

THIS AGREEMENT (hereinafter "Agreement") is entered into this xxx day of xxxx, 2024 by and between Grain Elevator and Processing Society (GEAPS) Foundation with offices at 7500 Highway 55, Ste. 350, Minneapolis, MN 55427 (GRANTOR) and _____ with offices at (GRANTEE).

WHEREAS it is GRANTORs mission to support the development of the best quality educational materials and experiences for members of the grain industry; and

WHEREAS GRANTEE has been selected to advance GRANTORS mission by providing the educational materials and experience as detailed in this agreement;

NOW THEREFORE in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1. **Statement of work:**

- a. **Description of work product** – AS SPECIFICALLY DEFINED BY **ADDENDUM A** HERETO WHICH IS HEREBY INCORPORATED BY REFERENCE AND FORMS AN INTREGAL PART OF THE GRANTEE'S OBLIGATIONS HEREUNDER GRANTEE will _____ ...
- b. **Format and delivery of work product** – Prior to final payment GRANTEE will deliver to GRANTOR a fully functional and unrestricted copy of the work product formatted in a current off-the-shelf version of software such as Word, Excel, Publisher, PowerPoint, wp4, SCORM or such alternative file format as is identified by the Parties in **Addendum A** hereto.

2. **Timing of work:** The Work shall be completed by GRANTEE on or before the Completion Date (defined on **Addendum A**, which date both Parties agree is reasonable for completion of the Work. Timing of the Work is of the essence in this Agreement. Consistent with this requirement, the Parties jointly acknowledge that the time and milestones provided in the description of work contained in **Addendum A** constitutes a commercially reasonable period of time to complete the project being funded by this grant. GRANTEE shall immediately notify GRANTOR in writing of any delay or anticipated delay, regardless of the cause.

3. **Grant:** In consideration of GRANTEE's performance of the work, subject to the promises and covenants contained herein, GRANTOR will pay GRANTEE a total sum not to exceed as provided in **Addendum A** hereto.

- a. **Expenses allowable under this Grant** – The grant that is the subject of this agreement is provided to help pay for the development of educational materials or experiences that serve to educate members of the grain industry. In doing so it is given to defray only the direct costs of developing those educational materials as those costs are defined by the GRANTOR. It is not intended that any of the grant funds will be used in whole or in part to pay for the overheads, hardware, software, costs related to support personnel or other indirect costs incurred by the GRANTEE. GRANTOR reserves the right to audit the

utilization of the grant funds as provided in section 11. The determination regarding whether or not a particular expenditure qualifies as fundable under this grant is determined unilaterally by the GRANTOR.

- b. **Recapture of Grant funds** – In the event that it is determined by the GRANTOR that a given expenditure does not qualify for funding or in the event that the agreement is terminated by either the GRANTOR or the GRANTEE, GRANTOR reserves the right to recapture grant funds as provided by this agreement.
4. **Funding Acknowledgment:** Each time the educational materials funded by this grant are published or utilized by GRANTEE, GRANTEE will acknowledge in writing that the materials were developed under a grant provided by GEAPS Foundation and that the funding supporting the grant was provided by an enumerated list of major contributors. GRANTOR will provide GRANTEE with the appropriate language, consistent with the requirement of this section and incorporated in **Addendum A** hereto.
 5. **Payment of grant:**
 - a. **Expenditures of Funds.** Milestones will be set as provided in **Addendum A** which will serve as the opportunities for the GRANTEE to request a progress payment for work accomplished through and including the milestone. If GRANTOR determines that it is appropriate GRANTOR may require proof of expenditures consistent with the budgeting for the work prior to making a progress payment.
 - b. **Substantial completion.** When GRANTEE considers its entire work product ready for its intended use, GRANTEE shall notify GRANTOR in writing that the work product is substantially complete and request that GRANTOR acknowledge in writing that GRANTEE has submitted the work product for final review.
 - c. **Final payment.** The final grant payment will be made by the GRANTOR to the GRANTEE when the work product has been fully and finally completed in this agreement has been fully performed. If and when GRANTOR elects to conduct an audit, final payment is withheld until the audit has been completed and the results indicate whether or not GRANTEE has complied with the terms, conditions and covenants contained in this agreement. Final payment will be made consistent with the findings of that audit.
 6. **Payment, Satisfaction of Claims and Retainage:** GRANTOR requires that all vendors and subcontractors who provide goods or services to the development of the work product be paid in a fair and timely manner. As a result GRANTOR will withhold a sum from progress payments that is equal to 20% of the requested and subsequently authorized payment. The calculation of the appropriate final payment will include payment of retainage consistent with GRANTEE'S meeting its obligations under this agreement.
 7. **Changes:** Changes or amendments to this agreement and the work to be performed hereunder, may be made only by the issuance of a further Addendum to this agreement signed and dated by both Parties.
 8. **Grant of intellectual property rights:**
 - a. The Parties agree that the express purpose of GRANTOR providing a grant to GRANTEE is to perform the work as defined in Addendum A and to fully vest in GRANTOR an exclusive worldwide, fully paid up, royalty-free, perpetual license limited to use by GRANTOR or their sub licensees except as allowed in

