



**Australian Government**  
**Australian Centre for  
International Agricultural Research**

**ANNEXE 1**

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**Standard Conditions for Project Agreements  
between the  
Commonwealth of Australia  
represented by the  
Australian Centre for International Agricultural Research  
and the  
Commissioned Organisation**

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Part of Australia's development  
assistance program

[www.aciar.gov.au](http://www.aciar.gov.au)

as at 1 July 2007

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## STANDARD CONDITIONS FOR PROJECT AGREEMENTS BETWEEN ACIAR AND THE COMMISSIONED ORGANISATION

### CHANGE REGISTER

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ACIAR is an Australian Government agency that operates as part of Australia's Aid Program within the portfolio of Foreign Affairs and Trade. It contributes to the aid program objectives of advancing Australia's national interest through facilitating research to underpin poverty reduction and sustainable development.

ACIAR has developed standard conditions which are the foundation of our agreements for the research partnerships it facilitates.

Recent changes to these standard conditions are identified below. This information is provided to assist commissioned organisations to keep up to date with ongoing improvements to ACIAR standard conditions for project agreements. This information will be updated as further substantive changes are made.

Inclusion of a definition of “Works” in clause 1, Interpretation	Jan 05
Replacement of clause 11 Moral Rights with a complete new clause relating to moral rights	Jan 05
Clause 20.1: Deletion of the words “and hold harmless”	March 07
ACIAR Act amendment as a result of governance changes. ACIAR now enters into this agreement on behalf of the Commonwealth of Australia. Subsequent changes to the agreement.	July 07
Removal of guidelines and proformas for the preparation of annual and final reports. Inclusion of a reference to web based guidelines and proformas.	July 07
Included reference to clause 10.2 in definition of “Works” in clause 1	July 07
Deleted reference to “exploit” in clause 1.	
Inclusion of sub-clause 7.2 relating to the conduct of personnel engaged in the Services and related definitions.	July 07
Clause 10.3: Included wording to Commissioned Organisation warranty on use of background IP	July 07
Clauses 10.2 and 10.11: Deleted “exploit” and included wording on sub-licencing by ACIAR	July 07
Clause 20.2: Included words “unlawful or negligent”	July 07
Clause 10.1: Amended reference to International <i>Treaty</i>	July 07
Clause 13.4: Wording change from “which arises directly or indirectly” to “arising”	July 07
Clause 20.1: Included words “wilful misconduct”	July 07
Clause 20.2: Included words “and sub-licencees”	July 07
Revised Clause 5.14 GST	July 07

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## Table of Contents

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1. INTERPRETATION.....	5
2. SERVICES.....	7
3. SUB-CONTRACTING.....	8
4. TERM OF PROJECT AGREEMENT.....	8
5. PAYMENT.....	8
6. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY.....	10
7. PERSONNEL.....	10
8. TRAVEL.....	11
9. PROJECT EQUIPMENT AND SUPPLIES.....	12
10. INTELLECTUAL PROPERTY.....	12
11. MORAL RIGHTS.....	14
12. DISCLOSURE OF INFORMATION.....	15
13. PROTECTION OF PERSONAL INFORMATION.....	15
14. COORDINATOR.....	16
15. PROJECT COMMITTEE.....	16
16. REVIEW AND EVALUATION.....	16
17. REPORT.....	16
18. TERMINATION.....	16
19. INSURANCE.....	17
20. INDEMNITY.....	18
21. WAIVER.....	18
22. APPLICABLE LAW.....	18
23. AUTHORITY.....	18
24. COOPERATION.....	18
25. VARIATION TO THE PROJECT AGREEMENT.....	18
26. DISPUTE RESOLUTION.....	18

## Schedules

### Schedule 1

ACIAR Acquittal.....	20
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### Schedule 2

Travel Advice Note.....	22
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## Standard Conditions for Project Agreements

between the

Commonwealth of Australia represented by the Australian Centre  
for International Agricultural Research (“ACIAR”)

and the

Commissioned Organisation

### THE PARTIES AGREE AS FOLLOWS:

#### Whereas:

*ACIAR has requested certain research services to be carried out and the Commissioned Organisation has agreed to provide the services in order to complete the Project on the terms and conditions of the Project Agreement.*

#### 1. Interpretation

1.1 In these Conditions:

“*Act*” means the Australian Centre for International Agricultural Research Act 1982 (as amended);

“*Annual Report*” means the annual report on the Project to be delivered to ACIAR;

“*APS Code of Conduct*” refers to the code of conduct of the Australian Public Service ([www.apsc.gov.au](http://www.apsc.gov.au));

“*APS Values*” refers to the values of the Australian Public Service ([www.apsc.gov.au](http://www.apsc.gov.au));

“*Background IP*” means Intellectual Property that is:

- (a) in existence prior to the date of this Agreement; or
- (b) is brought into existence independently of this Project,

and which is used in, or is otherwise required for the use of, the Project IP;

“*CEO*” means the Chief Executive Officer of ACIAR;

“*Collaborating Country*” means the country with which ACIAR has entered into a Memorandum of Understanding;

“*Collaborating Institution*” means the organisation or institution in the Collaborating Country which is nominated by the government of the Collaborating Country to undertake any aspects of the Project which are to be conducted outside Australia in collaboration with the Commissioned Organisation;

“*Commissioned Organisation*” means the person named as the Commissioned Organisation in the Project Agreement Letter who by executing and returning a duplicate of the Project Agreement Letter to ACIAR has undertaken to provide the Services in accordance with the Project Agreement;

“*Commonwealth*” means the Commonwealth of Australia;

“*Conditions*” means the terms and conditions set out in this document from clauses 1 to 26;

“*Confidential Information*” means information that is by its nature confidential and:

