Services Agreement

2017

REF: [INSERT REF № HERE]

[INSERT TITLE HERE]

Grains Research and Development Corporation (GRDC)

[insert name of the Service Provider] (Service Provider)
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SERVICES AGREEMENT

DATED DAY OF 201

PARTIES

GRAINS RESEARCH AND DEVELOPMENT CORPORATION ABN 55 611 223 291 (GRDC)

AND

[INSERT FULL LEGAL NAME OF THE SERVICE PROVIDER] ACN/ABN [insert] (Service Provider)

RECITALS

A. The GRDC seeks the provision of certain services for [INSERT TITLE OF SERVICES TO BE RENDERED] from the Service Provider.

B. The Service Provider is skilled, trained, qualified and competent to perform the required services.

C. The Service Provider has offered to provide, and GRDC has agreed to accept, the Services on the terms and conditions set out in this agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this agreement unless the context otherwise requires:

**agreement** means this agreement including Schedules and Attachments.

**Background IP** means, in relation to a Party, all Intellectual Property that is acquired, created or owned by the Party or licensed to the Party for use by a third party prior to the commencement of this agreement or developed by the Party outside the scope of its obligations under this agreement.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

**Commercial-in-Confidence Information** means all information:

(a) which is indicated in writing by a Party to be confidential; or

(b) which might otherwise reasonably be regarded by either of the Parties as confidential,

including technical and commercial information and information the disclosure of which could prejudice the registration, exploitation or value of any Intellectual Property, but does not include information that:

(c) is in the public domain, or comes into the public domain, other than as a result of a breach of this agreement; or
(d) is rightfully known by the receiving Party and is not subject to an obligation of confidentiality before the date of receipt; or

(e) has been independently developed or acquired by the receiving Party.

Conflict of Interest means any commercial, private, or financial interest or duty, that interferes or conflicts with the Service Provider's obligations or duties to the GRDC under this agreement or otherwise.

Contract IP means the Intellectual Property in the Contract Material and any other Intellectual Property created or generated by the Service Provider and/or any of its Personnel (whether alone, with the GRDC or with any of the GRDC's Personnel) during the course of providing, or otherwise in connection with, the Services.

Contract Material means all work product of the Service Provider of whatever nature arising directly or indirectly from the provision of the Services including the Milestones, and including documents, equipment, software (including source and object code versions), biological and genetic material (for example, germplasm), goods, information and data stored by any means including all copies and extracts.

Due Date means the date for a Milestone's achievement or completion as specified in Schedule 2.

Electronic Communication has the same meaning as in the Electronic Transactions Act 1999 (Cth).

Fees means the amount specified in Item 5 of Schedule 1.

GRDC Authorised Representative means the person specified at Item 12 of the Schedule 1 or any other person nominated by the GRDC from time to time and notified to the Service Provider in writing.

GRDC Material means any material provided to the Service Provider by or on behalf of GRDC.

GST means a Commonwealth goods and services tax imposed in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property or means any registered or unregistered intellectual property rights including any:

(a) inventions, including patents or rights concerning any discovery, invention, process, process improvement, procedure, manufacturing method, technique or information regarding the chemical or genetic composition of materials (whether patentable or not);

(b) related confidential information, including Commercial-In-Confidence information, trade marks, business names or trading styles (whether registered or not);

(c) copyright (including Moral Rights and future copyright) material and similar or neighbouring rights;

(d) designs;

(e) plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes;

(f) semiconductor rights, eligible layouts or protectable computer programs;
(g) business names, domain names and company names;
(h) software, software programs and source code,

whether or not existing at the date of this agreement and whether or not registered or registrable and includes any and all variations, modifications or enhancements to each of them together with any right to seek registration of, or to take action for infringement of, any such rights.

Invoice means a tax invoice in respect of the Services which includes all information required for the GRDC to claim any claimable input tax credits, all information necessary to advise how the Fees or other expenses were calculated and any other information required by the GRDC.

Key Person means each person specified in Item 9 of Schedule 1.

Loss means any liability, loss, action, claim, damage, injury, cost, charge, penalty, expense or diminution in value, including:
(a) legal costs (on a solicitor and own client basis) and other costs incurred in connection with investigating, defending or settling any action or claim;
(b) that arising from damage or destruction to, or any loss of use of, any property or injury to or death of any person; and
(c) any loss of profit or consequential damage.

Milestones means a stage or deliverable specified in connection with the Services in Item 2 of Schedule 1 (and Milestones has a corresponding meaning) as set out in Schedule 2.

Moral Rights means:
(d) the right of attribution of authorship;
(e) the right not to have authorship falsely attributed;
(f) the right of integrity of authorship; and
(g) any other rights of an analogous nature which now exist or which may exist in the future, including, without limitation, moral rights under Part IX of the Copyright Act 1968 (Cth).

Party means a party to this agreement.

Personnel of a party:
(a) means officers, employees, agents and contractors of a party; and
(b) in the case of the Service Provider, includes each Key Person.

Replacement Key Person means a person(s) who replaces a Key Person in accordance with clause 4.2.

Resolution Institute means the Resolution Institute organisation which provides alternative dispute resolution services.

Services means the services set out in Item 2 of Schedule 1 and Milestones including services or Milestones which are ancillary to the effective completion of those services and Milestones.
Service Provider Material means the material identified as the Service Provider Material:

(a) in Item 8 of Schedule 1; and
(b) in any other material provided by the Service Provider to enable the Services to be carried out.

Term means the period commencing from the Commencement Date and ending on the Completion Date.

Third Party Material means any material, other than the GRDC Material, in relation to which the Service Provider does not own the Intellectual Property.

