

Service Provider Agreement – «Project Number and Project Title»

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»
Service Provider	«Company Name» ABN «ABN» of «Address». Administrative Contact Attention: «Full Name» Telephone: «Phone Number» Title: «Title» Email: «Email»

DETAILS

Commencement Date	The Commencement Date of this Agreement is «Day, Date Month Year»
Project Name and Number	«Insert project name and number».
Service Period	«Date» to «Date», unless the agreement is terminated or the Services otherwise cease at an earlier time, in which case the Service Period will end as of the date of termination or cessation.
Services	«Description of the Services» «Or» «Scope of Services»
Key Personnel	«Insert Name» and any replacement of such personnel as appointed by the Service Provider from time to time in accordance with clause 2.7(b).
Fees (ex GST)	As set out in Item 1 of the Schedule.
Expense Reimbursement	Expense Reimbursement: YES/NO (delete inapplicable choice) If no, clause 3.2 is of no effect.
Special Terms	«Any terms specific to the arrangement. If no special terms, insert Not Applicable» «DRAFTING NOTE: if a Limitation of Liability is requested by the Service Provider, please consult with Manager, Legal Services, who will consider including the clause below as a Special Term» <Limitation of Liability> Notwithstanding any other provisions of this agreement, to the extent permitted by law the Service Provider's total aggregate liability to AgriFutures Australia, any person claiming by, under or through AgriFutures Australia or any other person, whether arising under contract, in equity, under statute, in tort (including

	for negligence) or otherwise, is limited to the maximum aggregate amount which is the lower of 3 times the price paid for the Services and \$1,000,000 (one million)
Note: All capitalised terms in column one of the Details have the meaning provided in column two.	

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

Note: By executing this Agreement each signatory represents that he or she is authorised to sign on behalf of their entity.

GENERAL TERMS

1 Appointment of the Service Provider

AgriFutures Australia appoints the Service Provider to provide the Services in accordance with the terms of this Agreement, and the Service Provider accepts the appointment.

2 Obligations of the Service Provider

2.1 Conduct of the Services

The Service Provider must:

- (a) provide the Services in accordance with the Milestones and Specifications;
- (b) not vary the Services without AgriFutures Australia's prior written consent; and
- (c) as reasonably required by AgriFutures Australia, attend, chair or facilitate internal AgriFutures Australia meetings and external meetings of committees established by AgriFutures Australia in connection with the Services.

2.2 Liaison

The Service Provider must, as required by AgriFutures Australia:

- (a) liaise with the person(s) nominated by AgriFutures Australia in providing the Services;
- (b) participate in technical and peer reviews (if applicable); and
- (c) provide reasonable details of the Service Provider's proposed methodology and strategies in providing the Services.

2.3 Directions

The Service Provider must liaise with AgriFutures Australia and comply with all reasonable and lawful requests and instructions of AgriFutures Australia from time to time concerning the Services.

2.4 Acceptance

- (a) The Service Provider will notify AgriFutures Australia when the Service Provider considers that a Milestone has been achieved.
- (b) AgriFutures Australia will review the Milestone and either:
 - (i) confirm whether it meets the requirements set out in the Schedule to its reasonable satisfaction; or
 - (ii) advise that further work is required.
- (c) A Milestone will be achieved once AgriFutures Australia provides confirmation that the Milestone is met.

2.5 Service Standards

- (a) The Service Provider must comply with:

- (i) all relevant laws;
 - (ii) all applicable codes of conduct, industry standards or guidelines; and
 - (iii) all applicable rules, policies and guidelines of AgriFutures Australia or the Commonwealth as notified in advance by AgriFutures Australia,
- when performing its obligations or exercising its rights under this agreement.
- (b) The Service Provider must ensure that all employees, agents and contractors employed or engaged by it have the necessary experience, skill and ability to properly carry out the Services.
 - (c) The Service Provider must ensure that all work undertaken under this agreement will be undertaken diligently, competently, in a professional manner and in accordance with generally accepted professional, scientific and ethical principles and standards.

2.6 Regulatory Compliance

Without limiting Clause 2.5(a), in performing its obligations under this agreement, the Service Provider agrees that it will comply with (as applicable):

- (a) licencing requirements under the Animal Welfare Acts; and
- (b) the requirements of the National Health and Medical Research Council in:
 - (i) the Australian Code for the Responsible Conduct of Research (2007); and
 - (ii) the Australian Code for the Care and Use of Animals for Scientific Purposes (2013).

