

Draft Services Agreement

This is an Agreement between GRDC and the Provider, which records the terms on which the Provider has agreed to provide Services to the GRDC. This Services Agreement is comprised of the Details, Terms and all attachments.

Services Agreement - Details							
GRDC GRDC Contact Person	Name: Grains Research & Development Corporation ABN: 55 611 223 291 Address: Level 1 40 Blackall Street Barton ACT 2600 Contact: Leecia Angus Telephone: (02) 6166 4500 Fax: (02) 6166 4599 E-mail: l.angus@grdc.com.au						
Provider Provider Contact Person	Name ABN Address Contact Telephone Fax E-mail						
Key People	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">Name</th> <th style="width: 30%;">Role</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Name	Role				
Name	Role						
GRDC Material	[GRDC reports, progress reports, final reports, project specifications and project lists.]						
Provider Material							
Services	<p>The Aim of this project is to provide continuation of wheat variety classification activities for the period of time 2009 to 2010. This is to be done with a view to -</p> <ul style="list-style-type: none"> • Delivering variety classification against the existing classification grades by assessing quality data of new wheat lines relative to the performance of known control varieties and grade quality parameters in order to place those new lines into grades • Supporting the Wheat Classification Council through provision of information and by providing a secretariat function to it • Ensuring clear communication, information flow and explanation of classification decisions and quality targets to wheat breeders, growers and other stakeholders as appropriate, to provide transparency and meaningful feedback • Managing the relationship between breeding organisations and the Variety Classification Panel including providing an avenue for additional data to be submitted • Assisting in the exchange of information between marketers and wheat breeders <p>The Services are to manage and run the operational and analytical component of the wheat classification process referred to as <i>Tier 2 Operational Wheat Variety Classification Activities</i> and described in Appendix 1. It includes provision of a Variety Classification Panel and Classification Management resources. These functions are to be undertaken in a manner consistent with the previous operation of these activities by AWB International Ltd as described in the Wheat Classification Guidelines in Appendix 2.</p> <p>Key activities required are:</p> <ul style="list-style-type: none"> • Classification of varieties according to the Wheat Variety Classification Guidelines in Appendix 2 						

Services Agreement - Details		
	<ul style="list-style-type: none"> • Contract and manage contracts of the independent technical experts on the Variety Classification Panel - the composition of which is set out in Appendix 1. • Organise meetings of the Variety Classification Panel and the Wheat Classification Council (and attend the latter as required) • Record detailed outcomes and assessments from these meetings for dissemination to breeding organisations and other key stakeholders • Report classification grading decisions: <ul style="list-style-type: none"> ○ for pre-release lines, to the owners ○ for released lines, to wheat breeding organisations, marketers, NACMA, growers and other stakeholders • Identify and capture issues for discussion at the Wheat Classification Council meetings • Coordinate the udon noodle expert sensory evaluation program as described in the Wheat Classification Guidelines • If required by GRDC, to act as a 'clearing house' for sensitive export market data - compiling, prioritising and analysing data prior to discussion at the Wheat Classification Council to ensure commercially sensitive information is protected • Analyse current crop quality data (if available) to determine grade benchmark quality • Chair the Late Maturing α-amylase (LMA) Steering Committee • Follow up on quality issues identified in Wheat Classification Council and report back on progress • Liaise with breeding and marketing organisations to ensure flow of information and issues management • Identify and recommend changes in approaches to variety classification • Manage laboratory accreditation / proficiency program providing feedback to laboratories as well as the Variety Classification Panel on laboratory performance • Organise annual forum for breeders and marketers to exchange information. 	
Outputs	<p>The Outputs of this project are associated with the conduct of key activities as outlined above. Key Outputs could be described as -</p> <ul style="list-style-type: none"> • Regular meetings of the Variety Classification Panel • Clearly articulated and explained wheat variety classification decisions • Operation of an Independent Wheat Variety Classification panel • Well set out and successfully implemented risk management strategies • Annual Breeders Forum presenting relevant market information • Regular LMA Steering Committee meetings and progress against action items • Variety Grade Masterlist regularly updated and made available to industry • Data base of classification decisions and supporting data • Regular meetings with wheat breeding organisations • Udon noodle expert sensory evaluation program conducted as required 	
Term	Start Date for Services	1 January 2009
	End Date for Services	31 December 2010
Fees	Total Fees (including GST):	
Insurance	Workers compensation insurance Professional indemnity insurance amount \$5,000,000 per claim Public liability insurance \$10,000,000 per claim [other (describe)]	