WHS Legislation means any applicable State or Commonwealth legislation, including Acts, Regulations and Codes of Practice, relating to work or occupational health and safety.

1.2 General

In this agreement unless the context otherwise requires:

(a) headings are for convenience only and do not affect interpretation;
(b) a reference to either Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
(c) a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
(d) a reference to any document or agreement includes a reference to that document or agreement as properly amended, novated, supplemented, varied or replaced from time to time;
(e) a reference to an agreement other than this agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
(f) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
(g) a reference to a clause, Party, annexure, exhibit or schedule is a reference to a clause of, and a Party, annexure, exhibit and schedule to, this agreement and a reference to this agreement includes any clause, annexure, exhibit and schedule;
(h) "includes" or "including" are not words of limitation;
(i) all monetary amounts are in Australian currency; and
(j) where any Party is constituted by more than one legal entity, they will be, unless otherwise expressly stated, jointly and severally liable in respect of all obligations arising under this agreement and jointly entitled to enjoy any rights granted by this agreement;
(k) a provision of this agreement may not be construed adversely to a Party solely on the ground that the Party (or that Party's representative) was responsible for the preparation of this agreement or the preparation or proposal of that provision;
(l) a reference to time is to time in Canberra in the Australian Capital Territory;
(m) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
(n) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
(o) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
(p) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
(q) if anything under this agreement is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day; and
(r) a reference to '$', 'A$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

2. SERVICES

2.1 Provision of Services

The Service Provider must provide the Services subject to the terms of this agreement.

2.2 Conduct of Services

The Service Provider must:

(a) carry out the Services with a standard of care, professional skill and diligence that would be exercised by a competent supplier of such services similar to the Services;
(b) comply with the requirements of the agreement including completing or achieving Milestones by Due Dates;
(c) rectify any defects or omissions in carrying out the Services, to the reasonable satisfaction of the GRDC;
(d) perform the Services in accordance with GRDC’s policy and procedures as notified to the Service Provider;
(e) comply with all applicable laws and regulations in providing the Services;
(f) provide the Services without breaching any obligation to any other person infringing any Intellectual Property of any other person;
(g) provide any reports about the Services that GRDC requests from time to time;
(h) not have, or after the date of this agreement accept, any obligations to any person that will or may interfere with the Service Provider’s ability to provide the Services in accordance with this agreement; and
(i) not accept sponsorships unless specifically requested to do so as discrete tasks.

2.3 Conflicts

(a) The Service Provider warrants that neither the Service Provider nor its Personnel have, at the date of signing this agreement, any Conflicts of Interest.
(b) The Service Provider must:

(i) promptly notify the GRDC of any actual, potential or perceived Conflict of Interest; and

(ii) comply with any written or oral direction from the GRDC, including any general procedures notified from time to time, to deal with such a Conflict of Interest.

2.4 Engagement

GRDC must provide the Service Provider with all information and facilities the Service Provider requires, including the GRDC Material, to provide the Services.

3. WARRANTIES

The Service Provider warrants that:

(a) it has the capacity and all authorisations to enter into this agreement;

(b) it has and will maintain any licences, approvals, consents or registrations necessary to provide the Services;

(c) the Services will be fit for the stated purpose in Item 2 of Schedule 1 to be applied by the GRDC;

(d) each Milestone will be completed or achieved by its Due Date;

(e) the Service Provider and its Personnel are skilled, trained, qualified and competent to perform the Services to the standards required under this agreement;

(f) the information provided to the GRDC by the Service Provider about the Service Provider’s work experience and qualifications, and those of the Service Provider’s Personnel, is true and correct;

(g) it is unaware of any actual or grievance, complaint, proceeding or action that could have a material adverse effect on the Service Provider, its Personnel or their ability to comply with the Service Provider’s obligations under this agreement;

(h) it will promptly notify GRDC after becoming aware of a matter described in clause 3(g); and

(i) it will promptly remedy any errors or defects in the Services that are notified to the Service Provider by the GRDC.

4. KEY PEOPLE

4.1 Key Person Active Involvement

The Service Provider must:

(a) ensure that each Key Person (if any) is actively involved in providing the Services and performs his or her role in accordance with the date of engagement and any other requirements as set out in Item 9 of Schedule 1;
(b) ensure that each Key Person is aware of and complies with the Service Provider’s obligations in providing the Services; and

(c) notify the GRDC Authorised Representative promptly where a Key Person becomes:

(i) unable to provide the Services; or

(ii) unwilling to comply with the requirements of clause 4.1(a),

and offer a Replacement Key Person who must be of at least equivalent skill, training and experience to the Key Person to be replaced.

4.2 Process to replace Key Person

The GRDC Authorised Representative must within 30 days after receiving notice under clause 4.1, either:

(a) accept the Replacement Key Person, which case the Service Provider must replace the Key Person with that Replacement Key Person; or

(b) on reasonable grounds, reject the Replacement Key Person. If this happens:

(i) the Service Provider must select and notify the GRDC Authorised Representative of an alternative person within 7 days after notice of the rejection; and

(ii) if the parties cannot agree on a suitable Replacement Key Person within 30 days after the GRDC Authorised Representative receives notice under clause 4.1, the GRDC may immediately terminate this agreement.

4.3 Removal of Personnel at GRDC’s discretion

The GRDC may, at its absolute discretion, give notice to the Service Provider’s Authorised Representative requiring the Service Provider to remove any Personnel (including a Key Person) from performing the Services. The Service Provider’s Authorised Representative must promptly arrange for the removal of those Personnel from performing the Services and their replacement with Personnel acceptable to the GRDC.

