payment is to be made; and

(b) the R&D Plan and AOP are consistent with AgriFutures Australia making the payment.

9.3 Subject to [Clause 9.2](#), AgriFutures Australia will use its best endeavours to ensure that it has sufficient funds from the Commonwealth and industry levies to perform its obligations under this agreement, but will not be in breach of or liable for any losses under this agreement if, due to insufficient funds from the Commonwealth or industry levies, it is unable to perform its obligations under this agreement.

9.4 **Conflict of Interest**

The Supplier must not, during the term of this agreement without the prior written consent of AgriFutures Australia:

- (a) act as a Supplier to any person who carries on or is involved in any capacity in an activity or business; or
- (b) carry on or be involved in any capacity in an activity or business,

which is competitive with or detrimental to the Services. The Supplier must notify AgriFutures Australia immediately if it becomes aware of any conflict of interest.

10 Records

10.1 The Supplier must maintain (in an orderly, auditable and accessible manner) a complete and accurate audit trail of all information, data, documents and records relating to the Services ordered under this Agreement, delivery of the Services and otherwise relating to this Agreement (including the records and documentation specified in [Clause 10.3](#)) (Audit Records).

10.2 The Supplier must maintain all Audit Records and historical records or data existing and made available to the Supplier at the Commencement Date until the later of:

- (a) seven years after the end of the Term;
- (b) the date that all pending matters relating to the Agreement (including disputes) are closed;
- (c) such date as may be necessary to meet any applicable regulatory or legal requirement.

10.3 Without limiting [Clause 10.1](#), the Supplier must keep complete, accurate and valid records and supporting documentation of invoices submitted to AgriFutures Australia, and payments made by AgriFutures Australia, under this Agreement.

10.4 If AgriFutures Australia has a reasonable belief that the Supplier has breached this Agreement, AgriFutures Australia may, upon reasonable notice to the Supplier, attend the Supplier's premises (or such other place that the Audit Records are kept), for the purposes of inspecting the Audit Records and assessing the Supplier's compliance with this Agreement.

10.5 The Provider must:

- (a) permit the Commonwealth at any time and without prior notice, through its officers, agents or advisers authorised on its behalf, to examine and inspect any material in its possession which is relevant to this agreement, including any books and records, and provide all necessary facilities for that purpose; and

- (b) give full and accurate answers to any questions the Commonwealth or its representative may have concerning books or records relating to this agreement and provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning this agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.

11 Confidential Information

11.1 Keep Confidential Information Confidential

Each party acknowledges that it may during the course of this Agreement acquire Confidential Information from the other party. The parties must treat all Confidential Information as such and must not use, exploit or disclose the Confidential Information to any person (except the parties' Personnel and then only to such extent as may be required to enable the parties to comply with the provisions of the Agreement) without the prior written consent of the other party.

11.2 Use of Confidential Information

The parties will use the Confidential Information only for the purpose for which it has been provided pursuant to this Agreement.

11.3 Exceptions

The obligations of confidentiality under [Clause 11.1](#) do not apply to the extent that Disclosure of Confidential Information is required by law or by those listing requirements of any relevant stock exchange.

11.4 Return of Confidential Information

A party who has received Confidential Information under this Agreement must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to that Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from it under [Clause 11.1](#).

12 Privacy

12.1 Compliance with Privacy Policy

The Supplier must ensure that any collection, use, disclosure or transfer by the Supplier, or the Supplier's Personnel, of Personal Information in connection with the performance of its obligations under this Agreement complies with the applicable AgriFutures Australia privacy policy, which is available at: <http://www.AgriFutures.com.au/privacy/>.

