



Australian Government

**Australian Centre for
International Agricultural Research**

**Research Agreement
between the
Commonwealth of Australia
represented by the
Australian Centre for International Agricultural Research
and the
Commissioned Organisation**

Reviews <i>Final Review</i> <i>Mid-Term Review</i>	To be conducted 8-12 months before completion of the Project. [To be held within the first 12-36 months of the Term or N/A]. [Note to Drafters: Mid-Term Reviews not required for SRAs]
Special Conditions	[special conditions or N/A] [Note to Drafters: if ACIAR agrees to amend one of the terms and conditions, we would note that in this Special Conditions in the form of "clause X is deleted and replaced with the following....." so that all agreements contain the same standard terms and conditions. All Special Conditions needs to be approved by Procurement before finalisation.]
CGIAR IA Principles Apply?	Yes <input type="checkbox"/> No <input type="checkbox"/> NOTE: If CGIAR IA Principles apply, payment arrangements will be in accordance with clause 9.2 and intellectual property arrangements will be in accordance with clause 13.513.6.
Complex Activity <i>Collaborating Country</i> <i>Collaborating Institution</i>	Yes <input type="checkbox"/> No <input type="checkbox"/> NOTE: If this Agreement relates to a Complex Activity, the Additional Terms will form part of this Agreement in accordance with clause 2. [Note to Drafters: Projects are a Complex Activity, SRAs are not. The Additional Terms often relates when there are Collaborating Institutions involved.] [insert or N/A] [insert or N/A]

Table of Contents

1.	Interpretation	1
2.	Additional Terms	4
3.	Country Specific Clauses	4
4.	Term	4
5.	Services	4
6.	Project Leader	5
7.	Delays	5
8.	Subcontracting	5
9.	Payment	5
10.	Personnel and Personal Property	6
11.	Project Supplies	6
12.	Travel	7
13.	IP Rights and moral rights	7
14.	Confidentiality of Information	9
15.	Reports, Records, Review and Evaluation	10
16.	Termination and Reduction	12
17.	Insurance	13
18.	Indemnity	14
19.	Compliance with laws and policies	14
20.	Taxes & Invoices	18
21.	Miscellaneous	18
	ANNEXURE A – PROJECT DOCUMENT	A-1
	ANNEXURE B – ADDITIONAL TERMS	B-1
A1.	Interpretation and further definitions	B-2
A2.	Application	B-2
A3.	Collaborating Countries and Collaborating Institutions	B-2
A4.	Project Committee	B-3
A5.	Payments	B-3
A6.	Dispute Resolution	B-3
A7.	Personnel	B-3
A8.	Audit and access	B-4
A9.	Intellectual property	B-5

Research Agreement between ACIAR and the Commissioned Organisation

BACKGROUND

ACIAR has requested that certain services be carried out pursuant to the Project, and the Commissioned Organisation has agreed to provide the Services on the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

1.1 **Definitions.** In this Agreement, unless a contrary intention appears, capitalised terms have the meaning provided in the Agreement Details and:

- | | |
|---------------------------------|--|
| Acquittal Report | has the meaning provided in clause 9.4. |
| Additional Terms | means the additional terms that are included as Annexure B, if the Agreement Details specifies this Agreement as relating to a Complex Activity. |
| Adverse Event | occurs, in respect of a Party, if <ol style="list-style-type: none">the Party is the subject of winding up or liquidation proceedings, whether voluntary or compulsory, otherwise than for the purpose of and followed by, a reconstruction, amalgamation or reorganisationif the Party has become insolvent, bankrupt or is subject to the appointment of a receiver, manager or an inspector to investigate its affairs, enters into any arrangement or composition with its creditors generally, or is unable to pay its debts as and when they become due, orif execution is levied upon all or any part of the assets of the Defaulting Party, provided that no breach occurs if the execution is contested in good faith or if within 5 Business Days after it is levied payment is made in full to the judgment creditor in question of all amounts owing to the judgment creditor. |
| Agreement | means this agreement, and includes the Background, the Agreement Details and the documents set out in clause 1.3 (as applicable). |
| Agreement Details | means the details set out in the table at the front of this Agreement. |
| Approved Subcontractor | means a third party to be engaged by the Commissioned Organisation for provision of sub-contracted Services that has been approved in writing by ACIAR, but does not include a Collaborating Institution. |
| Background IP | means IP Rights that are in existence prior to the date of this Agreement, or are brought into existence independently of this Agreement, and which are used in, or is otherwise required for the use of, the Project IP. |
| Budget | means the budget set out in Annexure B of the Project Document. |
| Commonwealth | means the Commonwealth of Australia. |
| Confidential Information | means information of a Party (Disclosing Party) that is by its nature confidential and: <ol style="list-style-type: none">is designated by the Disclosing Party as confidential, or |

(b) that another Party (**Receiving 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 Agreement, or

(ii) any other unlawful means

(d) is in the possession of a Receiving Party without restriction in relation to disclosure before receipt from the Disclosing Party, or

(e) has been independently developed or acquired by the Receiving Party,

and the burden of establishing any exceptions referred to in subclauses (c) to (e) above is on the Receiving Party.

Control

means, in relation to a body corporate, the ability of any person directly or indirectly to exercise effective control over the body corporate (including the ability to determine the outcome of decisions about the financial and operating and other policies of that body corporate) by virtue of the holding of voting shares, units or other interests in that body corporate or by any other means.

Deliverables

means the deliverables of the Project as specified in the Project Document.

Due Date

means the date that a Deliverable is due for submission to ACIAR, as specified in the Project Document.

Exploit

means, in respect of IP Rights:

(a) 'exploit' as defined in the *Patents Act 1990* (Cth), and

(b) to the extent that any IP Rights relates to works subject to copyright, to reproduce, modify, publish, adapt and communicate the works to the public.

Financial Year

means the period from 1 July to 30 June of the following year.

IP Rights

means statutory and other proprietary rights in respect of patents, designs, plant breeders' rights, trade marks, circuit layouts, copyright, confidential information, know-how and all other intellectual property rights as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation of July 1967*.

International Arrangements

means arrangements that establish the operating framework for the Project including such matters as: intergovernmental arrangements, sub-contracts with Approved Sub-Contractors, contracts between the Commissioned Organisation and any Collaborating Institutions, the arrangements covering matters such as customs assistance, in-country security, indemnities and intellectual property rights.

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).

Parties

means ACIAR and the Commissioned Organisation (and their respective successors and permitted assigns), and **Party** means either one of them.

Payment Period

means, unless otherwise specified in the Project Document, the periods:

1 January to 30 June, or

1 July to 31 December,

except that the period will be reduced in length relevantly if the Commencement Date or Completion Date falls within the period.

Payments	means the payments ACIAR will make available to the Commissioned Organisation in consideration of receipt of the Services as specified in the Budget, to be made available by ACIAR in accordance with the terms of this Agreement, and Payment means any one of those payments.
Personnel	means, in respect of a party, the: employees, officers, agents, students and sub-contractors of that party and, in respect of the Commissioned Organisation, includes the Key Personnel.
Primary Terms	has the meaning provided in clause 1.3.
Project Document	means the document set out in Annexure A to this Agreement, as amended from time to time in accordance with this Agreement.
Project IP	means IP Rights created by or on behalf of the Commissioned Organisation as a result of performing the Services or otherwise in the course of expending the Payments.
Services	means the services (including Deliverables) that the Commissioned Organisation is required to provide under this Agreement.