Paragraph 8(c) of this Agreement. GRANTOR shall also have the right to modify the work to meet its needs including without limitation by including a disclaimer that addresses any possible liability concerns. That license is provided in **Addendum B** hereto.

- b. GRANTEE retains the copyright to the work subject to the license as provided above.
- c. GRANTEE has the right to use the work as allowed in Addendum C. GRANTEE agrees to not use the work except as allowed in Addendum C and the worldwide, fully paid up, royalty-free, perpetual license is exclusive to GRANTOR except as expressly allowed in Addendum C.

9. **Execution of Documents:** GRANTEE agrees that it will execute any application assignments or other instruments necessary or useful to enable GRANTOR to utilize or sublicense the license which GRANTEE provides to GRANTOR under this agreement.

10. **Relationship between GRANTOR and GRANTEE. Independent Entities:** It is understood that the Parties to this agreement are wholly separate entities in their own right. The employees, methods, facilities and equipment of GRANTEE shall at all times be under GRANTEE's exclusive direction and control. For the purposes of carrying out the work specified in this agreement, GRANTEE's relationship to GRANTOR shall be that of an independent product developer. Nothing in this agreement shall be construed to constitute GRANTEE, or any of its employees, as employee, agent, associate, joint venture or partner of GRANTOR. Nothing in the performance under this agreement shall be construed as to imply that the Parties are assuming shared rights or responsibility for the other Parties' employees or subcontractors as co-employees.

11. **Right to Audit:** GRANTEE agrees to provide GRANTOR and its representatives reasonable access to GRANTEE's books and records for the purposes of verifying compliance with the terms and conditions of this grant. For the purpose of this agreement "reasonable access" shall be interpreted to include access to the books and records of the GRANTEE consistent with standard forensic accounting practices including all general ledger entries. It is the GRANTEE's obligation to keep appropriate books and records with respect to the expenditure of all funds provided under this grant. Failure to do so constitutes a material breach of this agreement and serves as the basis for GRANTOR demanding immediate repayment of the entire sum paid to GRANTEE under this agreement as provided in Section xxx above. **Failure by GRANTEE to properly cooperate with an audit or any other conduct which GRANTOR determines constitutes a material breach of this agreement will result in immediate suspension of GRANTEE's ability to be considered for further grants for a period of not less than three years in addition to such other relief as may be available at law or equity.**

12. **Subcontracts and Third Parties:** GRANTEE may subcontract any portion of the Work to a subcontractor approved in writing by GRANTOR. Contracts between the GRANTEE and its subcontractors shall require that the subcontractors (to the extent of the Work performed by the subcontractor assume toward the GRANTEE all of the obligations and responsibilities that GRANTEE assumes toward GRANTOR under this Agreement. In no case shall GRANTOR's approval of any subcontract relieve GRANTEE of any of its obligations under this

Agreement. GRANTEE shall be responsible for all acts and omissions of the subcontractors, and their agents and employees, and all other persons performing portions of the Work under an agreement with GRANTEE. In no event shall this Agreement or any part hereof, be construed to create a contractual relationship of any kind between the GRANTOR and a subcontractor or any person or entity other than the GRANTEE.