2.7 Personnel

- (a) The Service Provider must cause the Administrative Contact to manage the Service Provider's compliance with the day to day administrative requirements of this agreement.
- (b) The Services must be performed by the Key Personnel. If, for any reason, any of the Key Personnel become unavailable, the Service Provider will promptly notify in writing AgriFutures Australia and use reasonable endeavours to secure a replacement acceptable to AgriFutures Australia. If the Service Provider is not able to secure replacement Key Personnel within 30 days of the notification in accordance with this clause, AgriFutures Australia may, by notice to the Service Provider, terminate this agreement in writing on 30 days' notice and clause 7.3 will apply.
- (c) The Service Provider must not, without the prior written consent of AgriFutures Australia, engage agents or contractors to assist the Service Provider in carrying out its obligations under this agreement. Where the Service Provider engages agents or contractors:
 - (i) the Service Provider is liable for all acts and omissions of the agent or contractor and remains liable for the Service Provider's obligations under this agreement;

- (ii) unless otherwise agreed by AgriFutures Australia, the terms of engagement must contain terms requiring the agents or contractors to assign to AgriFutures Australia all Intellectual Property created in performing the Services; and
- (iii) the Service Provider may sublicense its rights to use the Intellectual Property in the AgriFutures Australia Material and the Contract Material to the Service Provider's agents and contractors engaged to provide the Services for the purposes of providing the Services.

2.8 **WHS**

- (a) The Service Provider must ensure that it, and any persons and any subcontractor which it engages to perform work under this agreement, will comply with all WHS Legislation and AgriFutures Australia's work health and safety policies and procedures (including any policies on the AgriFutures Australia website) and maintain all necessary licences, permits, registrations or other authorisations (however described) required by WHS Legislation. This includes ensuring:
 - (i) a safe working environment;
 - (ii) safe systems of work;
 - (iii) safe equipment;
 - (iv) such information, policies, training and supervision as are reasonably necessary to ensure the safety of those persons from injury and other risks to health; and
 - (v) monitoring of the health and welfare of those persons to the extent relevant for the prevention of work related injuries.

2.9 **AgriFutures Australia Material and Assets**

- (a) The AgriFutures Australia Material and the AgriFutures Australia Assets remain the property of AgriFutures Australia.
- (b) The Service Provider is responsible for the safekeeping and maintenance of the AgriFutures Australia Material and the AgriFutures Australia Assets and must ensure that they are used, copied, supplied or reproduced only for the purposes of this agreement.

2.10 **Deliverables**

- (a) The Service Provider agrees to:
 - (i) keep AgriFutures Australia informed about the progress of the Services;
 - (ii) ensure that all Deliverables are provided in accordance with the Specifications;
 - (iii) without limiting paragraph 2.10(a)(ii), ensure that all Deliverables are of a high standard acceptable to AgriFutures Australia on reasonable grounds, and where the Deliverable is a report, ensure that it has been proofread and edited to a high standard using Australian English language and in accordance with AgriFutures Australia's style guide; and

- (iv) provide all other information in connection with the Services or this agreement that AgriFutures Australia may reasonably require.
- (b) The Service Provider:
 - (i) acknowledges that AgriFutures Australia may abridge, make formatting changes, publish extracts, re-design, convert to alternative formats or make similar alterations to any Deliverables as it considers reasonably appropriate;
 - (ii) acknowledges that, notwithstanding the Deliverables and any other provision of this agreement, AgriFutures Australia may as it considers appropriate copy, reproduce, publish, exploit or otherwise use or disclose any report, including deciding not to publish, exploit or otherwise use or disclose it; and
 - (iii) must not copy, reproduce, publish, exploit or otherwise use or disclose any Deliverables without the prior written consent of AgriFutures Australia.
- (c) Property and title in the Deliverables will pass to AgriFutures Australia upon delivery without prejudice to any rights that AgriFutures Australia may have under clause 2.4.

