



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

**Attachment A**

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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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as at January 2020

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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

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 the Standard Conditions which are the foundation of agreements for the research partnerships it facilitates. These Standard Conditions must be read in conjunction with the Letter of Agreement and the Project Document (which together form the Project Agreement).

### 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 of the Project Agreement.*

#### 1. Interpretation

1.1 **Definitions.** Unless a contrary intention appears, in these Standard Conditions the following definitions apply:

*“ACIAR project management system”* means the collaborative project site that lets the Project Leader, and other members of the Commissioned Organisation, share documentation and respond to tasks allocated by ACIAR;

*“Acquittal”* means the provision of an accurate report on funded activities, providing a breakdown of what the funds have been spent on and assurance that they have been spent on the intended purpose and in accordance with the terms of the Project Agreement.

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

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

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

- (a) in existence prior to the date of the Project 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;

*“Budget”* means the financial document as part of the Project Document that details the high level application and distribution of funds within the Project.

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

*“Collaborating Country”* means the country with which ACIAR has entered into an International Agreement;

*“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 Letter of Agreement who by executing and returning the duplicate to ACIAR has undertaken to provide the Services in accordance with the Project Agreement;

“*Commonwealth*” means the Commonwealth of Australia;

“*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 the 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, the 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, referred to in paragraphs (c) to (h) above is on the other party;

“*Correctly Rendered Invoice*” means an invoice that:

- (a) Is correctly addressed and calculated in accordance with the Project Agreement;
- (b) Relates only to Goods and/or Services that have been accepted by ACIAR in accordance with the Project Agreement;
- (c) Includes the Purchase Order number, the name and phone number of the ACIAR Contract Manager;
- (d) Is for an amount, together with all previously Correctly Rendered Invoices, do not exceed the Project Agreement price; and
- (e) Is a valid tax invoice in accordance with the GST Act.

“*Expended Funds*” means the sum of all incurred expenditure and paid expenditure;

“*Final Acquittal*” means the financial Acquittal at the end of a Project of all amounts not acquitted in previous financial Acquittals;

“*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;

“*Fraud*” means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means’;

“*General Interest Charge Rate* “ means the general interest charge rate determined under section 8AAD of the *Tax Administration Act 1953* on the day payment is due, expressed as a decimal rate per day;

“*Intellectual Property*” means all intellectual property rights, whether or not such rights are registered or capable of being registered, including the following:

- (a) patents and inventions, plant varieties, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks), trade secrets and knowhow, and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere;

“*International Agreements*” means a Memorandum of Understanding, Memorandum of Subsidiary Agreement or Deed of Agreement with a Collaborating Institution;

“*Letter of Agreement*” 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 set out in the Project Agreement;

“*Letter of Interim Agreement*” means a Letter of Agreement forwarded by ACIAR to the Commissioned Organisation where the Project Agreement is conditional on the International Agreements being signed and creates an interim agreement where a payment can be made but ACIAR is under no further obligation to make further payments until the International Agreement is signed. Consequently if the International Agreement is not signed within 3 months of the date the Letter of Interim Agreement is signed by both

parties, then no further payments will be made and the Project Agreement terminates.

“*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 Commonwealth Government 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;

“*Payment Period*” means the periods: 1 January to 30 June; or 1 July to 31 December. The Payment Period may be reduced in length if the start or end date of the Project Agreement falls within the period;

“*Project*” means the project described in the Project Document and referred to in the Letter of Agreement;

“*Project Agreement*” means the Letter of Agreement between ACIAR and the Commissioned Organisation, these Standard Conditions and the Project Document;

“*Project Document*” means the document including Budget, which was provided to ACIAR by the Commissioned Organisation in relation to the Project, which has been approved by the CEO. The active version of the Project Document (including Budget) is that which appears as the last ACIAR approved document on the ACIAR project management system;

“*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 the Project 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;

“*Standard Conditions*” means the terms set out in this ‘Standard Conditions for Project Agreements’ document from clauses 1 to 35;

“*Unexpended Funds*” means all funds remaining after deducting funds expended in accordance with the Project Agreement, including the Project Document and the Budget;

“*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 clause 12.2 and clause 12.11.

- 1.2 **Interpretation.** Unless a contrary intention appears, in these Standard Conditions:
- (a) words imputing a gender include any other gender;
  - (b) the singular includes the plural and vice versa;
  - (c) another grammatical form of a defined word or expression has a corresponding meaning;
  - (d) 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;
  - (e) a reference to a document includes the document as novated, altered, supplemented or replaced from time to time;
  - (f) a reference to a person includes the person’s permitted successors, substitutes (including persons taking by novation) and assigns;
  - (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - (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) 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;
  - (j) 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;
  - (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Standard Conditions or the Letter of Agreement;
  - (l) paragraph headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
  - (m) all references to dollars are to Australian dollars; and
  - (n) a reference to a "clause" is a reference to a clause in these Standard Conditions and a reference to "Schedule" is a reference to a Schedule (if any) to these Standard Conditions.

