

PROVIDER AGREEMENT

**Rural Industries Research and Development Corporation trading as
AgriFutures Australia**

AND

##

**(PRJ-XXXX) (if applicable)
(Project Title)**

BANKI HADDOCK FIORA

LAWYERS

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PROVIDER AGREEMENT

PARTIES

RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION trading as AgriFutures Australia ABN 25 203 754 319 of Building 007, Charles Sturt University, Boorooma Street, Wagga Wagga, New South Wales (**AgriFutures Australia**)

ABN **##** of **##** (**Provider**)

BACKGROUND

AgriFutures Australia has agreed to engage the Provider to provide the Services and the Provider has agreed to accept the engagement on the terms set out in this agreement.

AGREEMENTS

1. Definitions and interpretation

1.1 Definitions

1.1.1 Where commencing with a capital letter:

AgriFutures Australia Material means all material and information provided by AgriFutures Australia to the Provider for the purpose of this agreement;

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

Commencement Date means the date on which this agreement is entered into or another date agreed in writing between the parties;

Confidential Information means all trade secrets and know-how, financial information and other commercially valuable information of AgriFutures Australia of whatever description and in whatever form, including AgriFutures Australia Material and Contract Material as well as information that is by its nature confidential or the Provider knows or ought to know is confidential (including information that is designated by AgriFutures Australia as confidential);

Contract Material means all material brought into existence for the purpose of providing the Services;

Financial Year means a period of 12 months commencing on 1 July and ending on 30 June;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*;

Provider agreement

Intellectual Property means all patents, trade marks, designs and plant breeder's rights (whether registered or not), copyright, know-how, trade secrets and eligible circuit layout rights;

KPIs means the key performance indicators specified in the schedule;

Milestone means a milestone specified in the schedule;

Nominated Persons means the persons named in the schedule and such other persons approved in writing by AgriFutures Australia to perform the work in respect of the Services on behalf of the Provider;

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;

Reports means reports to be provided by the Provider to AgriFutures Australia under clause 3.5(a) and drafts of those reports and includes all text, photographs, illustrations and other content of those reports;

Services means the services to be provided by the Provider specified in the schedule and includes any required Reports; and

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

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Presumptions of interpretation

1.2.1 Unless the context otherwise requires:

- (a) a word which denotes:
 - (i) the singular denotes the plural and vice versa;
 - (ii) one gender denotes all genders; and
 - (iii) a person includes an individual, a body corporate, an association, a joint venture, a partnership, a government and any other legally recognised entities; and
- (b) a reference to:
 - (i) a party includes the executors, administrators, successors and permitted assigns of the party;

Provider agreement

- (ii) any legislation includes any regulation or instrument made under it and any amended, re-enacted or replacement legislation;
- (iii) any agreement or other document includes that agreement or document as amended or replaced; and
- (iv) any thing (including any amount) is a reference to the whole and each part, and a reference to a group of persons is a reference to each of them collectively and individually.

1.2.2 In this agreement:

- (a) clause headings are for convenience only and do not affect interpretation; and
- (b) “includes” is not a word of limitation.

1.2.3 If an act must be done on a specified day which is not a Business Day, the specified day is taken to be the next Business Day.

1.3 Several

An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits those persons severally and not jointly or jointly and severally.

2. Appointment of the Provider

2.1 Appointment

AgriFutures Australia appoints the Provider to provide the Services in accordance with the timetable set out in the schedule and on the terms set out in this agreement, and the Provider accepts the appointment.

2.2 Nominated Persons

The Provider:

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

3. Obligations of the Provider

3.1 Milestones and KPIs

The Provider must, in providing the Services, use its best endeavours to meet the Milestones and the KPIs.

3.2 Liaison

Provider agreement

The Provider must, as required by AgriFutures Australia:

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

3.3 Directions

The Provider must comply with all reasonable and lawful directions of AgriFutures Australia from time to time concerning the Services.

3.4 Comply with all laws and policies

3.4.1 The Provider must comply with:

- (a) all relevant laws;
- (b) all applicable codes of conduct, industry standards or guidelines; and
- (c) all applicable rules, policies and guidelines of AgriFutures Australia or the Commonwealth as notified by AgriFutures Australia,

when performing its obligations or exercising its rights under this agreement.