2.11 **Conflict of Interest**

- (a) The Service Provider must not during the Service Period carry on or be involved in an activity or business which would adversely impact on:
 - (i) the Service Provider's ability to perform the Services fairly and independently in accordance with the terms of this agreement; or
 - (ii) AgriFutures Australia's ability to use the Intellectual Property subsisting in the Contract Material in accordance with this agreement.
- (b) If during the Service Period, any actual, perceived or potential conflict arises, the Service Provider must notify AgriFutures Australia promptly and make full disclosure of all relevant information relating to the actual, perceived or potential conflict. The parties must discuss in good faith a resolution to any issues arising from such notification.

2.12 **Warranties**

The Service Provider warrants that:

- (a) it has the power and authority to enter into, execute and perform its obligations under this agreement;
- (b) it will adhere to the AgriFutures Australia Supplier Code of Conduct, available at <https://agrifutures.com.au/wp-content/plugins/pdf-analytics/tracking.php?file=wp-content/uploads/2019/08/Supplier-Code-of-Conduct.pdf> as amended from time to time;
- (c) this agreement and its performance do not contravene its constituent documents or any law, or any of its obligations or undertakings by which it is bound, or cause a limitation on its powers of its corporate officers to be exceeded; and

- (d) it will obtain all necessary approvals, consents and authorisations for the purpose of carrying out the Services.

2.13 Insurance

- (a) The Service Provider must, unless otherwise agreed in writing by AgriFutures Australia, at all times maintain:
 - (i) adequate workers' compensation insurance as required by law for its employees;
 - (ii) professional indemnity insurance in the amount of \$5 million for each claim for the Service Period and at least 3 years after its end; and
 - (iii) such other insurance cover as AgriFutures Australia may from time to time reasonably require.
- (b) The Service Provider must, on request by AgriFutures Australia, produce evidence of the currency of the insurance policies referred to in clause 2.13(a).
- (c) Clause 2.13(a) does not apply where the Service Provider is a department or statutory body of the Commonwealth of Australia or an Australian state or territory and self-insures.

2.14 Records

The Service Provider must, in accordance with all applicable Australian Accounting Standards, keep true, up to date and complete books of account and other records that:

- (a) record the receipt of Fees, the Services provided and the time worked; and
- (b) otherwise support the Service Provider's compliance with its obligations under this agreement.

2.15 Compliance

- (a) AgriFutures Australia may on 7 days' notice to the Service Provider audit or examine the Service Provider's books of account and other records in connection with the Services to:
 - (i) determine the correctness of any Deliverables under this agreement or compliance by the Service Provider of its obligations under this agreement; or
 - (ii) in the case of a failure by the Service Provider to provide information in accordance with this agreement, to obtain information required to be provided under this agreement.
- (b) The Service Provider must:
 - (i) 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
 - (ii) 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.

2.16 **Anti-Bribery laws**

The Service Provider must comply with all applicable laws, rules and regulations relating to anti-bribery during the Service Period, including Chapter 4, Division 70 of the Criminal Code Act 1995 (Cth) (Australia). The Service Provider 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.

2.17 **Business Ethics Laws**

The Service Provider represents and warrants to AgriFutures Australia that it will comply with the Business Ethics Laws during the Service Period in relation to the Services, the Project or this agreement.

3 AgriFutures Australia contributions

3.1 **Fees**

- (a) Subject to the Service Provider complying with the terms of this agreement, AgriFutures Australia must, in accordance with the Milestones, provide to the Service Provider:
 - (i) the Fees (provided that the Services to which each payment relates are completed to the reasonable satisfaction of AgriFutures Australia);
 - (ii) the AgriFutures Australia Material (if applicable); and
 - (iii) the AgriFutures Australia Assets (if applicable),for the sole purpose of the Service Provider’s performance of the Services.
- (b) The parties may agree in writing any earlier dates or times for payment of the Fees to the Service Provider than the dates or times specified in the Milestones.
- (c) The Fees are exclusive of GST.

3.2 **Expenses**

This clause 3.2 applies if YES is selected in the Details for Expense Reimbursement.

- (a) AgriFutures Australia must reimburse the Service Provider for all reasonable expenses incurred by the Service Provider in providing the Services, provided that the Service Provider:
 - (i) obtains AgriFutures Australia’s prior written consent before incurring expenses; and
 - (ii) gives AgriFutures Australia:

- (A) details of the expenses incurred, together with a receipt and any other evidence acceptable to AgriFutures Australia of the incurring of those expenses; and
- (B) all assistance reasonably required by AgriFutures Australia to verify the expenses incurred.