- (a) is designated by a party as confidential; or
- (b) the other party knows or ought to know is confidential;

but does not include information which:

- (c) is or becomes public knowledge other than by:

- (i) breach of this Project Agreement; or
- (ii) any other unlawful means;
- (d) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party;
- (e) has been independently developed or acquired by the other party;
- (f) is contained in any clause, provision or Item of, or Schedule or Attachment to, this Project Agreement;
- (g) by law is required to be disclosed including under court subpoena, parliamentary order, under the *Freedom for Information Act 1982* (Cth) or as part of discovery during legal proceedings; or
- (h) is required to be disclosed to any government agency, authority, department or Minister, or to any parliamentary committee,

and the burden of establishing any exceptions referred to in paragraphs (c) to (h) above is on the other party;

*"Final Report"* means the final report on the Project which must be delivered to ACIAR;

*"Financial Year"* means the period from 1 July to 30 June of the following year;

*"Intellectual Property"* includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

*"Letter of Intent"* means a letter forwarded by ACIAR to the Commissioned Organisation that states an intention to enter into a Project Agreement;

*"Material"* means any subject matter including documents, equipment, software, goods, information or data stored by any means;

*"Memorandum of Understanding"* means the memorandum of understanding or similar arrangement entered into between ACIAR and the government of the Collaborating Country in regard to the Project;

*"Minister"* means the Minister responsible for ACIAR;

*"Moral Rights"* means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship granted to authors under the *Copyright Act 1968* (Cth).

*"month"* means a calendar month;

*"Net Monies Received"* means all monies received by the Commissioned Organisation net of any expenses that are properly paid on an arms-length basis by the Commissioned Organisation in exploiting the Project IP;

*"Parties"* means ACIAR and the Commissioned Organisation;

*"person"* includes a natural person, a body corporate and an unincorporated association;

*"Project"* means the project described in the Project Document and referred to in the Project Agreement Letter;

*"Project Agreement"* means the Project Document, these Standard Conditions for Project Agreements between ACIAR and the Commissioned Organisation and the Project Agreement Letter;

*"Project Agreement Letter"* means the letter forwarded by ACIAR to the Commissioned Organisation offering to enter into an agreement with the Commissioned Organisation to perform the Services on the terms and conditions set out in the Project Agreement;

*"Project Document"* means the document which was provided to ACIAR by the Commissioned Organisation in relation to the Project and which document has been approved by the CEO;

*"Project IP"* means Intellectual Property that is brought into existence by or on behalf of the Commissioned Organisation or the Collaborating Institution as a result of

performing the Services under this Agreement.

“*Services*” means the tasks to be performed by the Commissioned Organisation as set out in the Project Agreement;

“*Specified Personnel*” means professional, technical, support and administrative staff who have been nominated in the Project Document by the Commissioned Organisation to perform all or part of the Services;

“*Withholding Payment*” means the amount withheld by ACIAR from the final payment for the Services pending receipt of a satisfactory Final Report.

“*Works*” means the copyright material licensed to ACIAR under clauses 10.2 and 10.11.

- 1.2 Words imputing a gender include any other gender.
- 1.3 Words in the singular number include the plural and words in the plural number include the singular.
- 1.4 The Schedules (and annexures if any) form part of this Agreement. In the event of a conflict between the terms and conditions contained in the clauses and any part of a Schedule, then the terms and conditions contained in the clauses shall take precedence. In the event of a conflict between any part of a Schedule and any part of an annexure, then the Schedule shall take precedence.

## **2. Services**

- 2.1 The Commissioned Organisation shall perform the Services within the period for performing the Services specified in the Project Agreement Letter and the Project Document and in accordance with the Project Agreement.
- 2.2 When performing the Services, the Commissioned Organisation shall cooperate fully with the Collaborating Institution for the purpose of ensuring timely completion of the Project.
- 2.3 The Parties acknowledge and agree that from time to time there may be events which

delay the Commissioned Organisation's ability to perform its obligations under this Project Agreement which are beyond the reasonable control of the Commissioned Organisation. The Parties agree to deal with such unavoidable delays as follows:

- (a) the Commissioned Organisation shall:
  - (i) notify ACIAR in writing as soon as it becomes aware of any event which it believes will delay its ability to perform its obligations under this Project Agreement and which it believes are beyond its reasonable control; and
  - (ii) specify all the facts and circumstances which have caused the Commissioned Organisation to form the view that there will be a delay, and the delay is unavoidable and is beyond the reasonable control of the Commissioned Organisation;
- (b) Where there is likely to be a delay in performance of the Commissioned Organisation obligations, ACIAR shall not exercise its rights and remedies for default under clause 18.6 of this Project Agreement or under common law:
  - (i) before considering all the facts and circumstances relating to the delay; and
  - (ii) if it accepts that the delay has been caused by an act, omission or event beyond the reasonable control of the Commissioned Organisation, or was not reasonably foreseeable at the time this Project Agreement was executed;
- (c) if ACIAR accepts that the delay was unavoidable, the Parties shall use their best endeavours to resolve the causes of the delay, including but not limited to, adjusting the Project Document and any relevant timeframes;
- (d) if the causes of the delay cannot be resolved within 3 months, ACIAR may terminate this Project Agreement in accordance with clause 18.

### 3. Sub-contracting

- 3.1 The Commissioned Organisation shall not, without the prior written approval of ACIAR, sub-contract the performance of any part of the Services. In giving written approval ACIAR may impose such terms and conditions as it thinks fit. The Commissioned Organisation shall comply with any terms and conditions imposed by ACIAR under this clause and any failure to so comply shall entitle ACIAR to terminate the Project Agreement in accordance with clause 18.
- 3.2 The Commissioned Organisation shall be fully responsible for the performance of the Services notwithstanding that the Commissioned Organisation has sub-contracted the performance of any part of those Services.
- 3.3 The Commissioned Organisation shall provide a copy of any such sub-contract to ACIAR within 7 days of its execution.