13. Termination:

a. **Termination by GRANTOR for Default** – GRANTOR may terminate this Agreement if it is determined solely by GRANTOR that: (i) GRANTEE has committed a breach of any provision or fails to comply with any covenant under this Agreement and does not remedy the same within seven (7) days after written notice thereof from GRANTOR, (ii) any representation or warranty of GRANTEE under this Agreement is determined by GRANTOR to have been false at the time it was made, or (iii) GRANTEE becomes insolvent, makes an assignment for the benefit of creditors or voluntarily initiates or has involuntarily initiated against it any act, process or proceeding under any insolvency, bankruptcy or similar law providing for relief of debtors. In the event of a termination under this Section 13, GRANTOR may, in addition to all other remedies available to it under this Agreement or applicable law, terminate this Agreement as to Work not completed, complete (or retain others to complete) the Work, and GRANTEE agrees to pay GRANTOR for any loss or additional expense incurred by GRANTOR in connection therewith (including, but not limited to, any attorney's fees, expenses, fees and costs related to or arising from arbitration, and any other expenses and fees). GRANTEE shall only be paid for work completed in accordance with this Agreement at the time of termination under this Section 13. **Failure by GRANTEE to properly cooperate with an audit or any other conduct which GRANTOR determines constitutes a material breach of this agreement will result in immediate suspension of GRANTEE's ability to receive further grants for a period of not less than three years in addition to the other forms of recourse provided by this agreement.**

b. **Termination by GRANTEE** – GRANTEE may terminate this Agreement in the event: (i) GRANTOR commits a breach of a material provision or fails to comply with a covenant under this Agreement and does not remedy the same within seven (7) days after written notice thereof from GRANTEE, (ii) any representation or warranty of GRANTOR under this Agreement was false at the time it was made, or (iii) GRANTOR becomes insolvent, makes an assignment for the benefit of creditors or voluntarily initiates or has involuntarily initiated against it any act, process or proceeding under any insolvency, bankruptcy or similar law providing for relief of debtors. GRANTEE may, upon a termination event described in Section XXX, suspend its performance of the Work until such termination event has been cured. GRANTEE may also, upon a termination event under this Section XXX, terminate this Agreement and receive payment for the Work completed, less any amounts owed to GRANTOR from GRANTEE in order to complete the work as provided above in section 13a.

14. Indemnification:

- a. To the fullest extent permitted by law, GRANTEE shall defend, indemnify and hold harmless GRANTOR and its affiliates, employees, directors and agents from and against all claims, damages, losses, and expenses (including, but not limited to, attorney's fees) and any expenses, fees and costs related to or arising from claims or legal actions including, but not limited to arbitration, arising out of, related to or resulting from the performance or nonperformance of the Work as provided herein, whether by the GRANTEE, a subcontractor or anyone directly or indirectly employed or engaged by them including those claims, damages, losses and expenses arising out of or related to any intellectual property rights, whether by patent, copyright, or other intellectual property rights, which are contained in or in any way reflected in the work product of the GRANTEE.
- b. In the event that GRANTOR elects to exercise its right to audit as provided in Section 11, and GRANTOR finds that grant funds have been expended in a manner inconsistent with this agreement as provided in Section 16 and Addendum A hereof, GRANTOR shall have the right to demand the return of any such funds and GRANTEE shall indemnify and hold harmless GRANTOR and its affiliates, employees, directors and agents from and against all claims, damages, losses, and expenses (including, but not limited to, attorney's fees and accountant's fees) and any expenses, fees and costs related to or arising from the audit and any subsequent legal actions including, but not limited to arbitration, arising out of, related to or resulting from the audit whether resulting from actions by the GRANTEE, a subcontractor or anyone directly or indirectly employed or engaged by them.
15. **Intellectual Property:** GRANTEE guarantees that it has complete and unencumbered rights to any and all intellectual property incorporated by it into this project and which is developed by performance under this agreement. That includes, but is not limited to, any and all elements which are protected as intellectual property under law or by statute such as recordings, textual materials, graphics, photographs, videos, and representations of any kind. GRANTEE hereby grants to GRANTOR a perpetual, royalty-free worldwide license to use or sublicense all patents, copyrights, trade secrets, trademarks and other intellectual property incorporated into or made a part of the Work. GRANTEE shall pay all royalties, license fees or other costs associated with the grant of such license. To the fullest extent of the law, GRANTEE agrees to defend, indemnify and hold harmless GRANTOR and its affiliates, directors and agents from and against all claims, damages, losses and expenses (including, but not limited to, attorney's fees), arising out of or related to or resulting from infringement of any patent, copyright, trade secret, trademark or other intellectual property by GRANTEE, a subcontractor or anyone directly or indirectly employed or engaged by them; except to the extent that the infringing conduct is expressly required by GRANTOR under written specifications for the Work and GRANTEE does not have reason to believe such conduct is infringing. In addition to other remedies under this Section XX, if the infringing conduct results in an injunction against GRANTOR, GRANTEE agrees that it shall, at its option and sole expense, either: (i) procure for GRANTOR the right to continue using the infringing subject matter, or (ii) replace or modify the same so that the Work becomes non-infringing and continues to conform with the specifications for the Work and this Agreement.