4.4 Personnel management obligations

The Service Provider must:

(a) comply with all obligations to pay tax instalment deductions, fringe benefits tax, superannuation guarantee levy, training guarantee levy, payroll tax and any other taxes or levies imposed on an employer which apply to the Service Provider or its Personnel;

(b) comply with all requirements imposed on an employer to keep records, lodge returns and provide information in relation to the obligations referred to in clause 4.4(a); and

(c) on request, provide to the GRDC proof that the Service Provider has complied with these obligations.
5. PAYMENTS

5.1 Fee Payments

(a) The Fees are inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas and are fixed for the term of the agreement.

(b) Unless clause 5.1(c) applies, the Service Provider can only issue an Invoice for the Fees at the time and in the amount specified in Item 5 of Schedule 1.

(c) If Item 5 of Schedule 1 states Schedule 2 applies, the Fees will be payable in instalments upon completion of the relevant Milestones by the Due Date and the Service Provider must only issue an Invoice for the relevant instalments associated with the Milestones.

5.2 Out of pocket expenses

(a) GRDC will reimburse the out of pocket, overhead or similar expenses specified in Item 6 of Schedule 1.

(b) GRDC will only reimburse an out of pocket, overhead or similar expense if the Service Provider provides the GRDC with reasonable proof of the expense being incurred and identifies the expense on an Invoice.

(c) Except as specified in Item 6 of Schedule 1, or as otherwise agreed in writing by the GRDC, and subject to clause 5.2(b), GRDC will not reimburse the Service Provider for any out of pocket, overhead or other expenses incurred in carrying out the Services.

5.3 Service Provider Invoices

(a) The Service Provider must submit a correctly rendered Invoice to the GRDC. An invoice is correctly rendered if:

(i) it is correctly calculated in accordance with the agreement and does not exceed the agreed Fees or any agreed expenses;

(ii) the Services and any expenses acquitted in that Invoice meet the requirements of the agreement;

(iii) it includes the GRDC project number, and the name and phone number of the GRDC Authorised Representative; and

(iv) it is a valid tax invoice in accordance with A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(b) The GRDC will pay an Invoice which complies with the requirements of clause 5.3(a) within 30 days of receipt of the Service Provider’s Invoice.

5.4 Withholding Payment

Where the Service Provider’s Invoice is not in order, or GRDC is not reasonably satisfied with the performance of the Services or any Milestone or with any deliverable, the GRDC may withhold payment of part or all of the relevant Invoice until those matters have been rectified to the reasonable satisfaction of GRDC.
5.5 **GST**

GRDC is not liable to pay the Service Provider to cover any GST liability of the Service Provider on any supply made under this agreement unless:

(a) the Service Provider is registered for GST purposes;

(b) the Service Provider has rendered an Invoice in relation to such GST component and has provided any additional documentation required by the GRDC to claim any input tax credits claimable in relation to the supply; and

(c) such GST component is either:

   (i) specified in Item 5 of the Schedule 1 as a liability of the GRDC in addition to the Fees; or

   (ii) is included in the Fees.

5.6 **Financial Records**

The Service Provider must maintain and make available to the GRDC (or its authorised agents) any financial records necessary to enable GRDC to confirm that the Service Provider has complied with the terms and conditions of this agreement.

6. **MATERIAL**

6.1 **Ownership**

Each party:

(a) retains ownership of its Background IP; and

(b) grants the other party a non-exclusive royalty free right to use its Background IP to the extent necessary to enable the Services to be provided.

6.2 **GRDC Material**

GRDC excludes all warranties regarding the accuracy, completeness or suitability for any purpose of the GRDC Material and the Service Provider uses that GRDC Material at its own risk.

6.3 **Custody**

The Service Provider:

(a) is responsible for the GRDC Material (including any loss or damage to it) for as long as the GRDC Material is in the possession or control of the Service Provider; and

(b) must promptly return the GRDC Material as soon as:

   (i) the Services for which the GRDC Material was being used have been completed; or

   (ii) this agreement ends.
7. INTELLECTUAL PROPERTY

7.1 Intellectual Property in Contract Material

The Service Provider:

(a) assigns to GRDC ownership of the Contract IP and all associated materials and documentation; and

(b) acknowledges that all future Intellectual Property referred to in paragraph (a) vests in the GRDC from the date of their creation.

7.2 Licence or Assignment of Third Party Material

To the extent that the Contract Material contains any Third Party Material, the Service Provider must obtain for the GRDC either an assignment or licence in favour of the GRDC of Intellectual Property in that Third Party Material.

7.3 Render effective

The Service Provider must do all things necessary, including signing any documents, desirable or necessary to give effect to this clause.

7.4 Protection

(a) The Service Provider agrees to do all things reasonably necessary to enforce and protect the Contract Materials and associated Intellectual Property.

(b) The Service Provider must notify the GRDC immediately after becoming aware of any suspected or actual infringement by any person of any of the Contract Materials or any associated Intellectual Property.

(c) The Service Provider agrees to provide (at its cost, unless otherwise agreed in writing by the GRDC) all assistance and documents requested by GRDC in relation to any proceedings that the GRDC may take against any person for infringement of any of the Contract Materials or any associated Intellectual Property.

7.5 Restriction

The Service Provider must not apply for or attempt to acquire any Intellectual Property that is the same as, or substantially identical or deceptively similar to the Contract Materials or any associated Intellectual Property, without the prior written consent of the GRDC.