### 4. Term of Project Agreement

- 4.1 The Project Agreement shall commence on the date specified in the Project Agreement Letter. Any Services performed by the Commissioned Organisation prior to the date of commencement of the Project Agreement may be treated as Services under the Project Agreement if so specified by ACIAR in a Letter of Intent.
- 4.2 The Project Agreement shall expire on the date the Withholding Payment is made by ACIAR unless terminated earlier in accordance with clause 18.
- 4.3 A Project Agreement may be extended where ACIAR determines that sufficient reason exists to do this and the Parties so agree in writing.

### 5. Payment

- 5.1 The total amount of funds payable by ACIAR to the Commissioned Organisation for the Services is the "financial limitation" specified in the Project Agreement Letter.
- 5.2 In performing the Services the Commissioned Organisation shall not incur expenditure in any period in excess of the funds payable for that period in accordance

with clause 5.4 without the prior written approval of ACIAR.

- 5.3 Unless otherwise agreed by the Parties in writing, ACIAR shall in no way be liable for any additional costs incurred for services performed by the Commissioned Organisation outside the scope of the Services.
- 5.4 Subject to clause 5.1, in consideration of the performance of the Services by the Commissioned Organisation, ACIAR agrees, subject to appropriation being made by the Parliament of the Commonwealth, to pay from the Australian Centre for International Agricultural Research Official Departmental Account to the Commissioned Organisation:
- (a) the funds specified in the Project Document; and
- (b) any other costs or funds as may from time to time be agreed in writing between the Parties.
- 5.5 ACIAR shall pay the Commissioned Organisation six-monthly in advance during the term of the Project Agreement the funds referred to in clause 5.4 in accordance with the budget for the Project set out in the Project Document with the following conditions:
- (a) each payment shall only be made following ACIAR's receipt of:
- (i) a satisfactory written report as detailed in clause 5.10, for the previous six month period; and
- (ii) where required by clause 17.1, a satisfactory Annual Report.
- (b) any funds that are unexpended by the Commissioned Organisation at the expiration of the six month period for which they were allocated shall be carried over for expenditure in the following six month period and the advance made for the following six month period by ACIAR to the Commissioned Organisation shall be reduced accordingly, unless ACIAR approves otherwise in writing.
- 5.6 Notwithstanding clause 5.5, ACIAR shall withhold, from the Commissioned

Organisation Australian component of the final six-monthly payment (that is the amount specified in A1 of the budget in the Project Document) a Withholding Payment as follows:

- (a) the sum of \$10,000 where the Financial Limitation is less than or equal to \$400,000; or
- (b) the sum of \$20,000 where the Financial Limitation is greater than \$400,000;

pending receipt of a satisfactory Final Report as detailed in clause 17.2. The Withholding Payment shall be made to the Commissioned Organisation within thirty (30) days of ACIAR's acceptance of the Final Report.

- 5.7 The Commissioned Organisation may, without reference to ACIAR, transfer funds payable in respect of a particular item in the budget for the Project to another item. The amount transferred may be 10% or \$10,000 of the total of the particular item in the budget from which the funds are being transferred, whichever is the lesser. Transfers involving larger amounts must not be made without ACIAR's prior written approval.
- 5.8 Notwithstanding clause 5.7, the Commissioned Organisation shall not transfer funds payable in respect of a particular item in the budget payable outside Australia to another item in the budget payable outside Australia. However, the Collaborating Institution shall be able to vary its component of the budget in the same way described in the preceding clause 5.7. Transfer of funds between items in excess of the amount referred to in clause 5.7 shall not be made without the prior written approval of ACIAR.
- 5.9 Where the budget for the Project set out in the Project Document provides for the payment of any funds by the Commissioned Organisation to a Collaborating Institution, the Commissioned Organisation shall pay those funds six-monthly in advance within seven days after receipt of payment from ACIAR under clause 5.5 during the term of the Project Agreement. Any funds that are unexpended by the Collaborating Institution at the expiration of the six month period for which they were allocated shall be carried over for expenditure in the following six

month period and the advance made for the following six month period by the Commissioned Organisation to the Collaborating Institution shall be reduced proportionately, unless ACIAR approves otherwise in writing.

- 5.10 No later than 30 days after the expiration of each six month period for which the funds were allocated ("acquittal period"), the Commissioned Organisation shall provide to ACIAR a written report that includes the following details:
- (a) the amount received from ACIAR for that acquittal period and the amounts expended against each item of the budget in the Project Document;
  - (b) the amount, if any, advanced by the Commissioned Organisation to the Collaborating Institution;
  - (c) certification by an officer duly authorised by the Commissioned Organisation that the details set out pursuant to paragraph (a) above accurately reflect expenditure which has been incurred against each item for the purposes of the Project.
- 5.11 The report to be provided pursuant to clause 5.10 must be substantially in the form set out at Schedule 1.
- 5.12 The Commissioned Organisation acknowledges it is totally responsible for payment of and accounting to ACIAR for all expenses incurred in performing the Services.
- 5.13 **Access and Audit**
- (a) Inspection and Audit
    - (i) ACIAR, its appointed agent, the Australian National Audit Office (ANAO) or the Auditor-General may, from time to time, conduct audits or inspections of the Commissioned Organisation's premises or Material relevant to the Project Agreement to ensure this Project Agreement is being properly performed and administered by the Commissioned Organisation.
    - (ii) Audits may consider all elements of the Commissioned Organisation's

operation, including all elements of the Commissioned Organisation's performance;

(b) Access to Premises

The Commissioned Organisation agrees to:

- (i) participate promptly and cooperatively with all reasonable requests made by ACIAR, its appointed agent, the ANAO or the Auditor-General under this clause 5.13; and
  - (ii) provide access to its premises and all Material relevant to this Project Agreement as may be reasonably required by ACIAR, its appointed agent, the ANAO, or the Auditor-General.
- (c) The Commissioned Organisation may nominate a person to be present during any audit or inspection carried out under this clause 5.13.
- (d) The Commissioned Organisation must ensure that any sub-contract entered into for the purpose of this Project Agreement contains an equivalent clause to this clause 5.13 ensuring the same level of support and cooperation and granting the same rights of access to premises and documentation to ACIAR, its appointed agent, the ANAO and the Auditor-General.
- (e) Each party must bear its own costs arising out of or in connection with any audit or inspection conducted under this clause 5.13.
- (f) This clause 5.13 shall survive for seven (7) years after the expiration or termination of this Project Agreement.