Dated:	2008
..... <i>Signed for the Provider</i> <i>Signed for GRDC</i>
..... <i>Name and Title</i> <i>Name and Title</i>
..... <i>Witness</i> <i>Witness</i>
..... Name Name

1. MEANING OF WORDS

1.1 In this Agreement:

‘Confidential Information’ of a party:

- (a) means all information of whatever description, whether in permanently recorded form or not and whether or not belonging to a third party, which is by its nature confidential or which the party identifies as confidential to itself;
- (b) in the case of GRDC includes information:
 - (i) in the GRDC Material and
 - (ii) in the Outputs;
- (c) does not include information to the extent that information is:
 - (i) independently created or rightfully known by, or in the possession or control of, the other party and not subject to an obligation of confidentiality on the other party;
 - (ii) in the public domain (otherwise than as a result of a breach of this Agreement); or
 - (iii) required to be disclosed by law.

‘Details’ means the details to which these terms are attached.

‘GRDC Material’ means:

- (a) the material identified as GRDC Material in the Details; and
- (b) any other material provided by the GRDC to the Provider to enable the Services to be carried out.

‘Information and Data’ means all raw data and analysis thereof provided by third parties and/or generated by the Provider during the course of conducting the Services.

‘Intellectual Property Rights’ or **‘IPR’** means all intellectual property rights, including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in **paragraph (a)**.

‘Loss’ means any liability, loss, action, claim, damage, injury, cost, charge, penalty, expense or diminution in value.

‘Outputs’ means all items that the Provider brings into existence as part of, or for the purpose of, carrying out the Services and includes the Outputs as identified in the Details.

‘Personal Information’ means any information opinion (including any information or opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can be reasonably ascertained from, the information or opinion.

‘Personnel’ of a party:

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

‘Provider Material’ means the material identified as the Provider Material:

- (a) in the Details; and
- (b) in any other material provided by the Provider to enable the Services to be carried out.

‘Third Party Material’ means any material, other than GRDC Material, which the Provider does not own but uses to perform the Services.

1.2 Each other word starting with a capital letter has the meaning given to it in the Details.

2. Engagement and Fees

2.1 GRDC engages the Provider to provide the Services for the duration of the Term.

2.2 GRDC must:

- (a) provide the Provider with all information and facilities the Provider reasonably requires, including the GRDC Material, to provide the Services;
- (b) pay the Provider’s Fees within 30 days after receiving a valid invoice; and
- (c) pay the Provider’s out of pocket expenses but only if those expenses have first been approved by GRDC.

2.3 If the Fees are payable:

- (a) as a lump sum, an invoice may only be rendered following completion of the Services; or
- (b) by instalments, invoices may only be rendered in accordance with the amounts and dates set out in Fees in the Details.

2.4 If GRDC is not reasonably satisfied with the performance of the Services or any task, GRDC may withhold payment of the Fees, in part or full, until those matters have been rectified to the reasonable satisfaction of GRDC.