1.2 **Interpretation.** Unless a contrary intention appears, in this Agreement:

- (a) words imputing a gender include any other gender
- (b) a business day means a day which is not a Saturday or Sunday or a public holiday in the place where a notice is to be received or a particular activity is to be performed, and if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day
- (c) the singular includes the plural and vice versa
- (d) another grammatical form of a defined word or expression has a corresponding meaning
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- (f) a reference to a document includes the document as novated, altered, supplemented or replaced from time to time
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity, and includes and includes the person's permitted successors, substitutes (including persons taking by novation) and assigns
- (h) 'including', 'includes', 'such as' and 'in particular' do not limit the generality of the words which precede them or to which they refer
- (i) 'month' means a calendar month and 'year' means a calendar year
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally
- (l) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement
- (m) paragraph headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer
- (n) all references to dollars are to Australian dollars, unless otherwise specified, and

- (o) a reference to a clause is a reference to a clause of these Primary Terms, and a reference to a Schedule, or Annexure is a reference to a schedule or annexure of this Agreement.

1.3 **Order of Priority.** In the event and to the extent of any inconsistency, the components of this Agreement will be interpreted in the following order of priority:

- (a) the Special Conditions (if any)
- (b) where applicable under clause 2, the Additional Terms
- (c) these clauses 1 to 21 (**Primary Terms**), and
- (d) the Project Document.

2. Additional Terms

Where the Agreement Details identify this Agreement as a Complex Activity, this Agreement includes the Additional Terms. Where the Agreement Details do not identify this Agreement as a Complex Activity, the Additional Terms do not form part of this Agreement.

3. Country Specific Clauses

The Parties acknowledge and agree that:

- (a) if the Commissioned Organisation is identified as an 'Australian Entity' in the Agreement Details, clauses 15.6, 19.9, and 19.20 will apply to this Agreement and clause 19.10 will have no effect, and
- (b) if the Commissioned Organisation is not identified as an 'Australian Entity' in the Agreement Details, clause 19.10 will apply to this Agreement and clauses 15.6, 19.9, and 19.20 will have no effect.

4. Term

4.1 The term of this Agreement will commence on the Commencement Date and, subject to extension under clause **Error! Reference source not found.** or earlier termination under clause 16, will end on the Completion Date (**Term**).

4.2 The Term may be extended:

- (a) by ACIAR exercising any available Extension Option(s) by notice in writing prior to expiry of the Term, or
- (b) upon the mutual agreement of the Parties, including in circumstances where ACIAR has granted an extension of time under clause 7.2

5. Services

The Commissioned Organisation will perform the Services during the Term:

- (a) in a proper and professional manner exercising all appropriate care, diligence and attention, and in accordance with ethical scientific practice
- (b) in furtherance of the objectives of the Project
- (c) so as to provide any Deliverables and reports by the Due Dates and otherwise as required under this Agreement (including as specified in the Project Document)
- (d) without limitation to clause 10, using Personnel of the requisite scientific calibre
- (e) at the times and in the manner specified in this Agreement (including as specified in the Budget and the Project Document more generally) or otherwise agreed by the Parties, and
- (f) in accordance with:
 - (i) applicable law, and
 - (ii) the reasonable directions of ACIAR.

6. Project Leader

In addition to any tasks designated for the Project Leader in the Project Document, the Project Leader will be responsible for coordinating all Services to be provided by the Commissioned Organisation and will liaise with ACIAR regularly regarding Project progress.

7. Delays

7.1 Notwithstanding clauses 9.4(a)(iv) and 9.5(c), upon becoming aware of any (actual or potential) delay in provision of Services the Commissioned Organisation will immediately notify ACIAR in writing of: the relevant background circumstances, the likely length of delay, and the steps the Commissioned Organisation has and will take to minimise the length and effect of the delay (**Delay Notice**).

7.2 Following receipt of a Delay Notice, ACIAR will determine, acting reasonably, whether to grant an extension of time to perform all or part of any remaining Services.

8. Subcontracting

8.1 The Commissioned Organisation will not subcontract performance of Services other than to Approved Subcontractors. For the purposes of this clause 8.1, the subcontractors specified in the Project Document and the Subcontractors listed in the Agreement Details constitute Approved Subcontractors.

8.2 The Commissioned Organisation remains responsible for performance of the Services by its subcontractors, including Approved Subcontractors.

9. Payment

9.1 In consideration of performance of the Services, ACIAR will make the Payments to the Commissioned Organisation, in advance and in accordance with the Budget.

9.2 If the Agreement Details specify that the CGIAR IA Principles apply, then the Parties acknowledge that Payments shall be made pursuant to clause 9.1 according to the following process:

- (a) all Payments shall be made to the Commissioned Organisation via the International Bank for Reconstruction and Development (**IBRD**) as the Trustee of the CGIAR Fund for this Agreement
- (b) in respect of each of the Payments, ACIAR will seek an invoice from IBRD, and
- (c) following receipt of an invoice from IBRD, ACIAR will make the relevant Payments to IBRD with instructions to disburse those Payments to the Commissioned Organisation.

9.3 The Commissioned Organisation acknowledges it is responsible for payment of, and accounting to ACIAR for, all expenditure of Payments and all costs and expenses incurred in performing the Services.

9.4 Within 30 days of the end of each Payment Period or receiving a Withheld Payment under clause 9.5(e), the Commissioned Organisation will provide ACIAR (in a format as specified by ACIAR from time to time) a report including the following details:

- (a) for the relevant Payment Period and detailed on an item-by-item basis, an accurate account of:
 - (i) Payments received
 - (ii) Payments expended, including details of how Payments have been expended
 - (iii) Payments not expended, and
 - (iv) if the amount of Payments not expended exceeds 20% of Payments made available for the relevant Payment Period, the reasons for any delay in spending or committing Payments, and
- (b) sign-off by the Project Leader, and certification of the accuracy of details provided in acquittal report by an authorised officer of the Commissioned Organisation,

together an **Acquittal Report**.

9.5 Notwithstanding clauses 9.1 and 9.2:

- (a) Payments are subject to appropriation being made by the Parliament of the Commonwealth for those Payments
- (b) ACIAR will only advance Payments for the next Payment Period following:
 - (i) receipt of a satisfactory Acquittal Report for the previous Payment Period, and
 - (ii) if the Commissioned Organisation is required to provide ACIAR reports under clause 15.1 during earlier Payment Periods, satisfactory provision of such reports.
- (c) in respect of any previously advanced Payments (or part thereof) not expended during earlier Payment Periods (**Unspent Payments**), ACIAR may reduce the Payment for the next or a future Payment Period, and the Financial Limitation, by all or part of the amount of the Unspent Payments.
- (d) unless otherwise agreed in writing by ACIAR:
 - (i) Payments will not exceed the Financial Limitation
 - (ii) ACIAR will not be liable for expenses incurred other than as provided for in the Budget, for any services other than Services, or for any services performed (including purported Services) or expenses incurred after the Completion Date, and
 - (iii) the Commissioned Organisation must return any Payments not properly earned or expended within 30 days of ACIAR accepting the final Acquittal Report.
- (e) ACIAR will withhold the Withheld Sum from the final Payment pending acceptance of a satisfactory Final Report, following which:
 - (i) ACIAR will provide the Commissioned Organisation the Withheld Sum within thirty (30) days of ACIAR accepting the Final Report, and
 - (ii) the Commissioned Organisation must provide ACIAR a final Acquittal Report for the Project within thirty (30) days of receipt of the Withheld Sum.