3.4.2 Without limiting its other obligations under this agreement, the Provider warrants that:

- (a) it and any persons and any subcontractor which it engages to perform work under this agreement, will comply with all WHS Legislation, maintain all necessary licences, permits, registrations or other authorisations (however described) required by WHS Legislation and consult with AgriFutures Australia and its nominees regarding all matters relating to work health and safety;
- (b) it will, in carrying out work under this agreement, ensure, so far as is reasonably practicable, the health and safety of its personnel, the personnel of AgriFutures Australia and the personnel of any subcontractor and of any other persons who are "workers" within the meaning of the WHS Legislation, including ensuring that all such persons are provided with appropriate training and induction;
- (c) it, and any persons and subcontractor it engages to perform work under this agreement, will be familiar with and comply with AgriFutures Australia's work health and safety policies and requirements so far as they relate to the performance of the Provider's obligations under this agreement and will not do (or omit to do) anything which would or may place AgriFutures Australia in breach of any WHS Legislation;
- (d) it will promptly notify AgriFutures Australia of any incidents or near misses relating to work health and safety and of any notices or communications from any work health and safety regulator or safety representative; and

Provider agreement

- (e) it will promptly provide such information and verification of these matters as is reasonably requested by AgriFutures Australia.

3.5 Reports

The Provider must:

- (a) as required by AgriFutures Australia, provide AgriFutures Australia with progress reports and a final report on the outcomes of the provision of the Services;
- (b) ensure that all Reports are in the form and contain the information specified in the AgriFutures Australia reporting template provided by AgriFutures Australia to the Provider from time to time or otherwise notified by AgriFutures Australia to the Provider;
- (c) without limiting paragraph (b), ensure that all Reports are of a high standard acceptable to AgriFutures Australia on reasonable grounds, including being proofread and edited to a high standard; and
- (d) provide all other information in connection with the Services or this agreement that AgriFutures Australia may reasonably require.

3.6 Insurance

3.6.1 The Provider must, unless otherwise agreed in writing by AgriFutures Australia:

- (a) at all times maintain adequate workers' compensation insurance as required by law for its employees;
- (b) maintain professional indemnity insurance in the amount specified in the schedule for the term of this agreement and at least 3 years after its termination; and
- (c) maintain such other insurance cover as AgriFutures Australia may from time to time reasonably require.

3.6.2 The Provider must, on request by AgriFutures Australia, produce evidence of the currency of the insurance policies referred to in clause 3.6.1.

3.6.3 Clause 3.6.1 does not apply where the Provider is a department or statutory body of the Commonwealth or an Australian state or territory and self-insures.

4. Fees and expenses

4.1 Fees

AgriFutures Australia must, in accordance with the schedule, pay the Provider for providing the Services the fees specified in the schedule, provided that the Services to which each payment relates are completed to the reasonable satisfaction of AgriFutures Australia.

4.2 Expenses

Provider agreement

AgriFutures Australia must reimburse the Provider for all reasonable expenses incurred by the Provider in providing the Services, provided that the Provider:

- (a) obtains AgriFutures Australia's prior written consent before incurring expenses; and
- (b) gives AgriFutures Australia:
 - (i) details of the expenses incurred, together with evidence acceptable to AgriFutures Australia of the incurring of those expenses; and
 - (ii) all assistance reasonably required by AgriFutures Australia to verify the expenses incurred.

4.3 Payment

For the purposes of payment of the fees and expenses referred to in clauses 4.1 and 4.2, the Provider must provide AgriFutures Australia with an invoice setting out details of the Services provided, the time worked and fees payable and the expenses incurred.

4.4 GST

- 4.4.1 Unless otherwise indicated, amounts stated in this agreement do not include GST.
- 4.4.2 In relation to any GST payable for a taxable supply by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice.
- 4.4.3 Terms used in this clause 4.4 which are defined in the GST Act have the same meaning as in the GST Act.

5. Confidentiality and privacy

5.1 Provider to maintain

- 5.1.1 The Provider must not:
 - (a) use Confidential Information for any purpose other than the performance of its obligations under this agreement; or
 - (b) disclose (and ensure that its officers, employees, agents and subcontractors do not disclose) Confidential Information to any third party, except in accordance with the procedures set out in this clause.
- 5.1.2 The Provider must, subject to its legislative requirements, on request from AgriFutures Australia return all Confidential Information to AgriFutures Australia and permanently delete from all computer systems under the Provider's control all Confidential Information, which is in electronic form, subject to retention of 1 copy for archival purposes.

5.2 Disclosure to third parties of Confidential Information

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

- (a) it has obtained the prior written approval of AgriFutures Australia; or

Provider agreement

- (b) disclosure is:
 - (i) necessary for a party to fulfil its obligations under this agreement (for example, to the Provider's personnel);
 - (ii) required or compelled by an order of a court or by a law; or
 - (iii) necessary for the conduct of any legal proceedings arising in relation to this agreement.

5.3 Privacy

The Provider must:

- (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 the Provider 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) 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 the Provider 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 5.3;
- (d) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of and undertakes in writing to observe the Australian Privacy Principles referred to in paragraph (a); and
- (e) ensure that any record (as defined in the *Privacy Act 1988*) containing Personal Information provided to the Provider by AgriFutures Australia or any other person in connection with this agreement is on the termination of this agreement returned to AgriFutures Australia or deleted or destroyed at AgriFutures Australia's direction.