2.5

3. GST Clauses

- 3.1. Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 3.
- 3.2. Unless otherwise expressly stated, any amounts payable for a supply made under this document are exclusive of GST (**GST exclusive amount**).
- 3.3. Where under this document a taxable supply is made by the Provider to GRDC, GRDC must pay to the Provider an amount equal to the GST payable on the taxable supply (**GST amount**) in addition to, at the same time and in the same manner as the GST exclusive amount otherwise payable for the supply.
- 3.4. If an adjustment event arises in relation to any taxable supply made under this document that gives rise to an increasing adjustment or decreasing adjustment the GST amount must be adjusted accordingly and where necessary a payment must be made to reflect that increasing adjustment or decreasing adjustment. Immediately after the adjustment event arises the Provider must provide a valid adjustment note to GRDC.
- 3.5. If a party (**the first party**) is required under this document, to pay for or reimburse a cost, expense or outgoing of the other party, the amount to be paid by the first party is the sum of:
 - the amount of the cost, expense or outgoing less any input tax credits in respect of the cost, expense or outgoing that the other party (or the representative member of a GST group of which it is a member) is entitled to; and
 - if the payment by the first party is consideration for a taxable supply, an amount equal to the GST amount payable by the other party in respect of the taxable supply.

4. Provider's Principal Obligations

- 4.1 The Provider must:
 - (a) ensure that the Provider and its Personnel are suitably qualified and

- have sufficient expertise to provide the Services;
- (b) to the extent permitted by law, ensure that its Personnel have provided comprehensive consent as contemplated by section 195AWA(4) of the *Copyright Act 1968* for any acts or omissions that might otherwise infringe the moral rights of those Personnel in relation to any Outputs;
- (c) provide the Services
 - (i) efficiently, with due care and skill and to the best of its knowledge and expertise;
 - (ii) in accordance with GRDC's policy and procedures and all reasonable directions GRDC may give from time to time;
 - (iii) in compliance with all applicable laws and regulations;
 - (iv) without:
 - (A) breaching any obligation to any other person; or
 - (B) infringing any IPR of any other person; and
- (d) provide any reports about the Services that GRDC reasonably requests from time to time;
- (e) provide GRDC access to all Information and Data;
- (f) not have, or after the date of this Agreement accept, any obligations to any person that will or may interfere with the Provider's ability to provide the Services in accordance with this Agreement; and;

- 4.2 The Provider must maintain and make available to the GRDC or any of its authorised agents any records necessary to enable the GRDC to confirm that the Provider has complied with its obligations under this Agreement.

5. Key People

- 5.1 The Provider must:
 - (a) ensure that each Key Person is actively involved in providing the Services and performs his or her specified role;
 - (b) ensure that each Key Person is aware of and complies with the Provider's obligations in providing the Services;
 - (c) notify the GRDC Contact Person promptly of a '**Replacement Key Person**' (and their credentials) if:
 - (i) any Key Person becomes unable or unwilling to comply with the requirements of **paragraph (a)**; or

- (ii) requested by the GRDC Contact Person.
- 5.2 The GRDC Contact Person must within 30 days after receiving notice under **clause 5.1(c)**, either:
- (a) accept the Replacement Key Person, which case the 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 Provider must select and notify the GRDC Contact Person 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 Contact Person receives notice under **clause 4.1(c)**, GRDC may immediately terminate this Agreement.

6. Personnel

The 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 Provider or its Personnel in relation to this Agreement;
- (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 **paragraph (a)**; and
- (c) on request, provide to the GRDC proof that the Provider has complied with these obligations.

7. Material

- 7.1 Each party:
- (a) retains ownership of its Material;
 - (b) grants the other party a non-exclusive royalty free right to use its Material to the extent necessary to enable the Services to be provided.
- 7.2 GRDC excludes all warranties regarding the accuracy or completeness of the GRDC Material and the Provider uses that Material at its own risk.
- 7.3 The 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 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.

8. Outputs and IPR

- 8.1 The Provider:
- (a) assigns to GRDC ownership of the Outputs and all IPR in the Outputs; and
 - (b) acknowledges that all future IPR referred to in **paragraph (a)** vest in GRDC from the date of their creation.
- 8.2 To the extent that the Outputs contain any Third Party Material, the Provider must obtain for the GRDC either an assignment or licence in favour of the GRDC of IPR in that Third Party Material.
- 8.3 The Provider must do all things necessary, including signing any documents, desirable or necessary to give effect to this clause.