10. Personnel and Personal Property

- 10.1 The Commissioned Organisation will provide adequate and competent Personnel to perform the Services.
- 10.2 The Commissioned Organisation will notify ACIAR immediately if any Key Personnel become unavailable to continue performance of Services or otherwise progress the Project.
- 10.3 ACIAR may require the Commissioned Organisation to, at the cost of the Commissioned Organisation, promptly replace Personnel with replacement Personnel approved by ACIAR if:
 - (a) the circumstance set out in clause 10.2 arises, or
 - (b) ACIAR has any reasonable grounds to require removal of Personnel from the Project, including in circumstances where Personnel perform Services in another country and, while not citizens of that country, become involved in the political affairs of that country.
- 10.4 As between the Parties, the Commissioned Organisation will be solely responsible for the remuneration and the work, health and safety of its Personnel, and must ensure that such Personnel comply with the Commissioned Organisation's obligations under this Agreement (including in relation to the ownership of IP Rights and obligations of confidentiality).
- 10.5 The Commissioned Organisation is responsible for its personal property (and the property of any of its Personnel involved in performing the Services, including any Key Personnel) and for any loss of property or damage caused to it.

11. Project Supplies

- 11.1 The Commissioned Organisation will arrange the procurement and delivery of all equipment and supplies required for the Project, including those specified in the Project Document (**Supplies**), and may apply Payments to do so where specified in the Project Document.

- 11.2 The Commissioned Organisation will: exercise administrative control over, manage the security, maintain and keep in good repair, and (where applicable) repair or replace, the Supplies.
- 11.3 Ownership of Supplies will vest in the Commissioned Organisation from the date of purchase.

12. Travel

- 12.1 For all travel of Commissioned Organisation Personnel pursuant to this Agreement:
- (a) the Commissioned Organisation is responsible for arranging and paying for the travel and allowances of the Personnel, which may be paid from the Payments if allocated for in the Budget, and provided that all air travel is purchased in economy/excursion class or lower fares and for the most direct and economical routing (the Commissioned Organisation may reroute or upgrade at its expense)
 - (b) without limitation to clause 10.4, the Commissioned Organisation is solely responsible for the security and safety of its Personnel and must make its own enquiries in relation to travel advice. ACIAR has no responsibility or liability for any injury, death, loss or damage suffered or expenses incurred relating to travel undertaken by Commissioned Organisation Personnel
 - (c) the Commissioned Organisation will provide prior written notice to ACIAR, including a travel schedule and details of its Personnel undertaking the travel (and of any accompanying dependants), in the form of a 'Travel Advice Note' as available on the ACIAR website accessible at <http://aciar.gov.au/travel>, and
 - (d) the Commissioned Organisation will provide a travel report in accordance with clause 15.3.

13. IP Rights and moral rights

IP Rights

- 13.1 ACIAR and the Commissioned Organisation will 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:
- (a) the *International Treaty on Plant Genetic Resources*
 - (b) the FAO trustee arrangements with international agricultural research centres
 - (c) the *Convention on Biological Diversity*
 - (d) the *Agreement on Trade Related Aspects of Intellectual Property Rights*, and
 - (e) and the provisions of the *International Union for the Protection of New Varieties of Plant*.
- Transfer and exchange of germplasm by the Commissioned Organisation and/or sub-contractors will be subject to materials transfer and acquisition agreements and in accordance with the Convention on Biological Diversity. This clause 13.1 will be interpreted such that the relevant obligation is that which was in effect at the time of the action in question.
- 13.2 ACIAR and the Commissioned Organisation agree, in respect of any Project IP, that:
- (a) in a Collaborating Country, the Project IP shall vest upon creation in the Collaborating Institute that is located within the relevant Collaborating Country, and if there is more than one Collaborating Institute located in that Collaborating Country, those Collaborating Institutes shall own the Project IP in that Collaborating Country as joint owners;
 - (b) in Australia, the Project IP shall vest upon creation in the Commissioned Organisation (and clause 13.3 shall apply);
 - (c) in respect of all countries and territories outside Australia and any Collaborating Countries, in accordance with the cooperative nature of the Project and recognising that it will be desirable to use or exploit advances or discoveries which may be made in the course of the Project and under this Agreement, ACIAR and the Commissioned Organisation will discuss and will jointly determine:

- (i) the equitable apportionment of ownership of any Project IP arising from the Project
- (ii) the management, control and payment of costs in respect of any steps to obtain and maintain registration of IP Rights in respect of Project IP
- (iii) the equitable apportionment of profits, royalties or licence fees relating to such Project IP
- (iv) the equitable licensing of such Project IP
- (v) the equitable licensing of any Background IP of a Party as necessary to enjoy the full benefits of the Project and the Project IP, and
- (vi) where it is within their power, the equitable licensing of such other IP Rights (including third party IP Rights) as is necessary to enjoy the full benefits of the Project and the Project IP

and clause 13.4 shall apply.

- 13.3 Unless otherwise agreed pursuant to clause 13.2(c), 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) to exploit, use, reproduce, modify, publish, adapt and communicate to the public the Project IP.
- 13.4 In fulfilling their obligations under the clause 13.2(c), ACIAR and the Commissioned Organisation will have regard to relevant considerations including:
- (a) their respective intellectual and other contributions
 - (b) their respective contributions of Background IP, material, research effort and proprietary work
 - (c) the facilities and funding provided by the Parties, and
- such other relevant considerations as they may mutually determine.
- 13.5 If the Agreement Details specify that CGIAR IA Principles apply:
- (a) clauses 13.2 to 13.4 will not apply
 - (b) the Parties agree that all Intellectual Assets, as defined in the CGIAR Principles on the Management of Intellectual Assets (**CGIAR IA Principles**) and Project IP will be dealt with in accordance with CGIAR IA Principles and that all Project IP will be used for the public good
 - (c) the Commissioned Organisation acknowledges that:
 - (i) as a member of the Consortium of International Agricultural Research Centres, the Commissioned Organisation must ensure that all agreements and contracts it enters (including any confidentiality, partnership, collaboration, development, licensing, distribution, material transfer agreements), comply with the CGIAR IA Principles
 - (ii) ACIAR supports the vision and objectives of the CGIAR, and supports the dissemination of the results of research as a public good, and
 - (iii) accordingly, Project IP will be managed in a manner consistent with CGIAR IA Principles
 - (d) ACIAR, the Commissioned Organisation will consider whether to register/ apply for (or allow third parties to register/apply for) patents and/or plant variety protection (**IP Applications**) over the Intellectual Assets. In accordance with CGIAR IA Principles, the Parties agree that no such IP Applications will be made unless they are necessary for the further improvement of such Intellectual Assets or for the public good. The Parties acknowledge that all IP Rights will be exercised consistently with Articles 6.1 to 6.3 of the CGIAR IA Principles
 - (e) ACIAR and the Commissioned Organisation will grant or will secure the grant to each other of a permanent, irrevocable, royalty free, worldwide, non-exclusive licence (including a right to sublicense its rights to third parties) to Exploit the Project IP. Where Parties propose

to sublicense its rights under this clause 13.5(e), they will ensure that any sublicense will be on the same or substantially the same terms and conditions as the licence such party has from the other.