**5.14 Goods and Services Tax**

- (a) Amounts that ACIAR is required to pay under this Project Agreement are calculated on a GST-exclusive basis. Where the Commissioned Organisation becomes liable to remit any amount of GST in respect of any Supply it makes to ACIAR in accordance with this Project Agreement ("GST liability"), the amount otherwise payable by ACIAR

under this Project Agreement will be increased by the amount of the GST liability, or any lesser amount required by law. The increased amount will be payable by ACIAR in the same manner and at the same time as other amounts payable under this Project Agreement.

- (b) Where required, the Commissioned Organisation shall provide a tax invoice that may enable ACIAR, if permitted by the GST legislation, to claim a credit or refund, a notional credit or refund, of GST.
- (c) Under this Project Agreement, "GST Legislation" means any goods and services tax implemented in Australia pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time and "GST" means the goods and services tax payable pursuant to such GST Legislation. "Supplies" and other terms used in subclause 5.14(a) which have meaning under the GST Legislation have the meanings implemented pursuant to the GST Legislation.

**6. Negation of employment, partnership and agency**

- 6.1 The Commissioned Organisation shall not by virtue of this Project Agreement be or for any purpose be deemed to be an officer, employee, partner or agent of the Commonwealth or ACIAR, or as having power or authority to bind or represent the Commonwealth or ACIAR, and shall not represent itself, and shall ensure that its officers, employees, agents and sub-contractors do not represent themselves, as such.

**7. Personnel**

- 7.1 The Commissioned Organisation shall provide adequate and competent personnel to perform the Services and shall ensure that they undertake the Services in accordance with the terms and conditions of the Project Agreement.
- 7.2 The Commissioned Organisation shall conduct itself, and must use its best endeavours to ensure that its employees, agents and sub-contractors including Specified Personnel conduct themselves, in

a manner consistent with the *Public Service Act 1999*, and in accordance with the *APS Values* and the *APS Code of Conduct*.

- 7.3 Subject to clause 7.7 the Commissioned Organisation shall ensure that the Specified Personnel undertake work in respect of the Services in accordance with the terms of this Agreement. Where Specified Personnel are unable to undertake work in respect of the Services, the Commissioned Organisation shall notify ACIAR immediately. The Commissioned Organisation shall, if so requested by ACIAR, provide replacement personnel acceptable to ACIAR at no additional charge and at the earliest opportunity.
- 7.4 Personnel of the Commissioned Organisation (including Specified Personnel) who are undertaking Services in the Collaborating Country and who are not citizens of that country shall in no way become involved in the political affairs of the Collaborating Country. If, in the opinion of ACIAR such personnel have become involved in the political affairs of the Collaborating Country, ACIAR may require the Commissioned Organisation, at its own cost, to promptly remove the personnel involved from work in respect of the Services and for their replacement with personnel of equal competence approved in writing by ACIAR prior to their appointment.
- 7.5 ACIAR may, on reasonable grounds, give notice requiring the Commissioned Organisation to remove personnel (including Specified Personnel) from work in respect of the Services. The Commissioned Organisation shall at its own cost, promptly arrange for the removal of such personnel from work in respect of the Services and their replacement with personnel acceptable to ACIAR. If the Commissioned Organisation is unable to provide acceptable replacement personnel under this clause 7.5, clause 7.4 or clause 7.3, ACIAR may terminate this Agreement in accordance with the provisions of clause 18.
- 7.6 The Commissioned Organisation is responsible for arranging travel for and payment of salaries and allowances to its personnel including Specified Personnel from the budget provided for in the Project Document.

- 7.7 The Commissioned Organisation shall obtain the prior written approval of ACIAR to the appointment of the Specified Personnel or any specialist or scientist to perform the Services, which approval shall not be unreasonably withheld. If ACIAR requests the Commissioned Organisation to provide any of the following information, the Commissioned Organisation shall forthwith provide that information to ACIAR including:
- (a) the full names and date of birth of the proposed person(s);
  - (b) a statement which describes the position to be held, the position selection criteria and details of the duration of the proposed appointment; and
  - (c) a copy of the *curriculum vitae* of each of the proposed persons which details relevant employment experience and educational qualifications;
  - (d) any other information relating to the proposed appointment necessary for or directly related to the Services.

## 8. Travel

- 8.1 The Commissioned Organisation shall provide prior written notice to ACIAR in accordance with the form at Schedule 2 detailing all visits scheduled to a Collaborating Country by its personnel including Specified Personnel, and sub-contractors. Details of any dependants accompanying the personnel shall also be provided in the notice.
- 8.2 In the event it is advised that officials from the Collaborating Country involved in the Project intend to visit Australia, the Commissioned Organisation shall use its best endeavours to ensure that as much notice as possible is provided to the Australian Embassy, the Australian High Commission or the Australian Consulate, as appropriate, in the Collaborating Country so that it may commence visa and other formalities.
- 8.3 The Commissioned Organisation shall provide promptly to ACIAR a copy of any such notices to the Australian Embassy, the Australian High Commission or the Australian Consulate.