3.3 **Service Provider to provide invoice**

The Service Provider must provide a correctly rendered Tax Invoice to AgriFutures Australia for the Fees. The invoice must be a Tax Invoice and be in a form approved by AgriFutures Australia which sets out:

- (a) The AgriFutures Project Name and Number and Milestone reference;
- (b) Itemised details of the Services provided and the time worked;
- (c) the amount of Fees (ex GST) to be paid by AgriFutures Australia together with any substantiating material required; and
- (d) such other information as AgriFutures Australia requires.

3.4 **Due date for payment**

AgriFutures Australia must pay the Fees to the Service Provider within 30 days of the submission of a correctly rendered Tax Invoice in accordance with clause 3.3.

3.5 **Other fees and charges**

AgriFutures Australia will not pay any other fees or charges (including any levies or taxes) to the Service Provider in connection with this Agreement unless otherwise agreed in writing.

3.6 **Superannuation**

- (a) If the Service Provider is an individual, AgriFutures Australia will pay the compulsory superannuation contributions required by legislation on the Service Provider's behalf into a superannuation fund of that Service Provider's choice, provided that fund is a complying Australian superannuation fund. If the Service Provider does not nominate a superannuation fund, then the Service Provider's contributions will be directed to a superannuation fund nominated by AgriFutures Australia.
- (b) The payment of superannuation will be inclusive of the Fees.
- (c) The Service Provider acknowledges that to the extent that superannuation may be payable for individual Service Provider this is a consequence of statutory requirements and the relationship between the parties under this agreement is subject at all times to clause 12.4.

3.7 **Suspension**

Without limiting AgriFutures Australia's rights under clause 7:

- (a) AgriFutures Australia may suspend payment of any of the Fees or provision of any AgriFutures Australia Assets if the Service Provider:

- (i) does not achieve a Milestone, deliver a Deliverable or meet the Specifications by the due date for the payment to a standard acceptable to AgriFutures Australia on reasonable grounds;
 - (ii) does not ensure that the Key Personnel (or replacement persons approved by AgriFutures Australia) carry out the Services; or
 - (iii) is in breach of any other of its material obligations under this agreement,
- upon written notice to the Service Provider, until the matter is rectified to the reasonable satisfaction of AgriFutures Australia; and
- (b) following receipt of the notice under clause 3.7(a), if the Service Provider has not rectified the matter to the reasonable satisfaction of AgriFutures Australia within a reasonable period of time, AgriFutures Australia may, upon further written notice to the Service Provider, permanently withhold the payment of any of the Fees or provision of any AgriFutures Australia Assets to the Service Provider.

4 Variation Process

- (a) If during the performance of the Services, either party reasonably believes that it needs to vary the Services because of issues that have arisen, that party must give the other party a notice in writing as soon as reasonably practicable, setting out particulars of the proposed change to the Services, any resulting changes to the Fees and reasons why the party believes that the variation is necessary (“**Variation Request**”).
- (b) AgriFutures Australia and the Service Provider must, within a reasonable time frame of service of a Variation Request, commence good faith negotiations as to any variation to the Services on the basis that the nature of the Services to be carried out under this agreement means that it may be necessary or desirable from time to time to amend the Services in order to achieve the purpose of the Services. The Service Provider must, to the extent reasonably practicable, continue to perform the Services as they existed prior to the Variation Request, unless and until the parties agree to vary the Services. Any such agreement must be in writing signed by the parties.

5 Intellectual Property and Contract Material

5.1 Assignment

The Service Provider assigns all Intellectual Property subsisting in the Contract Material or arising out of provision of the Services to AgriFutures Australia as and when it is created, whether existing as at the date of this agreement or created afterwards.

5.2 Licence

AgriFutures Australia grants the Service Provider a non-exclusive royalty-free licence to use the Intellectual Property in the AgriFutures Australia Material and the Contract Material for the purpose of enabling the Service Provider to provide the Services.