- 13.6 The Commissioned Organisation will promptly notify ACIAR of the details of any Project IP. Any notification will be treated as Confidential Information by ACIAR.
- 13.7 Unless otherwise expressly agreed in writing by the Parties, this Agreement does not affect the ownership of Background IP.
- 13.8 The Commissioned Organisation warrants to ACIAR that to its actual knowledge and belief, following all diligent and reasonable enquiries, at the date that ACIAR first consents to use, or otherwise uses, Background IP supplied by the Commissioned Organisation pursuant to this Agreement (as applicable):
- (a) it is the owner of, or is otherwise entitled to use, the Background IP
 - (b) it is entitled to grant any licences to such Background IP made pursuant to this Agreement, and
 - (c) the exercise by ACIAR of its rights in such Background IP granted pursuant to this Agreement will not infringe the IP Rights of any third party.
- 13.9 Where the Commissioned Organisation intends to publish any article or paper of an academic, scientific or technical nature in regard to the Services or this Agreement, 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 this Agreement and must comply with ACIAR Branding Guidelines available on the ACIAR website <https://www.aciar.gov.au/branding-guidelines>.
- 13.10 The Commissioned Organisation may report details of this Agreement in non-specialist media provided:
- (a) it acknowledges the funding and support provided under this Agreement by ACIAR, and
 - (b) if the subject of the proposed media report may be controversial, the Commissioned Organisation will, prior to submission for publication, request ACIAR's written consent.

Moral Rights

- 13.11 ACIAR and the Commissioned Organisation:
- (a) acknowledge the existence of Moral Rights conferred on the authors of any Works which are created in carrying out this Agreement or which exist as part of the Background IP
 - (b) 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 clause 13.11(a), and
 - (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 13.11(a), and
 - (c) will, following notice under clause 13.11(a), 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.

14. Confidentiality of Information

- 14.1 Each Party will:
- (a) keep Confidential Information of the other Party confidential and will not, without the other Party's prior written consent, disclose or permit the same to be disclosed to any third party
 - (b) use reasonable endeavours (including labels or verbal notification) to ensure that the receiving Party is aware of the confidential nature of Confidential Information at disclosure
 - (c) take reasonable steps to provide for the safe custody of Confidential Information of the other Party and to prevent unauthorised access to or use of such Confidential Information, and

- (d) ensure that its Personnel comply with the obligations of confidentiality imposed upon it by this clause 14, including in the case of the Commissioned Organisation (if specified in the Agreement Details and where required by ACIAR thereafter), by ensuring that its Personnel to execute deeds of confidentiality in favour of ACIAR consistent with this clause 14.
- 14.2 The obligations on the Parties under this clause 14 will not be taken to have been breached to the extent that a Party:
- (a) discloses Confidential Information of the other Party to its:
- (i) Personnel, and
 - (ii) legal, financial or other professional advisers,
- who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know), provided the disclosure is made subject to an obligation of confidentiality in accordance with clause 14.1(d), or
- (b) discloses Confidential Information of the other Party to the extent required to be disclosed:
- (i) by law including under court subpoena, parliamentary order, under the *Freedom for Information Act 1982* (Cth) (or equivalent legislation) or as part of discovery during legal proceedings
 - (ii) to any government agency, authority, department or minister, or to any parliamentary committee, or
 - (iii) by the rules of a stock exchange,
- provided that to the extent reasonably possible, prior written notice of such required disclosure is given to the disclosing Party to enable it to seek to challenge the disclosure of its Confidential Information.
- 14.3 At any time upon written request, a Party must return all documents in any form which embody Confidential Information of the other Party, provided that a Party may retain one copy of such Confidential Information as necessary to meet its reasonable record-keeping requirements subject to an obligation to keep such copy confidential in accordance with this clause 14.
- 14.4 Each Party's obligations under this clause 14 survive expiration or earlier termination of this Agreement and continue until the Confidential Information disclosed to it lawfully becomes part of the public domain.

15. Reports, Records, Review and Evaluation

Reports

- 15.1 The Commissioned Organisation must provide ACIAR the Reports at the times specified in the Agreement Details, and any other reports as reasonably requested by ACIAR (such as interim final reports, project factsheets, and other ad hoc reports).
- 15.2 Where a self-assessment of the potential for significant environmental impacts under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) has been produced and accepted pursuant to this Agreement, the Commissioned Organisation will provide ACIAR with a report by 14 July each year on the implementation and effectiveness of the risk management procedures identified in the self-assessment.
- 15.3 Within 30 days of completion of any travel referred to in clause 12.1, the Commissioned Organisation will provide ACIAR a trip report including the travel itinerary and all information reasonably required by ACIAR to enable ACIAR to monitor the Project.
- 15.4 Each report provided under this clause 15 must be accurate, complete and detailed to enable ACIAR to confirm the true status of the Project, and (where applicable) prepared in accordance with the 'Guidelines for Annual Reports' available on the ACIAR website www.aciar.gov.au (**Guidelines**).

Access to documents

15.5 In clause 15.6, 'document' and 'Commonwealth Contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

15.6 If:

- (a) the Commissioned Organisation is identified as an 'Australian Entity' in the Agreement Details
- (b) this Agreement (or a subcontract of this Agreement) is a Commonwealth Contract, and
- (c) the Commonwealth has received a request for access to a document created by, or in the possession of, the Commissioned Organisation (or any of its Personnel) that relates to the performance of this Agreement (and not to the entry into of this Agreement),

the Commonwealth may at any time by written notice require the Commissioned Organisation to provide the document to the Commonwealth, and the Commissioned Organisation must, at no additional cost to the Commonwealth, promptly comply with the notice.

Records

15.7 The Commissioned Organisation must, at its cost, for the period commencing on the Commencement Date and ending seven years after expiry or termination of this Agreement (**Bookkeeping Period**), keep (and ensure its Personnel keep) adequate books and records, in accordance with international accounting standards, in sufficient detail to enable the determination of how Payments have been expended, and the determination of any other amounts paid or payable under this Agreement (**Records**).

15.8 The Commissioned Organisation must, at its cost, keep (and ensure that its Approved Subcontractors keep) accurate hardcopy or digital scientific records relating to the Project – such records will include detailed, witnessed laboratory notebooks (which may be kept in digital or hardcopy format) sufficient to document any discoveries or inventions made in the course of the Project (**Scientific Records**).

Reviews

15.9 In addition to the Reviews that ACIAR may undertake as specified in the Agreement Details, ACIAR may at any time during the Term, undertake (through its Personnel or its appointed nominee(s)) to review and evaluate this Agreement and the exercise of rights and obligations relating to it (including in respect of the performance of Services). To facilitate any such review, the Commissioned Organisation will at its cost promptly provide any financial, technical or such other information (including Records and Scientific Records) as is required by ACIAR, provide ACIAR with access to Personnel participating in the Project to enable interview and general cooperation, and will 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.

15.10 ACIAR may at any time during the Bookkeeping Period, direct that the Records be examined by an independent accountant nominated by ACIAR and will permit the accountant to take copies or extracts from the Records. The Commissioned Organisation will give the accountant all assistance, access and facilities necessary to enable the accountant to verify the Records and will supply such other information as may be necessary or proper to verify how Payments have been expended.