8.4 At the completion of the travel referred to in clause 8.1, the Commissioned Organisation shall provide to ACIAR within thirty days of travel, a trip report that shall include the travel itinerary and information relevant to the monitoring of the Project.

8.5 From time to time Australians are advised for security and safety reasons not to travel to certain countries or areas within countries. The Commissioned Organisation is responsible for the security and safety of any personnel it engages for the Project and should either make its own enquiries or check the Department of Foreign Affairs and Trade (DFAT) Travel Advices before Project personnel travel. Neither ACIAR nor its officers, employees or sub-contractors accept any responsibility or liability for any injury, loss, damage or expense incurred by personnel of the Commissioned Organisation and/or its sub-contractors, in any circumstances and in particular, who travel in areas where security or safety risks exist or who travel against the advice of DFAT in these matters.

## 9. Project equipment and supplies

9.1 The Commissioned Organisation shall arrange, from the funds payable by ACIAR to the Commissioned Organisation for the Services, the procurement and delivery of all equipment and supplies that are specified in the Project Document.

9.2 The Commissioned Organisation shall exercise administrative control of and maintain and keep equipment and supplies referred to in clause 9.1 in good repair.

9.3 The Parties agree that the ownership of equipment and supplies that are procured for the Project for the performance of the Services in Australia shall vest in the Commissioned Organisation from the date of purchase.

9.4 The Parties agree that the ownership of equipment and supplies procured by the Commissioned Organisation for the purposes of the Project in the Collaborating Country shall vest in the government of the Collaborating Country at the completion of the project.

9.5 Unless otherwise agreed in writing, the Commissioned Organisation shall effect with reputable and substantial underwriters

and maintain insurance against all loss or damage to the Project equipment referred to in clause 9.1 until the Services are completed.

9.6 Notwithstanding the above, the Commissioned Organisation may undertake self insurance arrangements where ACIAR agrees in writing to such arrangements.

## 10. Intellectual Property

10.1 ACIAR and the Commissioned Organisation shall have regard to the provisions of and fulfil all relevant obligations under international arrangements to which Australia is a signatory relating to intellectual property and biological resources including but not limited to:

- the International Treaty on Plant Genetic Resources;
- the FAO trustee arrangements with international agricultural research centres;
- the Convention on Biological Diversity;
- the Agreement on Trade Related Aspects of Intellectual Property rights;
- and the provisions of the International Union for the Protection of New Varieties of Plant.

Transfer and exchange of germplasm between the Commissioned Organisation and the Collaborating Institution shall be subject to Materials Transfer and Acquisition Agreements and in accordance with the Convention on Biological Diversity. This clause 10.1 shall be interpreted such that the relevant obligation is that which was in effect at the time of the action in question.

10.2 Unless otherwise expressly agreed in writing by the Parties, this Agreement does not affect the ownership of Background IP. The Commissioned Organisation grants to ACIAR or shall secure the grant of a permanent, irrevocable, royalty free, world wide, non-exclusive licence (including a right to sublicense its rights to third parties) to use, reproduce, modify, publish, adapt and communicate to the public Background IP in conjunction with Project IP. Where ACIAR proposes to sub-licence its rights

- under this clause 10.2, ACIAR will ensure that any sub-licence will be on the same or substantially the same terms and conditions as the licence ACIAR has from the Commissioned Organisation.
- 10.3 The Commissioned Organisation warrants that to its actual knowledge and belief, following all diligent and reasonable enquiries, at the date of this Agreement or the date on which Background IP is first used in the Project (whichever is applicable to the circumstances):
- (a) it is the owner of, or is otherwise entitled to use, the Background IP;
  - (b) it is entitled to grant the licences under clauses 10.2 and 10.11; and
  - (c) the exercise by ACIAR of its rights under clauses 10.2 and 10.11 shall not infringe any Intellectual Property rights of any third party.
- 10.4 The Commissioned Organisation shall indemnify, and keep indemnified ACIAR, its officers, employees and agents, from and against any and all liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor/client basis), compensation or expense incurred by them arising out of any action, claim, suit, dispute, or proceeding brought by any third party in connection with the breach of the warranties set out in clause 10.3.
- 10.5 For the purposes of this clause 10, “infringe” and “infringement” means unauthorised acts which would, but for the operation of section 183 of the Copyright Act 1968, constitute an infringement.
- 10.6 The warranties and indemnities contained in this clause 10 shall survive the expiration or termination of the Services.
- 10.7 The Commissioned Organisation shall notify ACIAR of the details of any Intellectual Property created as a result of the performance of the Services. Any notification shall be treated as Confidential Information by ACIAR.
- 10.8 The Parties agree that Project IP shall:
- (a) in Australia, vest in the Commissioned Organisation; and
  - (b) in the Collaborating Country, vest in the Collaborating Institution or an authority designated by the government of the Collaborating Country.
- 10.9 The Commissioned Organisation and the Collaborating Institution shall, prior to the commencement of the Services, enter into an agreement covering, without limitation, the following:
- (a) the ownership of Project IP in countries other than Australia and the Collaborating Country;
  - (b) the terms of any licence of Project IP between the Parties, including securing such rights as are necessary for the Commissioned Organisation to grant the licence to ACIAR under clause 10.11;
  - (c) the terms of any licence of Background IP, including securing such rights as are necessary for the Commissioned Organisation to grant the licence to ACIAR under clause 10.2; and
  - (d) the allocation of costs relating to the application for and maintenance of the Intellectual Property rights between the Commissioned Organisation and the Collaborating Institution.
- 10.10 The Commissioned Organisation agrees that the arrangements referred to in clause 10.9 shall be made taking into account the following factors:
- (a) the intellectual contributions of the Commissioned Organisation and the Collaborating Institution;
  - (b) the financial contributions of the Commissioned Organisation and the Collaborating Institution;
  - (c) the contribution of pre-existing Intellectual Property, materials, research effort and preparatory work of the Commissioned Organisation and the Collaborating Institution;
  - (d) the facilities provided by the Commissioned Organisation and the Collaborating Institution; and

(e) such other relevant considerations as the Commissioned Organisation and the Collaborating Institution may mutually determine.