12.2 Supplier's Privacy Obligations

The Supplier must:

- (a) only collect Personal Information under or in connection with this Agreement on behalf of AgriFutures Australia and not separately for the benefit of the Supplier and only to the extent necessary to perform its obligations under this Agreement;

- (b) use, hold, store, transfer and disclose Personal Information under or in connection with this Agreement only to the extent required for the performance of this Agreement and in accordance with all Applicable Laws;
- (c) take all necessary steps to ensure that the Personal Information held by it in connection with this Agreement is protected against misuse, interference and loss, and from unauthorised access, modification and disclosure;
- (d) provide reasonable assistance to AgriFutures Australia to enable AgriFutures Australia to comply with its obligations under Applicable Laws (including privacy laws), including by providing AgriFutures Australia with information about the storage, management and disclosure of the Personal Information, access to the Personal Information or modifying or deleting the Personal Information as requested by AgriFutures Australia;
- (e) co-operate with any reasonable requests or directions of AgriFutures Australia relating to the security, use, disclosure, transfer and erasure of Personal information, or the rights of individuals to access and correct Personal Information; and
- (f) as soon as reasonably practicable, notify AgriFutures Australia if it becomes aware that a disclosure of Personal Information by the Supplier may be required by Applicable Laws or a breach of this [Clause 12](#) has occurred.

13 Intellectual Property

13.1 Intellectual Property Created Before the Commencement Date

- (a) Unless agreed otherwise in writing by the parties, nothing in this Agreement affects ownership of any Intellectual Property Rights of either AgriFutures Australia or the Supplier, which came into existence before the Commencement Date.
- (b) Title to, and all Intellectual Property Rights in, all AgriFutures Australia Background IP remains vested in AgriFutures Australia.
- (c) Title to, and all Intellectual Property Rights in, all Supplier Background IP remains vested in the Supplier.

13.2 Enhancements and Modifications

To the extent that any enhancements or modifications are made to any AgriFutures Australia Background IP by or on behalf of the Supplier or its Personnel, then the Supplier assigns ownership of all such enhancements and modifications to AgriFutures Australia immediately upon creation.

13.3 Licenses of Background IP

- (a) AgriFutures Australia grants to the Supplier a non-exclusive, worldwide, royalty free, non-transferable licence for the Term to use, exploit and reproduce any AgriFutures Australia Background IP supplied to the Supplier by AgriFutures Australia solely for the purpose of providing the Services and otherwise in accordance with the reasonable directions of AgriFutures Australia.
- (b) The Supplier grants to AgriFutures Australia a non-exclusive, irrevocable, perpetual, worldwide, royalty free, sub-licensable licence to use, exploit and reproduce any Supplier Background IP:

- i. supplied to AgriFutures Australia by the Supplier in the course of providing the Services;
- ii. embedded in or forming part of the Deliverables or any other material provided by the Supplier to AgriFutures Australia as part of the Services; or
- iii. otherwise necessary for AgriFutures Australia and the AgriFutures Australia Group to enjoy the full benefits of the Services.

13.4 Termination of AgriFutures Australia Background IP Licence

- (a) The licence granted to the Supplier pursuant to [Clause 13.3\(a\)](#) (will terminate automatically without notice upon the termination or expiry of this Agreement
- (b) Upon termination of the licence granted pursuant to [Clause 13.3\(a\)](#), the Supplier must promptly:
 - i. provide to AgriFutures Australia all physical copies of any Material incorporating any AgriFutures Australia Background IP which the Supplier then holds; and
 - ii. permanently delete all electronic copies of any Material incorporating any AgriFutures Australia Background IP in the Supplier's possession and, if requested by AgriFutures Australia, certify that such deletion has occurred.

14 Work Health and Safety

14.1 AgriFutures Australia Sites

- (a) AgriFutures Australia shall provide the Supplier with such access to the Site(s) as is necessary to enable the Supplier to fulfil their obligations under this Agreement provided that the Supplier shall not interfere with any on-Site activities.
- (b) AgriFutures Australia and its Personnel will not be responsible for any damage done to the Supplier's property or to that of any of the Supplier's Personnel or, to the extent permitted by Applicable Law, for any personal injury sustained by any of the Supplier's Personnel occurring on AgriFutures Australia premises except to the extent that such damage or injury is caused directly as a result of AgriFutures Australia's negligence.