Post Project Updates

15.11 Upon request at any time in the ten (10) years following completion of the Project, the Commissioned Organisation will use all reasonable endeavours to provide ACIAR updates in respect of the current outcomes and impact of the Project, having regard to Project objectives (**Post Project Update**). Each Post Project Update will (as all reasonable endeavours enable) include:

- (a) details of Project impacts (including scientific impacts, capacity-building impacts, community impacts and environmental impacts)
- (b) details of steps take to obtain the full benefit of Project outcomes

- (c) where applicable, details of how Project outcomes could be better used to benefit communities, and
 - (d) learnings as to what future projects may be conducted to benefit communities in respect of the Project outcomes and topics related to the Project.
- 15.12 The Commissioned Organisation may charge ACIAR a fee for complying with clause 15.11, provided that:
- (a) such fee is reasonable and commensurate with the effort involved in complying with clause 15.11, and
 - (b) the Commissioned Organisation has provided written notice to ACIAR of the amount of such fee (the notified amount calculated to comply with clause 15.12(a)) prior to commencing activities in compliance with clause 15.11.

Accessing Premises

- 15.13 In accessing the premises of the other Party (**Host**), a Party (**Visitor**) will:
- (a) give reasonable written notice to the Host, such notice identifying the representatives of the Visitor to attend the Host's premises
 - (b) ensure that its representatives comply with all policies of the Host with respect to their attendance (including policies relating to health and safety, security, and standards of conduct) and otherwise comply with all reasonable directions, and
 - (c) procure that its representatives will (if required) sign a confidentiality agreement in favour of the Host to protect the confidentiality of any Confidential Information of the Host.

16. Termination and Reduction

Termination due to circumstances outside the control of the Parties

- 16.1 Should acts of God, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy or terrorism, war, political upheaval, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, industrial dispute, withdrawal of necessary support for the Project by a host nation government listed in the International Arrangements, transportation embargo or failure or delay in transportation render the completion of the Project impossible or unfeasible, either Party may terminate this Agreement upon providing the other with three months' written notice.

Termination

- 16.2 ACIAR may terminate or sever part of this Agreement without cause at any time by giving written notice to the Commissioned Organisation which must, on receipt, immediately cease all work and take appropriate action to mitigate any loss and prevent further costs being incurred with respect to the Services.
- 16.3 Without prejudice to any other rights ACIAR may have under this Agreement or at law, ACIAR may terminate or sever part of this Agreement for default by providing the Commissioned Organisation written notice if:
- (a) the Commissioned Organisation breaches any term of this Agreement where that breach is not capable of remedy
 - (b) the Commissioned Organisation undergoes a change in Control or is subject to an Adverse Event
 - (c) the Commissioned Organisation or its Personnel engage in conduct that, in the reasonable opinion of ACIAR, is detrimental to the reputation of ACIAR or the Commonwealth, or
 - (d) if the Commissioned Organisation breaches any term of this Agreement where the breach is capable of remedy and the breach is not remedied within 14 days of receipt of notice in writing from ACIAR.

Effect of termination (or partial termination)

- 16.4 If this Agreement is terminated pursuant to clause 16.1, ACIAR may recover (and the Commissioned Organisation agrees to return) any Payments provided to the Commissioned Organisation that have not been expended as at the date the Commissioned Organisation was notified of termination.
- 16.5 Where this Agreement is terminated, wholly or in part, under clause 16.2, ACIAR must pay invoices in respect of:
- (a) all reasonable amounts due in accordance with clause 16.2 for Services performed by the Commissioned Organisation in accordance with the terms of this Agreement up until the date of termination, and
 - (b) the equivalent of any liabilities or expenses of the Commissioned Organisation relating to the terminated Services which are substantiated, and which are properly incurred by the Commissioned Organisation, to the extent that those liabilities or expenses cannot be mitigated, but no other amount,
- provided that in no event will ACIAR be required to pay any loss of prospective profits.
- 16.6 For the purposes of clauses 16.2 and 16.3, ACIAR may elect to sever part of this Agreement (**Partial Termination**) by notifying the Commissioned Organisation that it no longer requires the Commissioned Organisation to provide a particular Service, in which case:
- (a) the Commissioned Organisation will cease to provide that Service
 - (b) ACIAR will no longer be obliged to provide any Payments in respect of that Service (and any Payments made available on account of the future performance of that Service will be returned to ACIAR), and
 - (c) this Agreement will be construed, and its provisions will be enforceable by and against the Parties, as if references to the Services the subject of that Partial Termination, and Payments made (or to be made) available in respect of those Services, were severed from the Contract.
- 16.7 If ACIAR notifies the Commissioned Organisation of termination of this Agreement under clause 16.3, ACIAR may, in addition to terminating this Agreement:
- (a) recover any Payments provided to the Commissioned Organisation for Services or other obligations that have not been fulfilled or performed
 - (b) be regarded as discharged from any further obligations under this Agreement, and
 - (c) pursue any additional or alternative remedies provided by law.

17. Insurance

- 17.1 The Commissioned Organisation will, for so long as any obligations remain in connection with this 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 \$20,000,000 per claim and \$20,000,000 in aggregate
 - (c) in relation to Services performed outside Australia, adequate insurance against claims by third parties resulting from acts or omissions of 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 this Agreement by its Personnel.
- 17.2 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 clause 17 and of all receipts for payments of premiums.
- 17.3 The requirement of clause 17.1(c) will not apply in relation to work performed in a particular country if ACIAR has agreed in writing that such insurance is not available in relation to the performance of the Services in that country.

- 17.4 The Commissioned Organisation will ensure that any Approved Subcontractor maintains appropriate insurances.
- 17.5 Notwithstanding the above, the Commissioned Organisation may undertake self-insurance arrangements with ACIAR's prior written approval.

18. Indemnity

- 18.1 The Commissioned Organisation indemnifies ACIAR and the Personnel of ACIAR (**Those Indemnified**) 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 breach of a term or condition of this Agreement or wilful misconduct or unlawful or negligent act or omission of the Commissioned Organisation and the Personnel of the Commissioned Organisation in connection with the Services.
- 18.2 The Commissioned Organisation's liability to indemnify Those Indemnified under clause 18.1 will be reduced proportionally to the extent that any unlawful or negligent act or omission of Those Indemnified contributed to the loss or liability.
- 18.3 Neither party shall be liable to the other Party for any special, indirect or consequential loss or damages arising under or pursuant to this Agreement (including without limitation for loss of profits or an anticipated saving or benefit).

19. Compliance with laws and policies

Modern Slavery

- 19.1 In these additional terms 19.1 to 19.3:
- (a) **Guiding Principles on Business and Human Rights** means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
- (b) **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
- 19.2 The Commissioned Organisation must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services, having regard to the Guiding Principles on Business and Human Rights.
- 19.3 If at any time the Commissioned Organisation becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, the Commissioned Organisation must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

Prohibited dealings

- 19.4 The Commissioned Organisation must ensure that it and any individuals, persons, entities or organisations involved in the Project, including its Personnel, are not:
- (a) directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act
- (b) listed terrorist organisations for the purposes of the *Criminal Code Act 1995* (Cth) (details of listed terrorist organisations are available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>)
- (c) subject to sanctions or similar measures under the Charter of the United Nations Act 1945 (Cth) or the Autonomous Sanctions Act 2011 (Cth) (details of individuals and entities are available at: <https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>)
- (d) listed on the 'World Bank's Listing of Ineligible Firms and Individuals' posted at <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>

- (e) owned, controlled by, acting on behalf of, or at the direction of individuals, persons, entities or organisations referred to in clauses 19.4(a) to 19.4(d) above, or
 - (f) providing direct or indirect support, resources or assets (including any grant monies) to individuals, persons, entities or organisations referred to clauses 19.4(a) to 19.4(d).
- 19.5 Where the Commissioned Organisation becomes aware that there are reasonable grounds to suspect it or any of its Personnel has or may have contravened any part of clause 19.4, the Commissioned Organisation must:
- (a) notify ACIAR and confirm that information in writing as soon as possible, which must be no later than within 24 hours
 - (b) immediately take all reasonable action to mitigate the risks, and
 - (c) take any other action required by ACIAR.