16. **Definitions:**

a. **Direct vs. Indirect expenses**

- i. **Direct costs** – Those costs or expenditures which are traceable solely to the work product being produced under this agreement.
- ii. **Indirect costs** – Those costs are expenditures which are not traceable solely to the work product and as a result benefit or support other activities of the GRANTEE.

b. **Examples** – For reference purposes only, examples of expense classifications under this agreement include but are not limited to the following:

i. **Direct**

1. Gross salary of an individual for the period that they are working exclusively on the work product;
2. The verified cost of outside services necessary for completion of the work product which are secured by the GRANTEE under a competitive process;

- ii. **Indirect** – Payment of any element or portion of heat, electricity, rent, facility improvements, depreciation, hardware, software, computer systems, gross salaries or any portion thereof related to management or administrative support staff, fringe benefits, over time compensation, insurances, or marketing expenses.

c. **Unqualified expenditures:** In addition to the classification of expenditures as defined in section 15A above, various other expenditures may not qualify for grant funding. GRANTEE is required to disclose all expenditures for travel and automobile rentals that it includes as part of the expenditure under this agreement. Lodging and meal allowance will be based on GSA standard CONUS rates at the time travel occurs. GRANTOR reserves the right to disqualify any or all of those expenditures to the extent that GRANTOR, in GRANTOR'S sole discretion, determines that the expenditures did not adequately support the development of the work product. In the same manner, GRANTOR reserves the right, in its sole discretion, to disqualify any or all expenditures which it determines do not support the production of the work product into a deliverable that is accessible to GRANTOR using standard off-the-shelf software and hardware. Under no circumstance will grant funding be provided for work associated with transforming the work product into a Learning Management System formatted software file. GRANTEE agrees to disclose the nature and formatting of the work product in **Addendum A** prior to receiving any funding under this grant.

17. **Taxes:** GRANTEE shall be responsible for and shall pay all taxes associated with its performance of the work which is the subject of this grant, including but not limited to, all income taxes, withholding, FICA, FUTA, SUTA, transfer taxes, sales and use taxes.

18. **Equal Opportunity Requirements:** All employment and Grant decisions related to the GEAPS Foundation are based on business needs, job requirements, the educational needs of and benefits to the grain industry and individual qualifications of the individual or project under consideration, without regard to race, color,

religion or belief, national, social or ethnic origin, sex (including pregnancy), age, physical, mental or sensory disability, sexual orientation, gender identity and/or expression, marital, civil union or domestic partnership status, past or present military service, family medical history or genetic information, family or parental status, or any other status protected by the laws or regulations in the locations where we operate. GRANTOR will not tolerate discrimination or harassment of or by employees, GRANTEEES or subcontractors based on any of these characteristics and retain the right to terminate our contractual relationship based on that behavior.