9. Confidential Information

- 9.1 Each party ('**Recipient**') must in relation to the Confidential Information of the other party ('**Discloser**'):
 - (a) keep it confidential;
 - (b) use it only for the purpose of providing or using the Services ('**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 'Confidential - (Discloser)'; and
 - (e) subject to clause 9.2, promptly comply with any request by the Discloser to return or destroy any or all copies of Confidential Information.
- 9.2 GRDC may retain one copy of the Confidential Information for record keeping purposes as required by the *Archives Act 1983* (Cwlth).
- 9.3 An '**Authorised Person**': means
 - (a) those of the Recipient'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, agents and visitors:
- (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**').
- 9.4 The Recipient must enforce each Undertaking.
- 9.5 The Recipient must:
- (a) immediately notify the Discloser if the Recipient:
 - (i) suspects or becomes aware of any unauthorised copying, use or disclosure in any form; or
 - (ii) is required by law to disclose any Confidential 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 Confidential Information that is software or attempt to do so.
- 9.6 On termination of this Agreement, or earlier on reasonable request by the Discloser, the Recipient must promptly return to the Discloser or destroy any or all copies of Confidential Information, in which case any right to use, copy and disclose that Confidential Information ceases.
- 10. Use of Names and Publication**
- 10.1 The 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.
- 11. Protection of Personal Information**
- 11.1 The Provider must:
- (a) comply with the Information Privacy Principles contained in the *Privacy Act 1988* (Cwlth) ("**the Act**") as if it were an agency under the Act;
 - (b) only use Personal Information held or controlled by it in connection with this Agreement:
 - (i) for the purposes of fulfilling its obligations under this Agreement; and
 - (ii) only to the extent that those obligations comply with the Information Privacy Principles.
 - (c) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this agreement is protected against loss and unauthorised access, use modification or disclosure;
 - (d) ensure that any Personnel with access to the Personal Information are aware of and undertake to observe the obligations in this clause;
 - (e) immediately notify GRDC of any breach or possible breach of the obligations contained in this clause, whether by the Provider, its Personnel or any sub-contractor; and
 - (f) inform each individual whose Personal Information that the Provider holds in connection with this Agreement that the individual can lodge complaints with the Privacy Commissioner about the acts or practices of the Provider.
- 11.2 If, under Clause 17.3, GRDC consents to the Provider entering into a sub-contracting arrangement, the Provider must ensure that the subcontractor has the same awareness and obligations as the Provider under this clause.
- 12. Liability**
- 12.1 The 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 Provider or any Personnel of the Provider in carrying out the Services;
 - (b) any breach by the 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 Provider or any Personnel of the Provider; or
 - (d) any claim or proceedings alleging that in performing the Services the Provider has infringed the IPR of any

person, or that any part of an Output or its use infringes the IPR of any person (**'IPR Infringement Claim'**).

- 12.2 The Provider must take out and maintain valid and enforceable insurance policies as specified in the Details.
- 12.3 The Provider must on request by GRDC provide GRDC with certificates from the Provider's insurers certifying that it has insurance as required by this clause 12.
- 12.4 If there is an IPR Infringement Claim:
- (a) the GRDC Contact Person must:
 - (i) notify the Provider in writing as soon as practicable of the IPR Infringement Claim; and
 - (ii) provide all information and assistance reasonably required by the Provider in relation to the IPR Infringement Claim; and
 - (b) the Provider must, at its option:
 - (i) modify the Output 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 GRDC the right to possess and use the Output free of any IPR Infringement Claim.
- 12.5 If the Provider fails to comply with **clause 11.4(b)** within 60 days after the GRDC Contact Person notifies the Provider of an IPR Infringement Claim, the Provider must comply with any reasonable settlement of that IPR Infringement Claim negotiated by GRDC after that date.
- 13. Dispute Resolution**
- 13.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement (**'Dispute'**) unless it has complied with this clause.
- 13.2 A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute (**'Notification'**).
- 13.3 On receipt of a Notification each party must negotiate in good faith to resolve the Dispute and, if necessary to resolve the Dispute, involve the Chief Executive Officers or other senior officers of the parties directly in those negotiations.
- 13.4 If the Dispute involves technical matters and has not been resolved by negotiations

under **clause 13.3** within a reasonable time, the parties will refer the Dispute for determination by an independent expert agreed by the parties in the technical field the subject of the Dispute.