5.3 Warranties

The Service Provider warrants that:

- (a) its output or contribution in connection with the Services, including all Deliverables, will be the original work of its Key Personnel, employees or of any other person which the Service Provider involves in the provision of the Services

and will not be in breach of any confidentiality obligations owed to any third party;
and

- (b) provision of the Services will not infringe any other person's Intellectual Property rights and AgriFutures Australia will be entitled to use the Intellectual Property subsisting in the Contract Material without the consent of any other person and without infringing any other person's Intellectual Property right.

6 Confidentiality and privacy

6.1 Limited use and disclosure

The Service Provider must:

- (a) maintain the secrecy of the Confidential Information;
- (b) not use the Confidential Information except as required for or permitted by this agreement; and
- (c) not disclose the Confidential Information to any other person other than each employee, agent and contractor employed or engaged by it and who need to know it in order to perform the Service Provider's obligations under this agreement.

6.2 Personnel

- (a) The Service Provider must use its best endeavours to ensure that:
 - (i) each employee, agent and contractor employed or engaged by it who has access to the Confidential Information is bound by obligations of confidentiality in substantially the same terms as these obligations of confidentiality; and
 - (ii) any of the employees, agents and contractors who cease to be employed or engaged by the Service Provider continue to be bound by such obligations of confidentiality.
- (b) The Service Provider may only disclose Confidential Information to those persons requiring access for the purpose of performing the Services.

6.3 Disclosure to third parties

The Service Provider may disclose Confidential Information to a third party if:

- (a) it has obtained AgriFutures Australia's prior written approval, which approval will not be unreasonably withheld if the Service Provider has procured from the person to whom it will be disclosed a suitable confidentiality undertaking; or
- (b) disclosure is required or compelled by an order of a court or by a law; or
- (c) disclosure is necessary for the conduct of any legal proceedings arising in relation to this agreement.

6.4 Protection of Personal Information

The Service Provider agrees to:

- (a) comply with the Australian Privacy Principles set out in the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use, disclosure or other handling of Personal Information to the extent that the content of those principles apply to the types of activities that that party undertakes under this agreement;
- (b) not transfer Personal Information held in connection with this agreement outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of AgriFutures Australia;
- (c) promptly notify AgriFutures Australia of any complaint that it receives concerning the Personal Information under this agreement and cooperate and comply with any reasonable directions, guidelines, demands or inquiries made by AgriFutures Australia or the Australian Information Commissioner in relation to the management and handling of Personal Information by a party or breaches or alleged breaches of privacy and provide AgriFutures Australia or the Australian Information Commissioner with access for the purpose of monitoring a party's compliance with this clause 6.4;
- (d) where the Service Provider collects Personal Information for or on behalf of AgriFutures Australia:
 - (i) only use and disclose that information for the purpose for which it is collected; and
 - (ii) not publish, disseminate or otherwise use the Personal Information in any other way; and
- (e) in relation to any Personal Information provided to the Service Provider by AgriFutures Australia under this Agreement:
 - (i) only store, use, disclose or otherwise handle the information for the specific purposes for which it was provided to the Service Provider under this agreement;
 - (ii) co-operate with any reasonable request or direction of AgriFutures Australia which relates to the protection of the information; and
 - (iii) comply with clause 6.4(c) in relation to that information.

6.5 Consents

In relation to any Personal Information that the Service Provider provides to AgriFutures Australia under this agreement, the Service Provider warrants that it has:

- (a) before providing the Personal Information to AgriFutures Australia, notified all individuals to whom the Personal Information relates that it will be disclosing their Personal Information to AgriFutures Australia for the purposes of this agreement and obtained any required consent to such disclosure; and
- (b) provided the individuals with a link to the privacy policy of AgriFutures Australia at <https://www.agrifutures.com.au/privacy-statement/>.

6.6 Use of Data

Without limiting AgriFutures Australia's other rights under this agreement, the Service Provider acknowledges that depersonalised aggregated data collected as part, or in the

course, of the Project or Services and which is incapable of being used to identify, or ascertain the identity of, any person may be:

- (a) used by AgriFutures Australia for planning, research and development, or marketing purposes, including as part of AgriFutures Australia's digital platforms such as grow^{AG}; and
- (b) provided by AgriFutures Australia to third parties for the purposes of projects undertaken by AgriFutures Australia.