Security Requirements

- 19.6 The Commissioned Organisation must perform its obligations to the highest professional standards and comply with the security requirements for the protection of official information: as detailed in the Commonwealth Protective Security Policy Framework available at: <https://www.protectivesecurity.gov.au/> as amended from time to time; and as advised by ACIAR from time to time during the term of this Agreement.

Public Interest Disclosure

- 19.7 Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (Cth). Prior to making a disclosure, refer to information available at: <http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

- 19.8 All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	Chief Financial Officer
Address:	Chief Financial Officer ACIAR House GPO Box 1571, Canberra, ACT 2601
Telephone:	(02) 6217 0500

Compliance with relevant legislation and policies

- 19.9 If the Commissioned Organisation is identified as an 'Australian Entity' in the Agreement Details then, without limiting any other provisions of this Agreement, the Commissioned Organisation must:
- (a) observe the same standards and obligations that are imposed on Commonwealth personnel under the *Work Health Safety Act 2011* (Cth) or where relevant any state or territory law and regulations applicable to work health and safety
 - (b) comply with the obligations imposed under the *Lobbying Code of Conduct* (Cth), if applicable
 - (c) comply with all relevant legislation of the Commonwealth, or of any State, Territory or local authority under any agreement entered into with the Commonwealth including:
 - (i) the *Crimes Act 1914* (Cth)
 - (ii) the *Disability Discrimination Act 1992* (Cth)
 - (iii) the *Racial Discrimination Act 1975* (Cth)
 - (iv) the *Sex Discrimination Act 1984* (Cth)
 - (v) the *Age Discrimination Act 2004* (Cth) and the *Age Discrimination (Consequential Provisions) Act 2004* (Cth)
 - (d) comply with all applicable workers compensation laws, and
 - (e) comply with such other Commonwealth and agency policies relevant to the performance

or provision of the Services and notified in writing to the Commissioned Organisation.

- 19.10 If the Commissioned Organisation is not identified as an 'Australian Entity' in the Agreement Details then, without limiting any other provisions of this Agreement, the Commissioned Organisation must comply with all laws and standards corresponding or equivalent to those listed in clause 19.9 in the country or territory in which the Commissioned Organisation is based or in which Services are performed (as applicable).

Child safety

- 19.11 If any part of the Project involves the Commissioned Organisation employing or engaging Personnel in a manner that requires the Personnel by local law to have a working with children check (or equivalent) to undertake the Project or any part of the Project, the Commissioned Organisation agrees:
- (a) to comply with all local law relating to the employment or engagement of people who work or volunteer with children in relation to the Project, including mandatory reporting and working with children checks (or equivalent), and
 - (b) if requested, provide the Commonwealth at the Commissioned Organisation's cost, an annual statement of compliance with this clause 19.11, in such form as may be specified by the Commonwealth.

Privacy

- 19.12 In clauses 19.13 to 19.16, capitalised terms have the meaning provided in the *Privacy Act 1988* (Cth) (**Act**).
- 19.13 The Commissioned Organisation acknowledges that ACIAR will store, use and disclose Personal Information in accordance with its privacy policy located at <https://www.aciar.gov.au/privacy-policy> and the Commissioned Organisation is responsible for obtaining all necessary consents to enable ACIAR to do so in respect of Personal Information provided to ACIAR by or through the Commissioned Organisation pursuant to this Agreement.
- 19.14 The Commissioned Organisation must in undertaking this Agreement comply with all applicable privacy laws including, to the extent that the Australian *Privacy Act 1988* (Cth) applies to any of its activities under this Agreement by:
- (a) complying with the Australian Privacy Principles and with any registered, applicable APP Code or Registered CR Code, and
 - (b) cooperating with any reasonable request or direction of ACIAR in relation to an inquiry, audit or other exercise of powers or functions, by the Information Commissioner under that Act.
- 19.15 Where the Act applies:
- (a) if the Commissioned Organisation becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Commissioned Organisation as a result of this Agreement or its performance of the Services, the Commissioned Organisation agrees to:
 - (i) notify ACIAR in writing as soon as possible, which must be no later than within three (3) days of becoming aware, and
 - (ii) unless otherwise directed by ACIAR, carry out an assessment in accordance with the requirements of the Act, and
 - (b) if the Commissioned Organisation is aware that there are reasonable grounds to believe there has been, or where ACIAR notifies the Commissioned Organisation that there has been, an Eligible Data Breach in relation to any Personal Information held by the Commissioned Organisation as a result of this Agreement or its provision of the Services, the Commissioned Organisation must:
 - (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates
 - (ii) unless otherwise directed by ACIAR, take all other action necessary to comply with the requirements of the Act, and

(iii) take any other action as reasonably directed by ACIAR.

19.16 Where privacy or data breach laws of another territory apply, the specific obligations of the Commissioned Organisation under clause 19.15 shall be modified only as necessary to ensure compliance with the privacy or data breach laws of that territory.

Fraud and Anti-Corruption

19.17 The Commissioned Organisation warrants that neither it nor its Personnel will make or cause to be made, receive or seek to receive any offer, gift or payment or benefit of any kind, which could be construed as an illegal or corrupt act, either directly or indirectly to any individual or organisation in relation to the execution of this Agreement.

19.18 Without limitation to any other clause of this Agreement, the Commissioned Organisation must comply with ACIAR's Fraud Policy Statement and guidance on reporting any allegations or concerns regarding fraud within the Project which is available at:
<https://www.aciar.gov.au/Standard-Contract-Conditions-and-Intellectual-Property-Policy>.

19.19 On request, the Commissioned Organisation will provide for ACIAR's review and acceptance a fraud control plan that details actions the Commissioned Organisation will undertake in order to identify, report and manage instances of actual or potential fraud. The fraud control plan will specify what audit procedures and audit frequency will be applied.

19.20 If the Commissioned Organisation is identified as an 'Australian Entity' in the Agreement Details then, without limiting its obligations under this clause 19, the Commissioned Organisation must comply with the requirements of the Commonwealth Fraud Control Framework or any replacement guidelines, in force from time to time, available at
<https://www.ag.gov.au/integrity/publications/commonwealth-fraud-control-framework>

Conflict of interest

19.21 The Commissioned Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

19.22 If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Commissioned Organisation must:

- (a) notify ACIAR immediately in writing
- (b) make full disclosure of all relevant information relating to the conflict, and
- (c) take such steps as ACIAR requires to resolve or otherwise deal with the conflict.

Compliance with the Commonwealth Supplier Code of Conduct

19.23 For the purposes of these clauses 19.23 to 19.31, **Commonwealth Supplier Code of Conduct** or **Code** means the 'Commonwealth Supplier Code of Conduct', most recently published on 1 July 2024, as updated from time to time.

19.24 The Commissioned Organisation must comply with, and ensure that its Personnel comply with, the Code in connection with the performance of this Agreement.

19.25 The Commissioned Organisation must:

- (a) periodically monitor and assess its compliance, and the Compliance of its Personnel, with the Code; and
- (b) on request from ACIAR, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Commissioned Organisation's compliance with clause 19.24.

19.26 The Commissioned Organisation must immediately issue ACIAR a Notice on becoming aware of any breach of clause 19.24. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.