7.6 Moral rights

(a) The Service Provider irrevocably consents to all possible uses by the GRDC (including adaptation, reproduction, editing, alteration, addition to and/or deletion from, rearrangement, transposition, translation) and exploitation of the Contract Material, and agrees that such consent extends to the GRDC’s licensees and any successors in title.

(b) The Service Provider agrees not to enforce, and otherwise waives to the fullest extent legally possible, any Moral Rights that it may have now or in the future in respect of such items.

(c) The Service Provider must obtain consents to the infringement of Moral Rights in respect of the Contract Material by the GRDC or its licensees, successors in title.
and anyone authorised to do acts permitted or contemplated under the terms of this agreement, and provide copies of the consents to the GRDC upon request.

7.7 Warranty

The Service Provider warrants that:

(a) it is entitled, or will be entitled to, or will ensure it will be entitled, at the relevant time, to deal with the Intellectual Property in respect of any Contract Material and Service Provider Material in the manner provided for in this clause 7.

(b) in performing the Services, it will not infringe the Intellectual Property rights of any person;

(c) the Contract Material (or its use by the GRDC) will not infringe the Intellectual Property rights or Moral Rights of any person.

8. CONFIDENTIALITY

8.1 Treatment

The Service Provider must in relation to the Commercial-in-Confidence Information:

(a) keep it confidential;

(b) use it only for the purpose of providing or using the Services (‘the Permitted Use’);

(c) only disclose it to ‘Authorised People’ for the Permitted Use;

(d) not copy it or any part of it that is in material form other than as strictly necessary and mark any such copy with an appropriate level of confidentiality; and

(e) promptly comply with any request by the GRDC to return or destroy any or all copies of Commercial-in-Confidence Information.

8.2 Authorised Person

An Authorised Person for the purposes of this clause 8 means

(a) those of the Service Provider's employees:

(i) who have a need to know (and only to the extent that each such employee has a need to know) for the purpose of carrying out or using the Services; and

(ii) who have first been directed and have undertaken orally or in writing to keep it confidential and to use it only as permitted under this agreement ("Undertaking");

(b) other people such as subcontractors and advisers:

(i) who have a need to know (and only to the extent that each such person has a need to know) for the purpose of carrying out the Services; and

(ii) who have agreed in writing to keep it confidential in accordance with this agreement (also an ‘Undertaking’).
8.3 **Enforcement of Undertakings**

The Service Provider must enforce each Undertaking.

8.4 **Notification to Discloser**

The Service Provider must:

(a) immediately notify the GRDC if the Service Provider:
   (i) suspects or becomes aware of any unauthorised copying, use or disclosure in any form; or
   (ii) is required by law to disclose any Commercial-in-Confidence Information;
(b) comply with any reasonable direction regarding a suspected or actual breach; and
(c) not alter, modify, tamper with or reverse engineer any part of the Commercial-in-Confidence Information that is software or attempt to do so.

8.5 **Disclosure by the GRDC**

The Service Provider acknowledges that the GRDC may be required to disclose Commercial-in-Confidence Information of the Service Provider:

(a) to meet a reporting obligation;
(b) to its responsible Minister;
(c) in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia;
(d) to a Commonwealth department or agency;
(e) where required by law;
(f) to its legal, accounting or other professional advisers;

and such disclosure by the GRDC will not be a breach of any obligation of confidentiality that may be owed by the GRDC.

8.6 **Actions on termination**

On termination of this agreement, or earlier on reasonable request by the party disclosing the Commercial-In-Confidence Information, the party who has received the Commercial-In-Confidence Information must promptly return to that party or destroy any or all copies of Commercial-in-Confidence Information, in which case any right to use, copy and disclose that Commercial-in-Confidence Information ceases. However, the obligation of confidentiality continues beyond the termination or expiry of this agreement.

9. **USE OF NAMES IN PUBLICATION**

9.1 **Publication of material**

If the Services require the Service Provider to publish any material, the Service Provider may only publish material which:

(a) has been approved in writing by the GRDC Authorised Representative;
(b) carries a disclaimer which has been supplied by or otherwise authorised by the GRDC Authorised Representative; and

(c) if such material refers to particular research, researchers or proprietary products, has been approved by the relevant researcher, proprietor or other interested party.

9.2 Written Consent

The Service Provider must obtain written consent from GRDC before it:

(a) uses the names Grains Research and Development Corporation or GRDC or any trademark or logo of GRDC; or

(b) makes a public statement about this agreement.

10. LIABILITY

10.1 Indemnity of GRDC

The Service Provider must indemnify and keep indemnified GRDC, its officers, employees and agents from and against any Loss arising from:

(a) any negligent or unlawful act or omission or wilful misconduct by the Service Provider or any Personnel of the Service Provider in carrying out the Services;

(b) any breach by the Service Provider of its obligations under this agreement;

(c) any breach of any law or any duty or infringement of any person’s legal rights by the Service Provider or any Personnel of the Service Provider; or

(d) any claim or proceedings alleging that in performing the Services the Service Provider has infringed the Intellectual Property of any person, or that any part of the Contract Material or its use infringes the Intellectual Property of any person (‘Intellectual Property Right Infringement Claim’).

10.2 Insurance

(a) The Service Provider must take out and maintain valid and enforceable insurance policies as specified in Item 10 of Schedule 1.

(b) Each policy of insurance must:

(i) be obtained from a reputable insurance company, with all normal risks and with no unusual exclusions or levels of deductibles; and

(ii) be maintained for the period commencing on the Commencement Date and ending at least 2 years after the expiry or termination of this agreement or provide insurance on an occurrence basis.

10.3 Provide Certificates

The Service Provider must on request by the GRDC provide certificates from the Service Provider’s insurers certifying that it has insurance as required by clause 10.2.