6.7 **Communication**

- (a) The Service Provider must:
 - (i) not publish or disseminate Deliverables without the prior written consent of AgriFutures Australia;
 - (ii) not publish or disseminate other information relating to the Project, the Services or its results, whether in writing or by audio-visual, oral presentation or any other means ("**Communication**"), without the prior written consent of AgriFutures Australia; and
 - (iii) ensure that any Communication acknowledges the contribution to and support of the Project by AgriFutures Australia in a manner acceptable to AgriFutures Australia and contains a disclaimer of liability acceptable to AgriFutures Australia.

6.8 **Brand Use**

- (a) Except to the extent required by law or with the prior written consent of the other party, a party must not use the other party's name, logo or trademarks to make a public statement about this agreement or in a manner that suggests any sponsorship, approval or endorsement of the other party's operations, business, products, services or activities. The use of such name shall be subject to any conditions attaching to any consent given by the other party and such consent may be withdrawn on reasonable notice at the discretion of that party.
- (b) Notwithstanding clause 6.8(a), a party may mention the other party in:
 - (i) annual or other periodical reports prepared by that party as part its reporting obligations in the normal course of its operations; or
 - (ii) any information required by law, governmental regulation or order to be disclosed to any governmental entity; or
 - (iii) acknowledgements in scientific publication as required by any peer reviewed publications. In any such statement, the relationship of the parties shall be accurately and appropriately described.

7 **Term and termination**

7.1 **Notice**

AgriFutures Australia may, on 30 days' written notice to the Service Provider, terminate this agreement.

7.2 **Default**

If a party ("**Defaulting Party**"):

- (a) fails, within 7 days of receipt of notice from the other party, to remedy any breach of a term of this agreement which is capable of remedy;
 - (b) breaches a material term of this agreement which is not capable of remedy; or
 - (c) persistently breaches a material term of this agreement,
- the other party may, by notice to the Defaulting Party, terminate this agreement.

7.3 **Stop / Go decision**

- (a) AgriFutures Australia may terminate or suspend this Agreement by notice to the Service Provider if a “Stop” decision is made by AgriFutures Australia.
- (b) If a “Stop Go” decision point is referred to in Item 1 of the Schedule, the Service Provider:
 - (i) must not proceed with the Services after that point until AgriFutures Australia notifies the Service Provider that it has made a “Go” decision to proceed with the Services after that point; and
 - (ii) acknowledges that it is not entitled to payment for any Services provided in breach of clause 7.3(a).
- (c) Unless otherwise agreed between the parties, all Stop / Go decisions must be made by 30 days after the Due Date as specified in the Schedule.

7.4 **Post-termination**

On termination of this agreement under clause 2.7(b), 7.1, 7.2 or clause 8, the Service Provider must promptly on request from AgriFutures Australia:

- (a) unless otherwise agreed in writing by AgriFutures Australia, to the extent that any Fees paid to the Service Provider are for Services not yet provided, the Service Provider must repay those Fees to AgriFutures Australia;
- (b) return the AgriFutures Australia Material and all copies of it to AgriFutures Australia and permanently delete from all computer systems under the control of the Service Provider all AgriFutures Australia Material which is in electronic form; and
- (c) provide AgriFutures Australia with electronic and hard copies of all Contract Material; and
- (d) provide AgriFutures Australia with the current versions of the Deliverables.

7.5 **Termination by AgriFutures Australia**

If this Agreement is terminated by AgriFutures Australia under clause 7.1 or if AgriFutures Australia is the Defaulting Party under clause 7.2, AgriFutures Australia will pay the Service Provider for the Services provided up to the date of termination, including any non-cancellable costs reasonably incurred by the Service Provider directly attributable to the early termination of this agreement, provided that the total costs do not exceed the remaining Fees not already paid by AgriFutures Australia under this Agreement.

8 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 8(a) applies:
- (i) the obligation will be suspended during the Force Majeure;
 - (ii) 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
 - (iii) a party may, by written notice to the other party, terminate this agreement if the Force Majeure continues for more than 30 days.

9 Goods and Service Tax (GST)

9.1 Supplies

If a supplier under this agreement is subject to GST and GST has not been accounted for in determining the consideration payable for the supply, the supplying party may recover from the receiving party an amount on account of GST. That amount is:

- (a) equal to the value of the supply calculated in accordance with GST law multiplied by the prevailing GST rate; and
- (b) payable at the same time as the recipient is required to pay for the related supply.