5.4 Survival of this clause

This clause 5 survives the expiration or termination of this agreement.

6. Funding and compliance

6.1 Unavailability of funds

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

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

Provider agreement

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

6.1.3 Subject to clause 6.1.2, AgriFutures Australia will use its best endeavours to ensure that it has sufficient funds from the Commonwealth and industry levies to perform its obligations under this agreement, but will not be in breach of or liable for any losses under this agreement if, due to insufficient funds from the Commonwealth or industry levies, it is unable to perform its obligations under this agreement.

6.2 Compliance

6.2.1 AgriFutures Australia may on 7 days' notice to the Provider audit or examine the Provider's books of account and other records to:

- (a) determine the correctness of any financial report or Report under this agreement or compliance by the Provider of its obligations under this agreement; or
- (b) in the case of a failure by the Provider to provide information in accordance with this agreement, to obtain information required to be provided under this agreement.

6.2.2 The Provider must:

- (a) permit the Commonwealth at any time and without prior notice, through its officers, agents or advisers authorised on its behalf, to examine and inspect any material in its possession which is relevant to this agreement, including any books and records, and provide all necessary facilities for that purpose; and
- (b) give full and accurate answers to any questions the Commonwealth or its representative may have concerning books or records relating to this agreement and provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning this agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.

7. Intellectual property

7.1 Assignment

The 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 Commencement Date or created afterwards.

7.2 Licence to the Provider

Provider agreement

7.2.1 AgriFutures Australia grants the 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 Provider to provide the Services.

7.2.2 The Provider's licence under clause 7.2.1 includes a right to sublicense the Contractor's agents and contractors engaged to provide the Services, provided that the agents and contractors are consented to by AgriFutures Australia under clause 10.

7.3 Moral rights

The Provider must procure from the Nominated Persons and any other author involved in the creation of, or anything that forms part of, the Contract Material, a consent in relation to the Contract Material:

- (a) to the extent permissible by law, to all acts and omissions by AgriFutures Australia or any related entity, licensee or successor in title which would otherwise infringe the Nominated Person's or the author's moral or similar rights and to not assert any such moral or other rights; and
- (b) to the following acts and omissions:
 - (i) use without attribution to the Nominated Person or the author;
 - (ii) altering the Contract Material in any manner authorised by AgriFutures Australia; and
 - (iii) using the Contract Material other than as contemplated by this agreement.

8. Warranty

The Provider warrants that:

- (a) the provision of the Services will not infringe any other person's Intellectual Property rights and that AgriFutures Australia will be entitled to use the Contract Material without the consent of any other person;
- (b) it, its employees, the Nominated Persons and all agents and contractors have the necessary experience, skill, qualifications and ability to properly provide the Services on the terms contained in this agreement; and
- (c) the Services will be provided in a professional manner and conform to a standard of competence equal to that normally employed by providers of good standing for services of a magnitude and nature similar to the Services.

9. Material

9.1 AgriFutures Australia Material

The AgriFutures Australia Material remains the property of AgriFutures Australia and, on termination of this agreement, the Provider must immediately return the AgriFutures Australia Material and all copies of it to AgriFutures Australia.

9.2 Contract Material

Provider agreement

On termination of this agreement, the Provider must immediately deliver the Contract Material and all copies of it to AgriFutures Australia.

9.3 Safekeeping

The Provider is responsible for the safekeeping and maintenance of the AgriFutures Australia Material and the Contract Material and must ensure that the AgriFutures Australia Material and the Contract Material are used, copied, supplied or reproduced only for the purposes of this agreement.

10. Subcontractors

10.1 Consent

The Provider must not, without the prior written consent of AgriFutures Australia, engage agents or contractors to assist the Provider in providing the Services.

10.2 Terms

If the Provider engages an agent or a contractor to assist the Provider in providing the Services, the terms of engagement must be approved by AgriFutures Australia and must contain terms requiring the agent or contractor to:

- (a) undertake the work in respect of the Services in accordance with the terms of this agreement;
- (b) undertake obligations of confidentiality in terms substantially the same as the terms of clause 5;
- (c) assign to the Provider all Intellectual Property created under the engagement; and
- (d) maintain such insurance in such amounts as AgriFutures Australia may specify.

11. Conflict of interest

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

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

which is competitive with or detrimental to the Services.