10.11 Where ownership of the Project IP vests in the Commissioned Organisation, the Commissioned Organisation grants to ACIAR a permanent, irrevocable, royalty free, world wide, non-exclusive licence (including a right to sublicense its rights to third parties) to use, reproduce, modify, publish, adapt and communicate to the public that IP. Where ACIAR proposes to sublicense its rights under this clause 10.11, ACIAR will ensure that any sublicense will be on the same or substantially the same terms and conditions as the licence ACIAR has from the Commissioned Organisation.

10.12 The Commissioned Organisation agrees that it shall not sub-licence or assign Project IP, without first obtaining the prior written consent of ACIAR, and in giving any such consent ACIAR may impose any conditions as it sees fit.

10.13 Where ownership of Project IP vests in the Commissioned Organisation, the Commissioned Organisation agrees that it shall pay to ACIAR within 30 days of the expiration of 30 June and 31 December 25%, or such percentage as is otherwise agreed, of Net Monies Received by the Commissioned Organisation in the previous six months by way of licence fees, sale price or royalties in relation to such Intellectual Property, and this obligation of the Commissioned Organisation shall continue for a period of twenty (20) years from the commencement of the Project Agreement.

10.14 The Commissioned Organisation shall maintain proper books of account which evidence receipt of any licence fees, sale price or royalties payable to it in respect of Project IP and any expenses properly paid in relation thereto and ACIAR shall be granted access to those records at any time upon request. This obligation shall continue for a period of twenty (20) years from the commencement of the Project Agreement.

10.15 Where the Commissioned Organisation intends to publish any article or paper of an academic, scientific or technical nature in regard to the Services or the Project, or to place any advertisement requesting applications from persons to perform any

part of the Services, any such publication or advertisement must acknowledge the funding and other support provided by ACIAR in regard to the Project.

10.16 The Commissioned Organisation may report details of the Project in the non-specialist media provided however:

- (a) it acknowledges the funding and support provided to the Project by ACIAR; and
- (b) in the event that the subject of the proposed media report is potentially controversial the Commissioned Organisation shall, prior to publication, request the written consent of ACIAR to the publication of any such report, and ACIAR may in its discretion consent or refuse consent to any such publication.

## 11. Moral Rights

11.1 ACIAR and the Commissioned Organisation:

- (a) acknowledge the collaborative nature of the Project and the mutual benefit derived by the Parties from the Project;
- (b) acknowledge the existence of Moral Rights conferred on the authors of any Works which are created in carrying out the Project or which exist as part of the Background Intellectual Property;
- (c) will immediately notify the other Party in writing:
  - (i) upon becoming aware of a possible infringement of Moral Rights of an author of any Works referred to in subclause (b); or
  - (ii) upon becoming aware of a claim for infringement of Moral Rights being made against a Party by an author of any Works referred to in subclause (b);
- (d) will, following notice under subclause (c), meet to negotiate in good faith (involving, where possible, the author of the relevant Works) the appropriate steps to resolve the matter to the satisfaction of the Parties and the author.

11.2 This clause shall survive the expiration or termination of the Project Agreement.

## 12. Disclosure of information

12.1 The Commissioned Organisation shall not, without prior written approval of ACIAR, disclose to any person other than ACIAR, any Confidential Information of ACIAR. In giving written approval, ACIAR may impose such terms and conditions as it thinks fit.

12.2 ACIAR shall not, without prior written approval of the Commissioned Organisation, disclose to any person other than the Commissioned Organisation, any Confidential Information of the Commissioned Organisation. In giving written approval, the Commissioned Organisation may impose such terms and conditions as it thinks fit.

12.3 Either Party may at any time require the other Party to give and arrange for its employees, officers, agents and sub-contractors to give written undertakings relating to the non-disclosure of its Confidential Information. The other Party shall promptly arrange for all such undertakings to be given.

12.4 The obligations under this clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.

12.5 This clause shall survive the expiration or termination of the Project Agreement.

## 13. Protection of personal information

13.1 This clause applies only where the Commissioned Organisation deals with personal information when, and for the purpose of, providing the Services under the Project Agreement.

13.2 The Commissioned Organisation acknowledges that it is a “contracted service provider” within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provisions of the Services under the Project Agreement:

(a) to use or disclose personal information obtained during the course of providing the Services under the Project

Agreement, only for the purposes of the Project Agreement;

(b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

(c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

(d) to notify individuals whose personal information the Commissioned Organisation holds, that complaints about acts or practices of the Commissioned Organisation may be investigated by the Privacy Commissioner who has power to award compensation against the Commissioned Organisation in appropriate circumstances;

(e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) or an Approved Privacy Code (APC) where that section, NPP or APC is applicable to the Commissioned Organisation unless the act or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Project Agreement.

(f) to disclose in writing to any person who asks, the content of the provisions of the Project Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to the Project Agreement;

(g) to immediately notify ACIAR if the Commissioned Organisation becomes aware of a breach or possible breach of any of the obligations in, or referred to in, this clause 13, whether by the Commissioned Organisation or by any sub-contractor;

(h) to comply with any directions by ACIAR with respect to privacy; and

(i) to ensure that any employee of the Commissioned Organisation who is required to deal with personal information for the purposes of the

Project Agreement is made aware of the obligations of the Commissioned Organisation set out in this clause 13.