10 Disputes




Any dispute relating to this agreement ("**Dispute**") must, prior to either party initiating litigation (other than for equitable or interlocutory relief), be dealt with as follows:

- (a) the affected party will notify the other party with details of the Dispute ("**Dispute Notice**") and, within 7 days of receiving the Dispute Notice, both parties will meet and attempt to resolve the Dispute;
- (b) if unresolved within 30 days of the Dispute Notice, the Dispute will be escalated to one executive from each party who will meet and attempt to resolve the Dispute;
- (c) if still unresolved within a further 14 days of being escalated, either party may refer the Dispute to mediation;

- (d) if the parties cannot agree on a mediator within a further 14 days, the Dispute will be referred by the parties to the President, Australian Commercial Disputes Centre, Sydney to nominate a suitably qualified mediator and the parties will accept that nomination;
- (e) the parties will cooperate to enable the mediator to mediate the Dispute within 30 days of the mediator’s appointment; and
- (f) the fees of the mediator will be paid by the parties in equal proportions.

11 Notices

A notice, consent or approval under this agreement must be in writing, in one of the forms set out in the “Method of Notice” column below and is treated as having been given and received:

Method of Notice	When is Notice received?
 HAND (HAND DELIVERY)	On date of delivery.
 MAIL (POST) Sent by post to the recipient’s Address	(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. (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.
 EMAIL Sent to recipient’s email address	If sender’s email system does not receive a delivery failure notification, the date the email is sent.

12 General

12.1 Terms and entire agreement

This agreement consists of these General Terms, the Details, the Special Terms, the Schedule and any annexures expressly incorporated and it constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

12.2 Variation and wavier

A provision of this agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties to be bound. A failure or delay in exercise of a right arising from a breach of this agreement does not constitute a waiver of that right.

12.3 Further assurances

Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this agreement, including assisting to facilitate any application to register

Intellectual Property rights, confirming any rights granted in relation to the Intellectual Property rights, and assisting with any GST requirements.

12.4 No relationship

- (a) The Service Provider is engaged as an independent contractor by AgriFutures Australia and the Service Provider is not an employee of AgriFutures Australia. It is the express intention of the parties that an employment relationship between AgriFutures Australia and the Service Provider is denied.
- (b) Both parties acknowledge that the Service Provider may provide the same, or similar services to, Services being provided to AgriFutures Australia under this agreement to third parties.
- (c) Nothing in this agreement constitutes any party as an agent, partner, joint venturer or employee of any other party or creates any agency, partnership, joint venture or employment relationship.
- (d) A party or any person acting on its behalf may not hold itself out as being entitled to contract or accept payment in the name of or on account of any other party.
- (e) The Service Provider must not represent itself, and must ensure that its officers, employees, agents and contractors do not represent themselves, as being an officer, employee, partner or agent of AgriFutures Australia or the Commonwealth, or as otherwise able to bind or represent AgriFutures Australia or the Commonwealth.

12.5 Assignment

A party may only assign a right under this agreement with the other party's prior written consent.

12.6 Remedies cumulative

The rights, powers and remedies provided in this agreement are in addition to and not exclusive of the rights, powers and remedies given by law independently of this agreement.

12.7 Governing Law

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

12.8 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument. A party may enter into this Agreement by executing and delivering a counterpart by email. A PDF or digital signature shall be deemed an original.

12.9 Legal costs

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this agreement and all documents incidental to it.

12.10 General interpretation

Unless the contrary intention appears, in this agreement:

- (a) 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;
- (b) references to the singular includes the plural and vice versa;
- (c) 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;
- (d) reference to a party means a party to this agreement and includes the party's executors, administrators, successors and permitted assigns;
- (e) 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;
- (f) the words "include" and "including" are not used as, nor are they to be interpreted as, words of limitation;
- (g) headings are for convenience only and do not affect interpretation.
- (h) references to dollars is to Australian dollars, unless otherwise stated;
- (i) 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
- (j) 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.

13 Definitions

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

Administrative Contact has the meaning given to it in the Details.

AgriFutures Australia Assets means all assets specified in Item 4 of the Schedule to be provided by AgriFutures Australia.

AgriFutures Australia Material means all material and information to be provided by AgriFutures Australia to the Service Provider for the purpose of this agreement as described in Item 3 of the Schedule.