- 13.5 If the Dispute is not resolved under **clause 13.3 or 13.4** within 30 days after the Notification (or longer period agreed between the parties), the parties must refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited (**'ACDC'**) for resolution in accordance with the Conciliation Rules of ACDC.
- 13.6 If the Dispute is not resolved under **clause 13.5** within 60 days after referral to ACDC (or longer period agreed between the parties) either party may initiate proceedings in a court.
- 14. Termination**
- 14.1 This Agreement will end at the end of the Term unless GRDC ends it earlier:
- (a) at any time by giving the Provider 30 days written notice;
 - (b) in accordance with **clause 5.2** (Key Personnel);
 - (c) immediately by giving notice to the Provider if:
 - (i) the 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;
 - (ii) the Provider commits a breach of any other provision of this Agreement which is not capable of remedy; or
 - (d) if any event referred to in **clause 14.2** happens to the Provider.

- 14.2 The Provider must notify GRDC immediately if:
- (a) the 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 Provider and its creditors;
 - (c) the Provider ceases to be able to pay its debts as they become due;
 - (d) the Provider ceases to carry on business;
 - (e) any step is taken by a mortgagee to enter into possession or dispose of

- the whole or any part of the Provider's assets or business; or
- (f) 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 Provider's assets or business.

15. After Termination

After termination or expiration of this Agreement:

- (a) GRDC must pay the 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 Provider in which case the Provider is not entitled to any compensation for early termination;
- (b) the Provider must:
 - (i) promptly deliver all Outputs to GRDC that have been created by, or for, the Provider but not previously delivered to GRDC;
 - (ii) stop providing the Services and minimise its loss;
- (c) the Provider must return all GRDC Material to GRDC;
- (d) accrued rights or remedies of either party are not affected; and
- (e) **clauses 9** (Confidential Information), **11** (Protection of Personal Information) **12** (Liability), **13** (Dispute Resolution) continue.

16. Notices

- 16.1 A party notifying or giving notice under this Agreement must give notice in writing, addressed to the Contact Person specified in the Details, and left at or sent by prepaid post or by fax to that person.
- 16.2 A notice given in accordance with clause **15.1** is received on the date of delivery (if left at the recipient's address), 5 days after the date of posting (if sent by prepaid post), or when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice (if sent by fax), as the case may be.

17. General

17.1 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 GRDC and the Provider or between GRDC and any Personnel of the Provider. The Provider must not represent itself and must ensure that its subcontractors do not represent themselves, as being employees, partners or agents of GRDC.

17.2 Authority: The Provider must not incur any liabilities in GRDC's name or on its behalf, or pledge its credit.

17.3 Subcontracting: The Provider must not subcontract any part of the Services, assign or attempt to assign or otherwise transfer any right or obligation arising out of this Agreement, without the written consent of the GRDC Contact Person. In giving its consent GRDC may impose any conditions it reasonably considers appropriate.

17.4 Severance: If part or all of any clause of this Agreement is illegal or unenforceable:

- (a) it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement; and
- (b) the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' commercial objectives.

17.5 Waiver: The failure of a party at any time to insist on performance by the other party of any obligation under this Agreement is not a waiver of its right:

- (a) to insist on providing of, or to claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time insist on performance of that or any other obligation of the other party under this Agreement.

17.6 General: This Agreement including any attachments:

- (a) constitutes the entire agreement between the parties as to its subject matter;
- (b) in relation to that subject matter, supersedes any prior understanding or between the parties;

- (c) is governed by the laws of the Australian Capital Territory; and
- (d) may only be amended in writing signed by both parties.

17.7 **Assignment and Novation:** Neither party may, without the written consent of the other, assign in whole or in part, its rights under this Agreement.

17.8 Where the Provider proposes to enter into any arrangement which will require the novation of the Agreement, it must notify the GRDC Contact person within a reasonable period prior to the proposed novation.

ATTACHMENT A

[Services, Resources and Implementation Plan]