10.4 Intellectual Property Infringement

If there is an Intellectual Property Right Infringement Claim:

(a) the GRDC Authorised Representative must:
(i) notify the Service Provider in writing as soon as practicable of the Intellectual Property Right Infringement Claim; and

(ii) provide all information and assistance reasonably required by the Service Provider in relation to the Intellectual Property Right Infringement Claim; and

(b) the Service Provider must, at its option:

(i) modify the Contract Material so that the possession or use of it ceases to infringe those rights (while still complying with the requirements of this agreement); or

(ii) procure promptly for the GRDC the right to possess and use the Contract Material free of any Intellectual Property Right Infringement Claim.

10.5 Compliance with reasonable settlement

If the Service Provider fails to comply with clause 10.4, within 60 days after the GRDC Authorised Representative notifies the Service Provider of an Intellectual Property Right Infringement Claim, the Service Provider must comply with any reasonable settlement of that Intellectual Property Right Infringement Claim negotiated by GRDC after that date.

11. DISPUTE RESOLUTION

11.1 Parties to seek to resolve disputes directly

(a) The Parties must first seek to resolve any dispute or difference (Dispute) about this agreement or its operation, in accordance with this clause 11.

(b) A Party claiming a Dispute has arisen must give a notice in writing to the other Party setting out the nature of the Dispute (Dispute Notice).

(c) Within 3 Business Days of receipt of the Dispute Notice (or such other period agreed by the Parties), the Dispute must be referred to the senior executives nominated by each of the Parties, who must meet and use their best endeavours to resolve the Dispute.

11.2 Initiating mediation

(a) If the Dispute is not resolved within 15 Business Days after receipt of the Dispute Notice either Party may request the other attend mediation by servicing a written notice specifying the nature of the dispute and the proposed mediator (Mediation Dispute).

(b) Within 10 Business Days after receipt of the Mediation Notice, the Parties must use best endeavours to agree on the mediator. If the Parties fail to agree on the mediator within that time, then the Parties will refer the Dispute to a person nominated by the Chair of the Australian Capital Territory Chapter of the Resolution Institute, and the Parties must accept that person's nomination as mediator.

(c) Each Party must pay an equal share of the mediator's fees and the mediation venue costs.
11.3 Attending mediation

(a) Each Party must be represented at the mediation by a person with authority to settle the dispute.

(b) Any information disclosed in connection with mediation remains confidential and is privileged from disclosure to third parties or in evidence, except to enforce a settlement agreement reached at the mediation.

(c) Any agreement reached at mediation will not be binding unless it is reduced to writing and signed by the Parties.

11.4 Litigation

If the dispute is not resolved on completion of the mediation, either Party may initiate proceedings in the appropriate jurisdiction.

11.5 Urgent relief

Nothing in clause 11 prevents a Party from, at any time, seeking an urgent injunction from a court to prevent an apprehended breach of this agreement.

12. TERMINATION

12.1 Term

This agreement will end at the end of the Term, unless GRDC ends it earlier:

(a) at any time by giving the Service Provider 30 days written notice;

(b) in accordance with clause 4.2 or clause 12.2;

(c) immediately by giving notice to the Service Provider if:
   
   (i) the Service Provider commits a breach of any other provision of this agreement which is capable of remedy and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
   
   (ii) the Service Provider commits a breach of any other provision of this agreement which is not capable of remedy.

12.2 Termination for Breach

The GRDC may immediately terminate this agreement by giving notice to the Service Provider if:

(a) the Service Provider disposes of the whole or any part of its assets, operations or business other than in the normal course of business;

(b) any step is taken to enter into any arrangement between the Service Provider and its creditors;

(c) the Service Provider ceases to be able to pay its debts as they become due;

(d) the Service Provider ceases to carry on business;

(e) a warranty given by the Service Provider in this agreement is or becomes untrue;
(f) in the GRDC's reasonable opinion, something happens that is likely to have a material adverse effect on the Service Provider or its ability to comply with its obligations to the GRDC;

(g) a Conflict of Interest arises in relation to the Service Provider or any of its Personnel that cannot be promptly resolved to the GRDC's reasonable satisfaction;

(h) the Service Provider has been named as a person or organisation under the Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2008 on the list of proscribed persons and entities;

(i) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Service Provider’s assets or business; or

(j) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Service Provider’s assets or business.

13. AFTER TERMINATION

13.1 Payment, delivery and surviving obligations

(a) After termination or expiration of this agreement:

(i) GRDC must pay the Service Provider for work done and expenses incurred up to the end of the agreement unless GRDC has terminated the agreement as a result of breach by the Service Provider in which case the Service Provider is not entitled to any compensation for early termination;

(ii) the Service Provider must:

(A) promptly deliver all Contract Material to GRDC that have been created by, or for, the Service Provider but not previously delivered to GRDC;

(B) stop providing the Services and minimise its loss;

(iii) the Service Provider must return all GRDC Material to GRDC;

(iv) accrued rights or remedies of either party are not affected; and

(v) any provision of this agreement which expressly or by implication from its nature is intended to survive the completion, expiry or termination of the agreement, and any rights arising on completion, termination or expiry shall survive, including those in clauses 8 (Confidentiality), 10 (Liability), 11 (Dispute Resolution) and 16 (Privacy).