15 Force Majeure Event

- (a) If a party ("**Affected Party**") becomes unable because of Force Majeure to perform an obligation placed on it under this agreement (other than an obligation to pay money), the Affected Party must give the other party prompt written notice of:
 - (i) reasonable particulars of the Force Majeure; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform the obligation.
- (b) If clause 15(a) applies:
 - (i) the obligation will be suspended during the Force Majeure;
 - (ii) an Affected Party will not be in breach of this Agreement or otherwise liable to the other party

for the delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to the Force Majeure event.

- (iii) the Affected Party must use all possible diligence to work around, overcome or remove the Force Majeure as quickly as possible, although it is not required to settle any labour or other 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 way of legal proceedings; and
- (iv) a party may, by notice to the other party, terminate this agreement if the Force Majeure continues for 30 continuous days.

16 Termination

16.1 Termination Events

Without prejudice to any of its other rights at general law or contained in this Agreement, either party shall have the right to immediately terminate this Agreement by notice in writing to the other party upon the occurrence of one or more of the following events:

- (a) the other party ceases or threatens to cease to carry on its business;
- (b) an Insolvency Event occurs in relation to the other party; or
- (c) the other party commits a material breach of any of the terms of this Agreement, and, where such a breach is capable of remedy, fails to remedy the same within ten (10) Business Days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

16.2 Termination by AgriFutures Australia

AgriFutures Australia may terminate this Agreement at any time without cause by giving to the Supplier not less than 30 days prior written notice or such lesser period as may be agreed by the parties.

16.3 AgriFutures Australia may terminate this Agreement immediately by written notice to the Supplier if the Supplier fails to achieve any or all of the Deliverables in any three consecutive months during the Term.

16.4 Consequences of Termination

Upon termination or expiration of this Agreement:

- (a) each party must immediately return to the other party all Confidential Information of that other party (including all copies or reproductions of the same and material referring to any Confidential Information), documents, equipment, materials and other things belonging to the other party or to which the other party is entitled;
- (b) the Supplier must immediately provide to AgriFutures Australia any Developed Materials made by the Supplier;
- (c) the Supplier must ensure that its Personnel vacate all of AgriFutures Australia Sites and remove all of the Supplier's Equipment from those sites; and

- (d) the Supplier must make good and repair any damage to AgriFutures Australia Sites or equipment caused by the Supplier.

16.5 Survival

- (a) Termination or expiry of this Agreement does not affect any rights or obligations of the parties that may have accrued before the effective date of termination or expiry.
- (b) Clauses [1](#), [9](#), [11](#), [12](#), [13.3\(b\)](#), [16.5](#), [18](#) and [Clause 20](#) survive termination or expiry of this Agreement.

17 Dispute Resolution

17.1 Without prejudice to either parties' rights under [Clause 16](#) **Error! Reference source not found.:**


- (a) If a dispute arises in connection with this Agreement, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this [Clause 17 \(Notice of Dispute\)](#).
- (b) The Supplier account manager and the AgriFutures Australia representative must negotiate in good faith with a view to resolving the dispute within two (2) weeks of the date of the Notice of Dispute.
- (c) If the dispute is not so resolved it shall be referred to the senior executives of AgriFutures Australia and the Supplier who shall negotiate in good faith with a view to resolving the dispute within two (2) weeks of referral of the dispute to the senior executives.
- (d) If the dispute is not able to be resolved following this process of dispute resolution, either party may take such further legal action or commence proceedings in relation to the dispute or Claim, as they determine is appropriate.



17.2 Despite anything in this [Clause 17](#), a party may at any time commence court proceedings in relation to any dispute or Claim arising under or in connection with this Agreement where that party seeks urgent interlocutory relief.

17.3 Notwithstanding the existence of a dispute, the parties will continue to perform their obligations under this Agreement.

18 Notices

18.1 A notice, consent or approval under this agreement must be in writing and is treated as having been given and received:

Method of Notice	When is Notice received?
 <p>HAND (HAND DELIVERY)</p>	On date of delivery.