19. **Addresses and individuals for notices:** All notices under this Agreement shall be in writing and will be deemed to be given: (i) when delivered in person; (ii) when sent by facsimile with telephonic confirmation of receipt; (iii) on the next day after deposit with a nationally recognized overnight courier service; or (iv) three business days after being sent by registered or certified United States mail, postage prepaid. All notices to GRANTEE shall be delivered to the address of GRANTEE listed on **Addendum A**. All Payment Applications and notices to GRANTOR shall be delivered to the address of GRANTOR listed on **Addendum A**. Changes of address by any party to this Agreement shall be effective upon delivery of notice to the other party with this Section.

a. GRANTOR Address

GEAPS Foundation
7500 Highway 55, Ste. 350
Minneapolis, MN 55427

b. GRANTEE Address

20. **Governing Law and Jurisdiction:** This agreement shall be binding upon the Parties hereto and upon their legal representatives, heirs, beneficiaries, successors or assigns of the Parties and shall be construed in accordance with and pursuant to the laws of the State of Minnesota, without giving effect to its conflicts of law provisions. Should any dispute arise with regard to this agreement, the Court of competent jurisdiction within the State of Minnesota shall have exclusive jurisdiction over all matters related to this agreement. The Parties further agree that any legal action which arises related to this agreement shall be considered to be properly venued in the District Court for Hennepin County, Hennepin County, Minnesota if the legal action is pursued within the State court system or if the action is pursued under Federal laws and regulations within the United States District Court for the District of Minnesota.

21. **Force majeure:** Any delays in the failure of performance by a party to this Agreement, other than payment of money, shall not constitute a default hereunder if and to the extent such delays or failures of

performance are caused by occurrences beyond the reasonable control of such party, including but not limited to: pandemics; acts of God or a public enemy; compliance with any order or request of any governmental authority; act of war (declared or undeclared); hostilities or acts of terrorism; rebellion or sabotage or damage resulting therefrom; fires, floods, explosions, accidents; riots or strikes or other concerted acts of workmen (provided the party whose performance has been delayed has exhausted all reasonable means, including legal recourse), whether direct or indirect; or any causes, whether or not the same class or kind as those specifically above named, which are not within the control of such party and which by the exercise of reasonable diligence such party is unable to prevent.

22. **No value received:** Except as otherwise explicitly set forth in the Grant Agreement, GRANTEE represents and warrants that no goods or services have been or will be provided to GEAPS Foundation in consideration of the award of this grant.
23. **Public disclosure or publicity:** GRANTEE shall obtain GEAPS Foundation's prior written consent for all materials, including advertising, web site and collateral materials, press releases or other public statements or communications produced by or for the GRANTEE containing information regarding the grant, the grant application process or its interaction with GEAPS Foundation prior to use or publication. Failure to do so will constitute a material breach of this agreement.
24. **Reasonableness:** Both GRANTOR and GRANTEE have been provided with adequate opportunity to review the terms and conditions of this agreement as they deem appropriate. As a result the signing of this agreement is an affirmation by each party that they consider its terms and conditions fair and reasonable.
25. **Inconsistent terms:** The terms and conditions of this Agreement shall control in the event of any conflict between **Addendum A** and this Agreement or any subsequent Addendum or attachment to this Agreement or **Addendum A**. The terms and conditions of this Agreement shall control in the event of a conflict between this Agreement and any Addendums or attachments to Addendum A or this Agreement.
26. **Severability:** If any provision or portion of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable Law, such provision or portion of this Agreement shall be deemed omitted and the remaining provisions shall remain in full force and effect.
27. **Survival:** Sections 3, 11, 13 through 17 inclusive, 20 and 23 shall remain in effect and survive the performance, cancellation or termination of this Agreement and the relationship of the Parties.
28. **Headings:** The headings in this Agreement are for ease of reference only and shall not be used to construe or interpret provisions of this Agreement.

29. **Assignment:** This Agreement may not be assigned by either party without the prior written consent of the other party hereto. Any attempted assignment without such consent shall be void ab initio. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.
30. **No waiver of rights:** No waiver by a party of a right, breach or default under this Agreement shall be effective unless in writing. No such waiver shall be deemed a waiver of any subsequent right or default of a similar nature or otherwise.
31. **Counterparts and Facsimiles:** This Agreement may be executed in any number of counterparts by facsimile or e-mail (pdf), each of which for all purposes shall be deemed an original, and all of which together shall constitute one instrument.
32. **Entire agreement:** This agreement including its Addendum's contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written. This agreement supersedes any prior written or oral agreements between the Parties.

Date: _____
GEAPS Foundation

Date: _____
XYZ Institution

XXXXXXXXXX
Its: _____

XXXXXXXXXX
Its: _____

END OF DOCUMENT