- 13.3. The Commissioned Organisation agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under the Project Agreement contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Commissioned Organisation has under this clause 13, including the requirement in relation to sub-contracts.
- 13.4 The Commissioned Organisation agrees to indemnify ACIAR in respect of any loss, liability or expense suffered or incurred by ACIAR arising from a breach of any of the obligations of the Commissioned Organisation under this clause 13, or a sub-contractor under the sub-contract provisions referred to in clause 13.3.
- 13.5 In this clause 13, the terms “agency”, “approved privacy code” (APC), “health information” and “Information Privacy Principles” (IPPs), “National Privacy Principles” (NPPs), “personal information” and “sensitive information” have the same meaning as they have in section 6 of the Privacy Act.
- 13.6 The provisions of this clause 13 survive termination or expiration of the Project Agreement.

## **14. Coordinator**

- 14.1 The person designated in the Project Document as the Project Leader, or any person agreed in writing by the Parties to replace that person, shall be responsible for coordinating all the Services to be provided by the Commissioned Organisation and this person shall liaise with ACIAR regularly in regard to the progress of the Project.

## **15. Project committee**

- 15.1 ACIAR may establish a Project Committee that shall include a representative of each of the Parties and, where appropriate, Collaborating Institution.
- 15.2 The Project Committee shall advise the Parties in relation to Project matters, and may call for specialised advice on any matter related to the Project.

## **16. Review and evaluation**

- 16.1 ACIAR may at any time undertake to review and evaluate the Project.
- 16.2 ACIAR may within three years of the completion of the Project undertake a review to assess the adoption and uptake of the Project results.
- 16.3 To facilitate any review pursuant to clauses 16.1 and 16.2 the Commissioned Organisation shall provide any financial, technical or such other information as is required by ACIAR and shall at all reasonable times permit persons authorised by ACIAR to have access to the premises upon which the Services are being or have been performed.

## **17. Report**

- 17.1 The Commissioned Organisation shall provide ACIAR with Annual Reports by 31 May each year until the final year. If the project has been active for five months or more on 31 May, an Annual Report is required to be submitted. These reports must be prepared in accordance with the Guidelines that are current at the time of preparation of the report. The Guidelines are available on the ACIAR website ([www.aciar.gov.au](http://www.aciar.gov.au)). The Annual Report for the final year (or part year) of the Project should be subsumed into the Final Report.
- 17.2 Upon the completion of the Project in accordance with the Project Agreement, the Commissioned Organisation shall provide ACIAR with a Final Report that must be prepared in accordance with the Guidelines that are current at the time of preparation of the Final Report. The Guidelines are available on the ACIAR website ([www.aciar.gov.au](http://www.aciar.gov.au)). The Final Report is due within 60 days of the completion of the Project.

## **18. Termination**

- 18.1 In the event of acts of God, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy or terrorism, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, industrial dispute, transportation embargo or failure or delay in transportation that render the performance of the Services impracticable or impossible

either Party may, upon providing a minimum of three (3) calendar months written notice to the other, terminate the Project Agreement.

18.2 In addition to clause 18.1, ACIAR may at any time by written notice, terminate the Project Agreement, or reduce it in scope. If the Project Agreement is terminated under clause 18.1 or 18.2, ACIAR shall be liable only for:

- (a) payments under the payment provisions of the Project Agreement for Services rendered before the effective date of termination; and
- (b) subject to clauses 18.3, 18.4 and 18.5 any reasonable costs incurred by the Commissioned Organisation and directly attributable to the termination or partial termination of the Project Agreement.

18.3 Upon receipt of a notice of termination the Commissioned Organisation shall:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and protect the Material; and
- (c) continue work on any part of the Services not affected by the notice.

18.4 In the event of a reduction in scope, ACIAR's liability to provide funds under the Project Agreement shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

18.5 ACIAR shall not be liable to pay compensation in an amount that would, in addition to any amounts paid or due, or becoming due, to the Commissioned Organisation under the Project Agreement, together exceed the funds set out in the Project Agreement. The Commissioned Organisation shall not be entitled to compensation for loss of prospective profits.

18.6 If the Commissioned Organisation fails to fulfil or is in breach of any of its material obligations under the Project Agreement and does not rectify the omission or breach after receiving fourteen (14) days notice in writing from ACIAR to do so, ACIAR may

terminate the Project Agreement by giving written notice to the Commissioned Organisation of the termination which is effective immediately.

## 19. Insurance

19.1 The Commissioned Organisation shall, for so long as any obligations remain in connection with the Project Agreement, effect and maintain with reputable and substantial underwriters the following insurance:

- (a) workers' compensation for an amount required by any relevant legislation;
- (b) in relation to Services performed in Australia, public liability insurance for an amount of not less than \$10,000,000;
- (c) in relation to work performed outside Australia, adequate insurance against claims by third parties resulting from negligent acts performed by the Commissioned Organisation in carrying out the Services; and
- (d) adequate travel and medical insurance for any domestic and international travel undertaken on behalf of the Project by its personnel including Specified Personnel.

19.2 Within 14 days of a written request from ACIAR, the Commissioned Organisation must provide ACIAR with a copy of any insurance policy (or related Certificates of Currency) effected in accordance with this requirement and of all receipts for payments of premiums.

19.3 The requirement of subclause 19.1(c) does not apply in relation to work performed in a particular country if ACIAR agrees in writing that such insurance is not available in relation to the performance of the Services in that country.

19.4 Notwithstanding the above, the Commissioned Organisation may undertake self insurance arrangements where ACIAR agrees in writing to such arrangements.

19.5 ACIAR undertakes no responsibility in respect of loss or damage to Project equipment or supplies or in respect of any life, accident, travel or any other insurance

coverage that may be necessary or desirable for the personnel or sub-contractors of the Commissioned Organisation or for the dependants of any such persons as may travel for the purposes of the Services.