Animal Welfare Acts means any legislation related to animal welfare in scientific research, including:

- (a) the Animal Research Act 1985 (NSW);
- (b) the Animal Welfare Act 1992 (ACT);
- (c) the Prevention of Cruelty to Animals Act 1986 (Vic);
- (d) the Animal Care and Protection Act 2001 (Qld);
- (e) the Animal Welfare Act 1985 (SA);

- (f) the Animal Welfare Act 2002 (WA);
- (g) the Animal Welfare Act 1993 (Tas); and
- (h) the Animal Welfare Act 1999 (NT) (as applicable).

Business Day means Monday to Friday other than a public holiday in Wagga Wagga.

Business Ethics Laws means the laws applicable to the Service 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, including the *Modern Slavery Act 2018* (Cth); 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 all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form that is provided by AgriFutures Australia to the Service Provider for the purposes of this agreement or the Services before, on or after the effective date of this agreement relating to the operations, business, research and technology of AgriFutures Australia, or collected by the Service Provider for the purposes of this agreement or the Services, excluding information which is:

- (a) publicly available or subsequently becomes publicly available other than in a breach of this agreement;
- (b) lawfully known to the Service Provider on a non-confidential basis before being disclosed by AgriFutures Australia; or
- (c) rightly acquired from a third party who is not in breach of an agreement to keep such information confidential.

Contract Material means all material brought into existence for the purpose of providing the Services and includes the Deliverables.

Deliverables means any goods, document, material, article or work (including any part thereof) to be supplied by the Service Provider pursuant to the provision of the Services, as described in Item 1 of the Schedule.

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.

Intellectual Property means all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, Confidential Information,

trade secrets and eligible layout rights and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Milestone means a milestone specified in Item 1 of the Schedule.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

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 the Milestones and this Agreement.

Specification means the specifications of the Milestones, as set out in Item 1 of the Schedule.

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 Services and any other activities contemplated by this agreement.

SCHEDULE

Item 1: Milestones

Milestones

[Insert Deliverables, Specifications and due date in the table below. An example Milestone is set out below. If a Milestone involves Deliverables such as reports, websites, apps, manuals etc, these should be described in detail below. The Deliverables should be SMART – Specific, Measurable, Achievable, Realistic and Timely.]

Note: If there is a Stop / Go decision point at the end of a Milestone, you should state this in the Milestone Column below and include the criteria or information required for the Stop / Go decision and the timeframe in which the Stop / Go decision must be made should be set out in the relevant Milestone.

Milestone Name	Specifications	Due Date	Fees
[Exchange of Contract]	[Contracts signed and returned to AgriFutures Australia along with a valid Australian Tax invoice (emailed to finance@agrifutures.com.au with Milestone name and Task) and the following: 1. [insert] 2. [insert]	[insert]	[insert]
[Plain English Summary of Key Achievements] [Stop / Go decision point?]	[Provide a brief plain english summary of notable achievements against objectives including major outputs or outcomes achieved to date.]	[insert]	[insert]
[Detailed Progress against Milestones]	[Provide detail of progress against all relevant individual milestones to date. Include milestone ID and title.]	[insert]	[insert]
[IP Register]	[Complete IP Register with details of all Background IP, Service Provider IP, Project IP]	[insert]	[insert]
[Communication Activities -To Date]	[Provide brief report on the extent that your research results have been disseminated to industry, scientific community, commercial parties or other institutions. Include publication list with publication references and a copy of each publication and presentation].	[insert]	[insert]
[Communication	[Provide a plan on how you intend to communicate the results or findings of your	[insert]	[insert]

Milestone Name	Specifications	Due Date	Fees
Activities- Future]	research to Industry, Scientific community, commercial parties or other institutions for the <time period>. Note: publications must be approved by AgriFutures Australia before release.]		
Deliverable		[insert]	[insert]
Final Project Summary		[insert]	[insert]
Project images and digital content		[insert]	[insert]

Item 2: AgriFutures Australia Material

[Describe AgriFutures Australia Material to be provided by AgriFutures Australia to the Service Provider for the purpose of this agreement. If none, insert "Not applicable"]

Item 3: AgriFutures Assets

[Describe any assets owned by AgriFutures Australia which will be provided to the Service Provider for the purposes of the provision of the Services. If none, insert "Not applicable"]