(b) Where the GRDC terminates this agreement for breach, the Service Provider must pay all reasonable costs incurred by GRDC up to and including the date of the termination.
14. DEFENCE TRADE CONTROLS

14.1 DSGL technology

If the Services involve the use of any ‘DSGL technology’ (as defined in the Defence Trade Controls Act 2012 (Cth)), the Service Provider:

(a) is responsible for ensuring compliance with the Defence Trade Controls Act 2012 and related export control laws and regulations, including by obtaining any necessary permits or approvals relating to the supply or publishing of DSGL technology in connection with the Services; and

(b) must ensure that any DSGL technology made available to GRDC in connection with the Services is clearly identified as such, and that any restrictions on the use or disclosure by GRDC of that technology under the Defence Trade Controls Act 2012 are disclosed to GRDC in writing.

14.2 Import and export

The Service Provider is responsible for ensuring compliance with any applicable laws and regulations relating to the import or export of goods, and to cross-border transfers of information, by the Service Provider in connection with the Services, including any relevant requirements concerning tariffs, duties, clearances, treatments, chemical registrations and quarantine.

15. NOTICES

15.1 Notice in writing

All notices or communications given pursuant to this agreement must be:

(a) in writing;

(b) signed by the Party giving the notice; and

(c) delivered by hand, sent by pre-paid express post or transmitted by facsimile or Electronic Communications to the Authorised Representative of the other Party at the address of that Party set out in Item 11 of Schedule 1, or such other address as may be advised in writing from time to time.

15.2 Receipt

A notice or communication will be deemed to be received:

(a) if delivered by hand, upon delivery;

(b) if sent by pre-paid express post within Australia, within 2 Business Days of the date on which it was sent;

(c) if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the notice or communication has been properly transmitted to the recipient; and

(d) if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).
16. PRIVACY

16.1 Meanings in the Privacy Act

In this clause 16:

(a) ‘Agency’, ‘Australian Privacy Principles’ (APPs), ‘Contracted Service Provider’, ‘Personal Information’ and ‘Registered APP Code’ have the same meanings as their corresponding definitions in section 6 of the Privacy Act 1988 (Cth) (the Privacy Act); and

(b) ‘GRDC’s APP Privacy Policy’ means the policy published at: https://grdc.com.au/policies/policies, as updated from time to time.

16.2 Obligation

(a) When performing the Services, the Service Provider must:

i. comply with the Privacy Act in respect of the Personal Information;

ii. carry out and discharge the obligations contained in the APPs as if it were an Agency;

iii. only use or disclose Personal Information obtained, held or controlled by it in connection with this agreement:

   1. for the purposes of fulfilling its obligations under this agreement; and

   2. only to the extent that those obligations comply with the APPs, GRDC’s APP Privacy Policy and any Registered APP Code which is binding on a Party to this agreement;

iv. not do, or fail to do, any act or engage in any practice which would breach any provision of the APPs (including in relation to collection of Personal Information and obtaining of privacy consents), GRDC’s APP Privacy Policy or an applicable Registered APP Code (if any) which, if done or engaged in by GRDC, as an Agency, would be a breach of that provision;

v. comply with further privacy-related procedures in relation to the Services which GRDC may provide to the Service Provider.

vi. ensure that any Personnel of the Service Provider who has access to the Personal Information in connection with this agreement is made aware of and undertakes to comply with privacy obligations which are at least equivalent with the obligations of the Service Provider as set out in this clause 16;

vii. immediately notify the GRDC of any breach or possible breach of any of the obligations contained in, or referred to in, this clause 16, whether by the Service Provider or its Personnel (including any sub-contractor); and

viii. disclose in writing to any person who asks, the content of the provisions of this agreement (if any) that are inconsistent with an APP or a Registered APP Code binding a Party to this agreement, provided that before doing so, the Service Provider:

   1. promptly notifies GRDC of the request;
2. consults with GRDC about the form and content of any disclosure required; and

3. only discloses such content as is necessary to comply with section 95C of the Privacy Act.

17. WORK HEALTH AND SAFETY

17.1 Service Provider's obligation

The Service Provider must comply with and ensure all of its Personnel comply with obligations under the applicable WHS Legislation and ensure any of its Personnel (whether on GRDC premises or not) comply with any safety and conduct rules notified to it by GRDC. This includes, so far as is reasonably practicable, an obligation to consult, co-operate, and co-ordinate activities with the GRDC or the GRDC’s Personnel.

17.2 Acknowledgement and warranty

The Service Provider acknowledges it has a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of the Service Provider and its Personnel and represents and warrants that the Service Provider has:

(a) given careful, prudent and comprehensive consideration to the work health and safety issues that may arise in the course of the Services; and

(b) devised and implemented a method of performance of that work that complies with, and includes a system for identifying and managing work health and safety risks which complies with, all applicable legislation relating to work health and safety.

17.3 Other

The GRDC may direct the Service Provider to take specified measures that the GRDC considers reasonably necessary to comply with applicable legislation relating to work health and safety, in relation to the Services. The Service Provider must comply and ensure the Service Provider's Personnel comply with any such directions.

18. INFORMATION MANAGEMENT PROVISIONS

18.1 Audits

(a) The Service Provider must grant access, at all reasonable times, to premises, records, accounts and other material relevant to this agreement, including Contract Material, however and wherever stored or located, in the custody, possession or control of the Service Provider or its Personnel to:

(i) GRDC or any person authorised in writing by the GRDC;

(ii) GRDC's auditors.

(b) In the case of documents or records stored on a medium other than in writing, the Service Provider must make available on request and at no expense to the GRDC such facilities as may be necessary to enable a legible reproduction to be created.

(c) If the Service Provider has sub-contracted its obligations in accordance with this agreement, the Service Provider must ensure that its contract with the sub-
contractor contains a clause giving the GRDC rights equivalent to those under this clause 18.1.