- 19.27 Where ACIAR identifies a possible breach of clause 19.24, it may issue the Commissioned Organisation a Notice, and the Commissioned Organisation must, within three (3) Business Days of receiving the Notice, either:
- (a) where the Commissioned Organisation determines a breach has not occurred: advise ACIAR that there has not been a breach and provide information supporting that determination; or
 - (b) where the Commissioned Organisation determines that a breach has occurred: issue a Notice under clause 19.26 and otherwise comply with its obligations under this clause 19.27.
- 19.28 Notwithstanding clause 19.27, ACIAR may notify the Commissioned Organisation in writing that it considers that the Commissioned Organisation has breached clause 19.24, in which case the Commissioned Organisation must issue a Notice under clause 19.26 and otherwise comply with its obligations under this clause 19.28.
- 19.29 A failure by the Commissioned Organisation to comply with its obligations under any part of these clauses 19.23 to 19.31 will be a material breach of the Agreement.
- 19.30 Nothing in these clauses 19.23 to 19.31 or the Code limits, reduces, or derogates from the Commissioned Organisation's other obligations under the Contract. ACIAR's rights under this clause are in addition to and do not otherwise limit any other rights ACIAR may have under the Agreement.
- 19.31 The Commissioned Organisation agrees that ACIAR or any other Commonwealth agency may take into account the Commissioned Organisation's compliance with the Code in any future approach to market or procurement process.

20. Taxes & Invoices

Stamp Duty and other taxes

- 20.1 Subject to clauses 20.2 and 20.3, the Commissioned Organisation must pay all:
- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the undertaking of the Project, and
 - (b) all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

GST

- 20.2 In clause 20.3:
- (a) subject to clause 20.2(b), a word or expression defined in the *A New Tax System (Goods and Services Tax Act) 1999* (Cth) (**GST Act**) has the meaning given to it in the GST Act, and
 - (b) where a taxable supply takes place outside Australia in a territory that imposes a goods and services tax, value added tax, or similar, then references in this clause to GST, GST Liability, and GST Law will refer to the applicable tax, tax liability and legislation in that territory and clause 20.3 will be read and construed accordingly.
- 20.3 Unless otherwise specified in the Budget, amounts that ACIAR is required to pay under this 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 Agreement (**GST Liability**), the amount otherwise payable by ACIAR under this 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 Agreement; and where required, the Commissioned Organisation will provide a tax invoice that may enable ACIAR, if permitted by the GST Act, to claim a credit or refund, a notional credit refund, of GST.

21. Miscellaneous

Warranties

21.1 The Commissioned Organisation warrants that it has all necessary permissions and is entitled to undertake the Services and that it is not subject to any agreement, policy, arrangement or otherwise, which is inconsistent with or would otherwise restrict its ability to undertake the Services and vest or licence IP Rights under clause 13.

Approvals and consents

21.2 Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

Entire agreement

21.3 This Agreement contains the whole of the agreement between the Parties with respect to its subject matter and supersedes any and all other representations or statements by a Party whether oral or in writing and whether made prior or subsequent to the date of this Agreement.

Notices

21.4 All notices, requests, demands and other communications under this Agreement will be in writing directed to the representative specified in the Agreement Details (which may be updated by providing a notice to the other Party in accordance with this clause 21.4) and will be deemed to have been given: (i) immediately if delivered by hand, (ii) on the seventh day following postage if delivered by express post; and (iii) on the next business day in the location of the recipient's address if sent by email.

Negation of Employment, Partnership and Agency

21.5 The Commissioned Organisation will not by virtue of this Agreement be, or for any purpose be deemed to be, an officer, employee, partner or agent of ACIAR or the Commonwealth, or as having power or authority to bind or represent ACIAR or the Commonwealth, and will not represent itself, and will ensure that its Personnel do not represent themselves, as such.

Applicable Law

21.6 This Agreement will be governed by and construed in accordance with the laws of the State of Victoria. The Commissioned Organisation submits to the jurisdiction of the courts of Victoria and any court competent to hear appeals from those courts.

Waiver

21.7 A waiver by either Party in respect of any breach of a condition or provision of this Agreement must be made in writing and will 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 Agreement at any time will in no way be interpreted as a waiver of such provisions.

Authority and consents

21.8 Any and all rights, powers, authorities and discretions expressed in this 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 Commonwealth minister responsible for ACIAR.

21.9 Except as expressly provided in this Agreement, ACIAR may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this Agreement.

Assignment

21.10 The Commissioned Organisation must not assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this Agreement except with the written consent of ACIAR.

Variation to this Agreement

21.11 This Agreement may only be amended by a written instrument signed by the Parties.

No Merger

21.12 The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

Further acts

21.13 A Party, at its own expense and within a reasonable time of being requested by the other Party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement and the transactions contemplated by it.

Severance

21.14 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement will continue in force.

Costs and Expenses

21.15 Each Party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this Agreement and any related documentation.

Counterparts

21.16 This Agreement may be executed in counterparts. All executed counterparts constitute one document. Counterparts may be exchanged and relied on in facsimile or digital scanned form.

Survival

21.17 Without limitation to the express provisions of this Agreement or those clauses of this Agreement which are intended or capable of having effect following the expiry or termination of this Agreement, the following clauses will survive the expiry or termination of this Agreement: clauses 1 to 3, 10.4, 10.5, 13 to 15, 16.4, 16.5, 16.7, 17, 18, 20, 21.3, 21.5, 21.6, 21.7, 21.10, 21.12, 21.14, 21.16 and this clause 21.17.

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by the **Australian Centre for International Agricultural Research ABN 34 864 955 427** by its duly authorised delegate

←

Signature of delegate

Name of delegate (print)

Position of delegate (**print**)

ON: [insert date] ____/____/____

←

Executed by [Type here] by its duly authorised delegate

Signature of delegate

Name of delegate (print)

Position of delegate (**print**)

ON: [insert date] ____/____/____

←

ANNEXURE A – PROJECT DOCUMENT

ANNEXURE B – ADDITIONAL TERMS

SAMPLE

Additional Terms

A1. Interpretation and further definitions

A1.1 In these Additional Terms, unless the context otherwise requires, reference to a clause is a reference to a clause of the Primary Terms and reference to an additional term is to a clause of these Additional Terms.

A2. Application

A2.1 These Additional Terms will only take effect in accordance with clause 2.

A3. Collaborating Countries and Collaborating Institutions

A3.1 As applicable, international agreements that establish the overseas operating framework for the Project including such matters as protocols, customs assistance, in-country security, indemnities and intellectual property rights will be signed by the parties to the Project, including the Parties and any applicable Collaborating Institutions.

A3.2 In undertaking the Project, the Commissioned Organisation will engage with each Collaborating Institution (if any) via an agreement:

- (a) as negotiated and agreed with each Collaborating Institution, provided that in no circumstances may an agreement with a Collaborating Institution provide for arrangements that would be inconsistent with any other term of this Agreement (including as found in the Project Document), or otherwise place the Commissioned Organisation in breach of this Agreement, or
- (b) substantially on the terms set out in Schedule 1 to these Additional Terms,

(Collaborating Institution Agreement).

A3.3 The Commissioned Organisation warrants that, as of the date of signing this Agreement, each Collaborating Institution has received a draft copy of a proposed Collaborating Institution Agreement and that the terms of a proposed Collaborating Institution Agreement have either:

- (a) been agreed and executed by the Commissioned Organisation and each Collaborating Institution, or
- (b) been in substance approved by each of the Commissioned Organisation and each Collaborating Institution, and

the Commissioned Organisation shall provide ACIAR with a copy of each executed Collaborating Institution Agreement as soon as practical following the later of:

- (c) execution of this Agreement, or
- (d) execution of the relevant Collaborating Institution Agreement.