## **20. Indemnity**

- 20.1 The Commissioned Organisation shall indemnify ACIAR, its officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person where such loss or liability was caused by any wilful misconduct or unlawful or negligent act or omission of the Commissioned Organisation, its officers, employees, agents or sub-contractors in connection with the Services.
- 20.2 The Commissioned Organisation's liability to indemnify ACIAR under clause 20.1 shall be reduced proportionally to the extent that any unlawful or negligent act or omission of ACIAR or its officers, employees, agents or sub-licensees contributed to the loss or liability.
- 20.3 The indemnity referred to in clause 20.1 shall survive the expiration or termination of the Services.

## **21. Waiver**

- 21.1 A waiver by either Party in respect of any breach of a condition or provision of the Project Agreement shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either Party to enforce any of the provisions of this Project Agreement at any time shall in no way be interpreted as a waiver of such provisions.

## **22. Applicable law**

- 22.1 The Project Agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.
- 22.2 The Commissioned Organisation shall ensure that in carrying out the Services it

complies with the laws from time to time in force in the Australian State or Territory or in the country in which the Services, or any part thereof, are to be carried out.

## **23. Authority**

- 23.1 Any and all rights, powers, authorities and discretions expressed in the Project Agreement or in the specifications to be conferred upon or vested in ACIAR may be exercised by any person designated for that purpose by the Minister.

## **24. Cooperation**

- 24.1 ACIAR shall provide necessary representation with appropriate officials of the Government of the Collaborating Country to assist in securing cooperation reasonably required for the successful completion of the Project.

## **25. Variation to the project agreement**

- 25.1 Variations to the Project Agreement shall be made by means of a Letter of Variation signed for and on behalf of the Parties to the Project Agreement.

## **26. Dispute resolution**

- 26.1 Subject to clause 26.4, before resorting to external dispute resolution mechanisms, the Parties shall attempt to settle by negotiation any dispute in relation to the Project Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.
- 26.2 If a dispute is not settled by the Parties within 10 working days of one Party first sending to the other Party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the Parties.
- 26.3 Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under the Project Agreement.
- 26.4 A Party may commence court proceedings relating to any dispute arising from this

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Project Agreement at any time where that Party seeks urgent interlocutory relief.

26.5 This clause shall survive the expiration or termination of the Project Agreement.

# Schedule 1

## ACIAR Acquittal

Commissioned Organisation: \_\_\_\_\_

Project Number: \_\_\_\_\_

Period - half year beginning: \_\_\_\_\_

Set out below is a statement of receipts and expenditure:

### A Receipts:

Carried Forward (unacquitted from previous period) \_\_\_\_\_

Funds brought forward from previous period (uncommitted carryover) \_\_\_\_\_

Funds brought forward from previous period (committed carryover) \_\_\_\_\_

Total advance received for this period \_\_\_\_\_

**TOTAL**

**0.00**

### B Less Expenditure:

Commissioned organisation \_\_\_\_\_

Australian collaborator (1) \_\_\_\_\_

Australian collaborator (2) \_\_\_\_\_

Country (1) \_\_\_\_\_

Country (2) \_\_\_\_\_

Country (3) \_\_\_\_\_

**TOTAL**

**0.00**

**C** Progress variation (carryover) carried over: \_\_\_\_\_

0.00

Committed (details attached) \_\_\_\_\_

Uncommitted \_\_\_\_\_

0.00

### OR if the project is overspent

Project is overspent by: \_\_\_\_\_

(Progress variation (carryover) to be carried over to next period) \_\_\_\_\_

### Comments

I certify that the expenditure shown above has taken place and is correct.

Prepared by: \_\_\_\_\_

(Name)

Signed\* and dated: \_\_\_\_\_

(Authorised Officer)

(Date)

*\*If emailing please print name*

Post to: Relevant program area in ACIAR, GPO Box 1571, Canberra ACT 2601

*(continued over page)*

Acquittals due: at the end of each six-month payment period

*Please provide information explaining any variations of expenditure from budget allocations.*

		<b>Committed this period</b>	<b>Committed next period</b>
<b>Example</b>	Travel	\$10,000	5,000.00

		<b>Committed this period</b>	<b>Committed next period</b>
	Personnel		
	Supplies and Services		
	Travel		
	Capital		
	Infrastructure		
	Other		
	<b>Total</b>	<b>\$0</b>	<b>0.00</b>

**Comments:**

## Schedule 2

### Travel Advice Note

#### AUSTRALIAN CENTRE FOR INTERNATIONAL AGRICULTURAL RESEARCH

This form is used to provide details to the ACIAR Country Office of a visit by ACIAR funded Project personnel. The completion of this Travel Advice is essential to the maintenance of harmonious relations between partner countries, ACIAR and commissioned organisations. Email completed form at least **six weeks** ahead of travel to the relevant Research Program Area.

All trips should be registered on [www.smarttraveller.gov.au](http://www.smarttraveller.gov.au).

**Traveller's Organisation:**

**Person/s Travelling:**

*(list names if more than one person with the same itinerary)*

I have registered this trip with Smarttraveller:

Yes [  ] No [  ]

**Mobile Phone No/s:**

**Proposed Travel:**

Country	Region/ City/Town	Flights	Date from	Date to	Hotel	Phone/Fax <i>(include country codes)</i>

**Reasons for Travel:**

<b>Program:</b>		<b>Project No.&amp; Title:</b>	
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**Purpose of travel:** *(include names of institutions and personnel to be visited)*

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Australian Centre for International Agricultural Research GPO Box 1571 Canberra City ACT 2601

Ph 02 6217 0500 Fax 02 6217 0501