18.2 Access

(a) In this clause 18.2, ‘document’ and ‘Commonwealth contract’ have the same meaning as in the Freedom of Information Act 1982 (Cth).

(b) The Service Provider acknowledges that this agreement is a Commonwealth contract.

(c) Where the GRDC has received a request for access to a document created by, or in the process of, the Service Provider or any subcontractor (appointed in accordance with this agreement (Subcontracting)) that relates to the performance of this agreement (and not to the entry into the agreement), the GRDC may at any time by written notice require the Service Provider to provide the document to the GRDC and the Service Provider must, at no additional cost to the GRDC, promptly comply with the notice.

(d) The Service Provider must include in any subcontract relating to the performance of this agreement provisions that will enable the Service Provider to comply with its obligations under this clause 18.2.

19. SUBCONTRACTING

19.1 Prior written approval

The Service Provider must not, without the prior written approval of the GRDC or noting in Item 13 of Schedule 1, sub-contract the performance of any part of the Services.

19.2 Conditions

The GRDC may impose any conditions or restrictions it considers appropriate if giving its approval under clause 19.1.

19.3 Service Provider responsible

(a) The Service Provider is fully responsible for the performance of the Services even if the Service Provider has sub-contracted the performance of any part of those Services.

(b) The Service Provider must, in addition to any conditions or restrictions imposed by the GRDC under clause 19.2, ensure the terms of its contract with the subcontractor enable the Service Provider to meet its obligations to the GRDC, including imposing equivalent obligations on its subcontractors to those imposed on the Service Provider in relation to privacy, confidentiality, work health and safety and audit and access.

20. GENERAL

20.1 Discretion

(a) Unless expressly required by the terms of this agreement, the parties are required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this agreement.
(b) Unless expressly required by the terms of this agreement, a party may impose reasonable conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

20.2 Relationship

Nothing in this agreement or any circumstances associated with it or its performance give rise to any relationship of agency, partnership or employer and employee between the GRDC and the Service Provider or between the GRDC and any Personnel of the Service Provider. The Service Provider must not represent itself and must ensure that its subcontractors do not represent themselves, as being employees, partners or agents of GRDC.

20.3 Authority

The Service Provider must not incur any liabilities in GRDC’s name or on its behalf, or pledge its credit.

20.4 Costs and expenses

(a) Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this agreement.

(b) The Service Provider must pay any stamp duty payable on this agreement or in connection with any of the transactions contemplated by this agreement.

20.5 Severance

If a provision in this agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this agreement.

20.6 Waiver

A waiver by a Party in respect of any breach of a condition or provision of this agreement will not be deemed to be a waiver in respect of any other or subsequent breach.

20.7 Variation

Notwithstanding any correspondence between the Parties, no amendment to this agreement is effective or valid unless it is effected in writing and signed by both Parties.

20.8 Whole Agreement

This agreement states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

20.9 No reliance

The Service Provider has not relied on any statement by the GRDC which has not been expressly included in this agreement.
20.10 **Further assurances**

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this agreement and the transactions contemplated by it.
EXECUTION PAGE

EXECUTED BY THE PARTIES AS AN AGREEMENT

SIGNED for and on behalf of the GRAINS RESEARCH AND DEVELOPMENT CORPORATION ABN 55 611 223 291 by its Managing Director (Executive Director) pursuant to section 76(3) of the Primary Industries Research and Development Act 1989 (Cth), in the presence of

Signature of witness

Signature of delegate

Name of witness (print)

Name of delegate (print)

[OPTION - WHERE THE SERVICE PROVIDER IS NOT AN INDIVIDUAL. DELETE IF THE SERVICE PROVIDER IS AN INDIVIDUAL.]

SIGNED for and on behalf of [INSERT FULL LEGAL NAME OF SERVICE PROVIDER] under section 127(1) of the Corporations Act 2001 (Cth):

Signature of director

Signature of director/company secretary

Name of director/print)

Name of director/company secretary

[OPTION - WHERE THE SERVICE PROVIDER IS AN INDIVIDUAL. DELETE IF THE SERVICE PROVIDER IS NOT AN INDIVIDUAL.]
Executed by #{INSERT FULL LEGAL NAME OF SERVICE PROVIDER}# in the presence of:

________________________________________________________________________
Signature of witness                                                   Signature of #{Insert name of signatory}#

________________________________________________________________________
Full name of witness (print)

________________________________________________________________________
Address of witness (print)

[OPTION - WHERE AGREEMENT BEING SIGNED UNDER POA FOR A COMPANY]
Signed, sealed and delivered for and on behalf of #[Insert company name]# ACN #[Insert ACN]# by its attorney #[Insert full name of attorney]# under power of attorney dated #[Insert date]#, in the presence of in the presence of:

Signature of witness

Signature of attorney

By executing this deed the attorney states that the attorney has not received notice of revocation of the power of attorney at the date of executing this deed.