12. Indemnity

The Provider indemnifies AgriFutures Australia against all liabilities, damages, losses, costs and expenses (including all legal costs, whether incurred or awarded) suffered or incurred by AgriFutures Australia arising out of:

- (a) any breach by the Provider of this agreement; or

Provider agreement

- (b) any act or omission of the Provider, its employees, the Nominated Persons and all agents and contractors in connection with this agreement.

13. Term and termination

13.1 Term

This agreement commences on the Commencement Date and continues until terminated in accordance with this agreement.

13.2 Notice

AgriFutures Australia may, on 1 month's notice to the Provider, terminate this agreement.

13.3 Default

If the Provider:

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) fails, within 7 days after receipt of notice, to remedy any breach of its obligations under this agreement which is capable of remedy;
- (c) breaches any of its obligations under this agreement which is not capable of remedy; or
- (d) persistently breaches its obligations under this agreement,

AgriFutures Australia may, by notice to the Provider, terminate this agreement and recover from the Provider all damages, losses, costs and expenses suffered by AgriFutures Australia.

14. Dispute resolution

14.1 Dealing with disputes

14.1.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

14.1.2 If a party requires resolution of a dispute it must do so in accordance with this clause 14.

14.1.3 The parties acknowledge that compliance with this clause 14 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:

- (a) in the case of applications for urgent interlocutory relief; or
- (b) a breach by another party of this clause 14.

14.2 Resolution by management

Provider agreement

14.2.1 If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of each of the other parties.

14.2.2 If the dispute is not resolved within 30 days of submission of the dispute to them, or such other time as they agree, the provisions of clause 14.3 will apply.

14.3 Conciliation

14.3.1 Disputes must be submitted to conciliation in accordance with and subject to The Institute of Arbitrators and Mediators Australia *Conciliation Rules*.

14.3.2 A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 30 days of submission to conciliation, or such other time as the parties agree.

15. Exclusion

AgriFutures Australia's only liability is as expressly stated in this agreement. To the extent permitted by law, all other liability is excluded.

16. Relationship

16.1 No partnership

Nothing contained in this agreement creates an agency, partnership, joint venture or employment relationship between AgriFutures Australia and the Provider or any of their respective employees, agents or contractors.

16.2 No holding out

16.2.1 Neither the Provider nor any person acting on behalf of the Provider may hold itself out as being entitled to contract or accept payment in the name of or on account of AgriFutures Australia.

16.2.2 The 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 the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

17. Miscellaneous

17.1 Notices

17.1.1 A notice under this agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid post to the address of the addressee; or
- (c) sending it by fax to the fax number of the addressee,

and the notice will be deemed to have been received by the addressee on receipt.

Provider agreement

17.1.2 A fax is deemed to have been received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the addressee.

17.2 Amendment

This agreement may only be varied by the written agreement of the parties.

17.3 Assignment

The Provider may only assign a right under this agreement with AgriFutures Australia's prior written consent.

17.4 Entire agreement

17.4.1 This agreement embodies the entire understanding and agreement between the parties as to its subject matter.

17.4.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

17.5 Consent

Where the consent or approval of AgriFutures Australia is required under this agreement, AgriFutures Australia may, except as expressly stated, withhold its consent or approval or give it conditionally or unconditionally as it sees fit.

17.6 Waiver

A waiver under this agreement is not binding on a party unless it is in writing and signed by the party. A waiver is not a waiver of any other right.

17.7 Further assurance

Each party must promptly:

- (a) sign all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it; and
- (b) act reasonably in effecting, perfecting and completing this agreement and all transactions incidental to it.

17.8 Severance

Each of the agreements of the parties under this agreement is severable from the others and the severance of one agreement does not affect the other agreements.

17.9 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.

Provider agreement

17.10 Governing law and jurisdiction

17.10.1 This agreement is governed by and must be construed in accordance with the laws of New South Wales.

17.10.2 Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

Provider agreement

SCHEDULE

1. Services

##

2. Nominated Persons

##

3. Timetable, Milestones and KPIs

##

4. Insurance

Professional indemnity insurance: \$5 million¹

5. Fees (GST exclusive)

Option 1

Milestone	Payment
##	##

Option 2

###, payable ##.

Option 3

###/day, up to ## days as directed by AgriFutures Australia.

¹ Variation to this amount requires approval from General Manager Business and Finance.
Banki Haddock Fiora
20 May 2014

Provider agreement

SIGNED AS AN AGREEMENT

Signed by **Rural Industries Research and Development Corporation trading as AgriFutures Australia:**

.....
Signature of authorised person

.....
Signature of witness

.....
Office held

.....
Name of witness (print)

.....
Name of authorised person (print)

.....
Date

.....
Date

Signed by **##:**

.....
Signature of authorised person

.....
Signature of witness

.....
Office held

.....
Name of witness (print)

.....
Name of authorised person (print)

.....
Date

.....
Date