 <p>MAIL (POST) Sent by post to the Recipients Address</p>	<p>(a) if sent from and to a place within Australia by regular post, at 9:00 am on the fourth Business Day after the date of posting;</p> <p>(b) if sent from a place within Australia to a place outside Australia by airmail, at 9.00 am on the tenth Business Day after the date of posting.</p>
 <p>EMAIL Sent to recipient's email address</p>	<p>If sender's email system does not receive a delivery failure notification, the date the email is sent.</p>

19 General

- 19.1 This Agreement is governed by and construed in accordance with the laws of the State of New South Wales, Australia for Services supplied in Australia.
- 19.2 A waiver by AgriFutures Australia of any provision or breach by the Supplier of this Agreement cannot be construed as a waiver of any other provision or breach.
- 19.3 This Agreement sets out the entire agreement between AgriFutures Australia and the Supplier in relation to the supply of the Services. No variation to this Agreement is valid unless it is set out in writing and signed by AgriFutures Australia and the Supplier. The Supplier's terms and conditions of supply have no effect and are not incorporated into this Agreement.
- 19.4 Any provision of this Agreement that is illegal, void or unenforceable will be severed without affecting the other provisions.
- 19.5 The Supplier cannot, without AgriFutures Australia's prior written consent, assign or sub-contract any of its obligations under the Agreement to a third party.
- 19.6 AgriFutures Australia may transfer its rights and obligations under this Agreement or any part thereof to any member of the AgriFutures Australia Group without the Supplier's consent.
- 19.7 This Agreement may be executed in any number of counterparts, each of which is to be deemed an original, but all of which together shall constitute a single instrument. A party may enter into this Agreement by executing and delivering a counterpart by facsimile or email. A facsimile, PDF or digital signature shall be deemed an original.

20 General Interpretation

Unless the contrary intention appears, in this agreement:

- 20.1 references to statutes, regulations, policies, rules or code include references to those statutes, regulations, policies, rules or codes as amended, updated or replaced from time to time;
- 20.2 references to the singular includes the plural and vice versa;

- 20.3 references to person or individuals include a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- 20.4 reference to a party means a party to this agreement and includes the party's executors, administrators, successors and permitted assigns;
- 20.5 an agreement, warranty, representation or obligation which binds or benefits two or more persons under this agreement binds or benefits those persons severally and not jointly or jointly and severally;
- 20.6 the words "include" and "including" are not used as, nor are they to be interpreted as, words of limitation;
- 20.7 headings are for convenience only and do not affect interpretation.
- 20.8 references to dollars is to Australian dollars, unless otherwise stated;
- 20.9 a provision of this agreement will not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement; and
- 20.10 if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

21 Definitions

In addition to the definitions in the Details, the following words have these meanings in this agreement:

Applicable Laws means all laws, regulations, codes, standards determined by any governmental or regulatory authority and generally applicable industry or self-regulatory standards;

AgriFutures Australia Background IP means all Intellectual Property Rights owned by any member of AgriFutures Australia or the AgriFutures Australia Group that are developed or created before the Commencement Date or developed or created after the Commencement Date independently of this Agreement or the Schedule of Services and outside the scope of the Services;

AgriFutures Australia Materials means any Materials transmitted or otherwise delivered to the Supplier by AgriFutures Australia for the purpose of assisting the Supplier to supply the Services the subject of this Agreement including any information or work (or adaptation of a work) in any material form, any specifications, know-how, manuals, instruction manuals, other information or materials supplied by AgriFutures Australia in any media;

Background IP means the AgriFutures Australia Background IP or the Supplier Background IP, as the case may be;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

Business Ethics Laws means the laws applicable to the Provider in relation to:

- (a) fundamental human rights and in particular the prohibition of: (A) using child labour and any form of forced or compulsory labour; and (B) organising or supporting any form of discrimination amongst its employees or towards its suppliers and subcontractors;

- (b) labour, immigration and prohibition of illegal work; and
- (c) anti-money laundering.