Full name of witness (print)

Address of witness (print)
## Schedule 1

### INFORMATION TABLE

<table>
<thead>
<tr>
<th>Item</th>
<th>Topic</th>
<th>[Data/Information]</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><strong>Services Name:</strong></td>
<td>Reference No: [INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>GRDC Panel: [INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Program: [INSERT]</td>
</tr>
<tr>
<td>2.</td>
<td>Services</td>
<td>[Description of what the Service Provider is to do. If a proposal has been lodged which sets out the Services in detail, reference may be made to that document. For example &quot;The Services are to describe the Services&quot;] as set out in the attached proposal dated [*] as amended by GRDC. Mention should be made of when GRDC needs to provide approval. Specific deliverable and other objective performance stages should be included in Schedule 2 as a Milestone.</td>
</tr>
<tr>
<td>3.</td>
<td>Commencement Date</td>
<td>[INSERT]</td>
</tr>
<tr>
<td>4.</td>
<td>Completion Date</td>
<td>[INSERT]</td>
</tr>
<tr>
<td>5.</td>
<td>Fees</td>
<td>Option 1: $[insert amount of fees] payable on [insert when payment will be made (weekly, fortnightly, monthly)]; or Option 2: $[insert total amount of fees to be payable to the Service Provider] in accordance with Schedule 2. [Note to GRDC - Option 2 should be used where Milestones are required.]</td>
</tr>
<tr>
<td></td>
<td>GST</td>
<td>If Fee is quoted with an additional GST component, specify the GST component (even if it is just to say &quot;Fee= $x plus 10% GST&quot;). If Fee quote does not mention GST, then we will assume that there is no additional GST component to be paid by the GRDC.</td>
</tr>
<tr>
<td>6.</td>
<td>Out of pocket expenses</td>
<td>If expenses are to be paid, state exactly what expenses &amp; whether to be approved in advance by the GRDC &amp; what maximum amount is allowed. eg. “If the Service Provider is required to travel outside the boundaries of NSW and the ACT in carrying out the Services, GRDC will pay for any economy class air fares (and related taxi fares/car hire fees) and reasonable accommodation costs necessarily incurred by the Service Provider in carrying out the Services provided that such travel is approved in advance in writing by GRDC.” Make certain that you define a “home base” – the area out of which the Service Provider will be paid travel and accommodation costs. In the example above “home base” is NSW including the ACT.</td>
</tr>
<tr>
<td>Item</td>
<td>Topic</td>
<td>[Data/Information]</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>-------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Describe when each out of pocket expense is payable, whether the amount is inclusive or exclusive GST and whether GST can be claimed.</td>
</tr>
<tr>
<td>7.</td>
<td>GRDC Material</td>
<td>[See clause 6.2. Insert GRDC material and any restrictions or limitations that apply to Background IP to be contributed to the Services that are incorporated into Contract Material or otherwise required for dissemination or commercialisation of the Contract Material]</td>
</tr>
<tr>
<td>8.</td>
<td>Service Provider Material</td>
<td>[Insert Service Provider Material and any restrictions or limitations that apply to Background IP to be contributed to the Services that are incorporated into Contract Material or otherwise required for dissemination or commercialisation of the Contract Material]</td>
</tr>
<tr>
<td>9.</td>
<td>Key People</td>
<td>Name/title</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note: CV’s should be attached.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[If no Key Persons are required, insert ‘Not applicable’ in the rows above.]</td>
</tr>
<tr>
<td>10.</td>
<td>Insurance</td>
<td>Workers compensation insurance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professional indemnity insurance amount $5,000,000 per claim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public liability insurance $10,000,000 per claim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Insert other types of insurance as required given the nature of insurable risks associated with the Services and Contract Material]</td>
</tr>
<tr>
<td>11.</td>
<td>Address for Notices</td>
<td>GRDC</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Facsimile: [INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Email: [INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Service Provider</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Facsimile: [INSERT]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Email:[INSERT]</td>
</tr>
<tr>
<td>12.</td>
<td>Authorised Representative(s)</td>
<td>GRDC</td>
</tr>
<tr>
<td>Item</td>
<td>Topic</td>
<td>[Data/Information]</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>-------------------</td>
</tr>
<tr>
<td></td>
<td>Service Provider</td>
<td>[INSERT NAME OF SERVICE PROVIDER CONTRACT MANAGER(S)]</td>
</tr>
<tr>
<td>13.</td>
<td>Subcontractor/s</td>
<td>[INSERT NAME OF SUBCONTRACTORS APPROVED AND AGREED WITH GRDC AT THE TIME OF ENTERING INTO THE AGREEMENT]</td>
</tr>
</tbody>
</table>
## Schedule 2

**SERVICES TO BE DELIVERED**

Milestone table to include all payment and non payment milestones

*The below table is to be used where a Milestone needs to be achieved before GRDC will make a payment to the Service Provider. The Milestone and the instalment amount needs to be clearly described and defined. Where a Milestone is to occur which will not result in a payment of Fees, this should be specified as 'Nil' in the column entitled 'Instalment of Fees Payable'. Where GRDC requires the performance of one Milestone before permitting the Service Provider to undertake a further milestone, this should be specified in the below table.*

*If the Service Provider will be paid on a fixed fee per week, per month, or fortnightly, the below table does not need to be used*

<table>
<thead>
<tr>
<th>Milestone Number</th>
<th>Milestone</th>
<th>Instalment of Fees Payable ($) excluding GST</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>[INSERT DESCRIPTION OF MILESTONE]</td>
<td>[INSERT AMOUNT ]</td>
<td>[INSERT DUE DATE]</td>
</tr>
<tr>
<td>2</td>
<td>[INSERT DESCRIPTION OF MILESTONE]</td>
<td>[INSERT AMOUNT ]</td>
<td>[INSERT DUE DATE]</td>
</tr>
<tr>
<td>3</td>
<td>[INSERT DESCRIPTION OF MILESTONE]</td>
<td>[INSERT AMOUNT ]</td>
<td>[INSERT DUE DATE]</td>
</tr>
<tr>
<td>4</td>
<td>[INSERT DESCRIPTION OF MILESTONE]</td>
<td>[INSERT AMOUNT ]</td>
<td>[INSERT DUE DATE]</td>
</tr>
</tbody>
</table>