A3.4 The Commissioned Organisation acknowledges that ACIAR may:

- (a) delay the provision of any Payments until the Commissioned Organisation has provided ACIAR with copies of all applicable Collaborating Institution Agreements, and
- (b) terminate this Agreement with immediate effect upon providing the Commissioned Organisation written notice if the Commissioned Organisation has not provided ACIAR with all applicable Collaborating Institution Agreements within one (1) calendar month of the date this Agreement is signed by the last Party to sign, and clause 16.7 shall apply.

A3.5 Without limitation to clause 5, in performing the Services the Commissioned Organisation will cooperate fully with any Collaborating Institution for the purpose of ensuring timely completion of the Project.

A3.6 Notwithstanding clause 11.3, the ownership of Supplies procured within a Collaborating Country will vest in the government of that Collaborating Country on completion of the Project, and the Commissioned Organisation will take whatever action is necessary to effect that transfer.

A4. Project Committee

A4.1 ACIAR may establish a Project Committee that will include a representative of each of the Parties and, where relevant and appropriate (as determined by ACIAR), any Collaborating Institutions.

A4.2 The Project Committee will advise the Parties in relation to Project matters, and may call for specialised advice on any matter related to the Project.

A5. Payments

A5.1 The Commissioned Organisation may, subject to the following qualification and without reference to ACIAR, transfer Payments payable in respect of a particular item in the Budget for the Project to another item. The amount transferred may be the lesser of 10% of the total of the particular item in the Budget or \$10,000 from which the Payments are being transferred.

A5.2 Notwithstanding additional term A5.1, the Commissioned Organisation will not transfer Payments payable in respect of a particular item in the Budget payable outside Australia to another item in the Budget payable outside Australia. However, any Collaborating Institution will be able to vary its component of the Budget in the same way described in additional term A5.1. Transfer of Payments between items in excess of the amount referred to in additional term A5.1 must not be made without the prior written approval of ACIAR.

A5.3 Where the Budget for the Project provides for the payment of any Payments by the Commissioned Organisation to a Collaborating Institution, the Commissioned Organisation will pay those Payments six-monthly in advance within seven days following receipt of Payments from ACIAR. Any Payments that are unexpended by the Collaborating Institution at the expiration of the Payment Period for which they were allocated will be carried over for expenditure in the following Payment Period and the advance made for the following Payment Period by the Commissioned Organisation to the Collaborating Institution will be reduced proportionately, unless ACIAR approves otherwise in writing.

A6. Dispute Resolution

A6.1 Subject to additional term A6.4, before resorting to external dispute resolution mechanisms, the Parties will attempt to settle by negotiation any dispute in relation to this Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

A6.2 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.

A6.3 Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement.

A6.4 A Party may commence court proceedings relating to any dispute arising from this Agreement at any time where that Party seeks urgent interlocutory relief.

A7. Personnel

A7.1 The Commissioned Organisation will obtain the prior written approval of ACIAR to the appointment of any specialist or scientist Personnel not identified in the Project Document to perform the Services, which approval will not be unreasonably withheld. If ACIAR requests, the Commissioned Organisation must promptly provide any relevant information relating to such specialist or scientist 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
- (c) a copy of the curriculum vitae of each of the proposed persons which details relevant employment experience and educational qualifications, and
- (d) any other information relating to the proposed appointment necessary for, or directly related to, the Services.

A8. Audit and access

Without limitation to clause 15:

- (a) the Commonwealth through ACIAR or a representative may conduct audits relevant to the performance of the Commissioned Organisation's obligations under this Agreement. Audits may be conducted of:
 - (i) the Commissioned Organisation's operational practices and procedures as they relate to this Agreement, including security procedures
 - (ii) the Commissioned Organisation's compliance with its confidentiality, privacy and security obligations under this Agreement
 - (iii) records and documentation in the possession of the Commissioned Organisation relevant to the Services or this Agreement, and
 - (iv) any other matters determined by the Commonwealth to be relevant to the Services or this Agreement
- (b) the Commonwealth through ACIAR or a representative may, at reasonable times and on giving reasonable notice to the Commissioned Organisation:
 - (i) access the premises of the Commissioned Organisation to the extent relevant to the performance of this Agreement
 - (ii) require the provision by the Commissioned Organisation, its Personnel, of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Commissioned Organisation, its Personnel, and
 - (iv) require assistance in respect of any inquiry into or concerning the Services or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), and any inquiry conducted by Parliament or any Parliamentary committee
- (c) the Commissioned Organisation must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this additional term A8, and provide the Commonwealth through ACIAR or its representative with any reasonable assistance requested by the Commonwealth to use that hardware and software
- (d) the parties confirm that the rights of the Commonwealth set out in Additional Terms A8(b) and A8(c) may only be exercised for the purposes established in additional term A8(a)
- (e) the Commonwealth through ACIAR or a representative must use reasonable endeavours to ensure that:
 - (i) audits performed under clause A8, and
 - (ii) the exercise of the general rights granted by clause A8(b) by the Commonwealth, do not unreasonably delay or disrupt in any material respect the Commissioned Organisation's performance of its obligations under this Agreement or its business.
- (f) each Party must bear its own costs of any reviews and/or audits
- (g) the rights of the Commonwealth through ACIAR or its representative under additional term

A8 apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers

- (h) the Commissioned Organisation must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under additional term A8(g), provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate
- (i) the requirement for, and participation in, audits does not in any way reduce the Commissioned Organisation's responsibility to perform its obligations in accordance with this Agreement
- (j) the Commissioned Organisation must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this additional term A8
- (k) nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Commonwealth under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner, and
- (l) this additional term A8 applies for the Term and for a period of seven years from the expiry or termination of this Agreement.

A9. Intellectual property

A9.1 Without limitation to additional term A3.2(a), the Commissioned Organisation and any relevant Collaborating Institution, as part of the entering into a Collaborating Institute Agreement, negotiate Intellectual Property arrangements between those parties (**IP Arrangements**) that cover matters such as:

- (a) how Project IP may be used and disseminated by those parties in accordance with the terms of this Agreement including, if applicable, the CGIAR IA Principles
- (b) the terms of any rights to Project IP between those parties, including securing such rights as are necessary for the Commissioned Organisation to grant ACIAR and any other parties rights to Project IP pursuant to this Agreement
- (c) the terms of any licence of Background IP, including securing such rights as are necessary for the parties to undertake the Project and to grant ACIAR or any other party any rights to Project IP pursuant to this Agreement
- (d) indemnity arrangements against liability arising from claims by third parties in connection with the breach of Intellectual Property Rights
- (e) whether the Commissioned Organisation and any Collaborating Institution will seek to put in place any 'Limited Exclusivity Agreements' or 'Restricted Use Agreements' as defined in and in accordance with Articles 6.1 to 6.3 of the CGIAR IA Principles, and
- (f) the allocation of costs relating to the application for and maintenance of the IP Rights between the Commissioned Organisation and any relevant Collaborating Institution,

provided that in no circumstances may the IP Arrangements provide for arrangements that would be inconsistent with any other term of this Agreement (including as found in the Project Document), or otherwise place the Commissioned Organisation in breach of this Agreement.