Confidential Information means information of every kind:

- (a) which includes, but is not limited to, all recipes, formulations, specifications, Services, strategies, forecasts, projects, plans, documents and financial information of a party including sales figures, marketing information, computer records, software, trade secrets, drawings, designs, plans, concepts not reduced to product form and all other documents, records and information of a party which is of a confidential nature and is the property of a party or any Related Entity of a party;
- (b) but does not include information:
 - i. which is or becomes generally available to the public (other than as a result of the wrongful disclosure by a party or any Related Entity of the party); or
 - ii. which a party can prove was in its possession before disclosure by the other party, which information was not acquired in breach of an obligation of confidence;

Corporations Act means the Corporations Act 2001 (Cth) in relation to supplies made in Australia;

Costs includes costs, charges and expenses, including those incurred in connection with advisers;

Deliverables means any goods, document, material, article or work (including any part thereof) to be supplied by the Supplier pursuant to the provision of the Services specified in [Schedule 2](#);

Developed Material means all Deliverables that are Materials and any other Materials created by either party or their Personnel as part of the Services or otherwise in the course of performing this Agreement or Schedule of Services;

Force Majeure means, in respect of a party, any reason or cause, other than lack of funds, which could not with reasonable diligence be controlled or prevented by the party, including war, insurrection, riot, civil commotion, strikes, lock-outs, labour or industrial disputes, acts of God, acts or restrictions of governments or governmental agencies, flood, epidemics, storm, power shortages or failures or inability to obtain sufficient labour, raw materials, fuel or utilities.

GST means in relation to Australia, GST as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended (GST Act) or any replacement or other relevant legislation and regulations; or

Insolvency Event means any of the following events:

- (a) a party fails to meet its debts as they fall due;
- (b) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to a party;
- (c) a receiver, a receiver and manager, official manager, trustee, administrator or similar officer is appointed over the assets or undertakings of a party; or

- (d) a party enters into or resolves to enter any arrangement, composition or compromise with, or assignment for the benefit of its creditors or any class of them other than for the purpose of amalgamation or reconstruction;

Intellectual Property Rights includes any copyright (both present and future); design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for); trade, business, company or domain name; specifications, formulations, Confidential Information (whether in writing or recorded in any form) including trade secrets and know-how, inventions, processes; and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;

Liability includes all liabilities (whether actual, contingent or prospective), losses, damages, Costs and expenses of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred;

Material includes equipment, hardware, computer software, data, documentation, designs, drawings, reports, notes, calculations, specifications, photographs, audio-visual materials, recordings, manuals, tools and anything else which is in a material form (which, for the avoidance of doubt, includes information stored in an electronic form);

Personal Information has the meaning given in the *Privacy Act 1988* (Cth) in relation to Australia, which is information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not. Personal Information includes such information or opinions provided by AgriFutures Australia or generated by the Supplier pursuant to this Agreement;

Personnel in respect of a party, means that party's employees, agents, consultants and subcontractors, and employees of its agents, consultants and subcontractors;

Related Body Corporate or Related Entity has the meaning given to in the Corporations Act;

Services means the performance of the scope of work specified in the Details, and provision of any Deliverables to be provided to AgriFutures Australia pursuant to this Agreement using the Personnel and Supplier's Equipment in accordance with this Agreement, and as may be amended by agreement between the parties from time to time;

Supplier means the party providing Services under or in connection with this Agreement, or its Personnel as the situation requires;

Supplier Background IP means all Intellectual Property Rights owned by the Supplier that are developed or created before the Commencement Date or developed or created after the Commencement Date independently of this Agreement or Schedule of Services and outside the scope of the Services;

Supplier's Equipment means all equipment, tools and materials that are used by the Supplier in the provision of the Services;

Site means a physical location controlled by AgriFutures Australia;

WHS Legislation means the *Work Health and Safety Act 2011* and any State or Territory legislation relating to occupational or work health and safety and includes all regulations, codes or guidelines, whether made under that legislation or otherwise, which apply to the parties in performing this agreement or conducting the Project and any other activities contemplated by this agreement.

SCHEDULE 1 – Rates and Fees Payable

Rates

«Insert Details»

SCHEDULE 2 – Services

«Insert Details»