## **2. Services**

- 2.1 The Commissioned Organisation shall perform the Services within the period for performing the Services specified in the Letter of Agreement 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 the 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 the 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 20.6 of these Standard Conditions 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 the 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; and
- (d) if the causes of the delay cannot be resolved within 3 months, ACIAR may terminate the Project Agreement in accordance with clause 20.

## **3. Subcontracting**

- 3.1 The Commissioned Organisation shall not, without the prior written approval of ACIAR, subcontract the performance of any part of the Services that, or engage a subcontractor who, was not expressly specified in the initial CEO approved Project Document. Where ACIAR approves subcontracting, either as part of the initial CEO approved Project Document or as a result of a subsequent request by the Commissioned Organisation to vary the Project, the Commissioned Organisation shall comply with any terms imposed by ACIAR. Any failure by a Commissioned Organisation or its subcontractor to comply



- will entitle ACIAR to terminate the Project Agreement in accordance with clause 20.
- 3.2 The Commissioned Organisation shall be fully responsible for the performance of the Services notwithstanding that the Commissioned Organisation has subcontracted the performance of any part of those Services.
- 3.3 Where requested, the Commissioned Organisation shall provide a copy of any such subcontract to ACIAR within 7 days of its execution.
- 3.4 The Commissioned Organisation agrees that ACIAR may publicly disclose the names, Australian Business Numbers and addresses of the subcontractors approved under the Project Agreement and their role in fulfilling the Project Agreement.
- 3.5 The Commissioned Organisation must ensure that any subcontract entered into for the purpose of the Project Agreement contains an equivalent provision to clause 3.4 permitting ACIAR to disclose the information specified in that clause.

#### **4. Term of Project Agreement**

- 4.1 The Project Agreement commences on the date specified in the Letter of Agreement. 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 the Letter of Interim Agreement.
- 4.2 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 Letter of Agreement.
- 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 Budget of the Project Document in the 'Payment Schedule' tab; 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 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 as follows:
- (a) each payment shall only be made following ACIAR's receipt of:
    - (i) a satisfactory written report as detailed in clause 5.10 in relation to the Payment Period; and
    - (ii) where required by clause 19.1, a satisfactory Annual Report.
  - (b) any funds that are unexpended by the Commissioned Organisation at the expiration of the Payment Period for which they were allocated shall be carried over for expenditure in the following Payment 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 the Australian component of the final payment (that is the amount specified in the 'Payment Schedule' tab 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 19.2. The Withholding Payment shall be made to the Commissioned Organisation within thirty

- (30) days of ACIAR's acceptance of the Final Report. Within thirty (30) days of receipt of the Withholding Payment, the Commissioned Organisation must provide a Final Acquittal for the Project including all unexpended funds.
- 5.7 The Commissioned Organisation may, subject to the following qualification and 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 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 Payment Period for which they were allocated shall 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 shall be reduced proportionately, unless ACIAR approves otherwise in writing.
- 5.10 No later than 30 days after the expiration of each Payment Period for which the funds were allocated ("acquittal period"), the Commissioned Organisation shall provide to ACIAR a written acquittal that includes the following details:
- (a) the unacquitted amount from the prior period (if any), the amount received from ACIAR for the acquittal period and the amounts expended in the acquittal period;
  - (b) an explanation detailing the reasons for the delay in spending funds must be provided where unexpended funds exceed 20% of available funds;
  - (c) sign-off by the Project Leader; and
  - (d) certification by an officer duly authorised by the Commissioned Organisation that the amounts, reported under clause 5.10(a) above, are correct and accurately reflect expenditure which has been incurred against each item for the purposes of the Project.
- 5.11 The report to be provided under clause 5.10 must be in the form set out in the ACIAR project management system.
- 5.12 The Commissioned Organisation acknowledges it is solely responsible for payment of, and accounting to ACIAR for, all expenses incurred in performing the Services.
- 5.13 **Taxes**
- The Commissioned Organisation must pay all:
- (a) stamp duty (including penalties and interest) assessed or payable in respect of the Project Agreement and the undertaking of the Project; and
  - (b) subject to clause 7, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of the Project Agreement.
- 6. Interest on Late Payments**
- 6.1 Where ACIAR and the Commissioned Organisation both have the capability to deliver and receive e Invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), ACIAR will pay the amount of a Correctly Rendered Invoice to the Commissioned Organisation within five (5) calendar days after receiving it, or if this day is not a business day, on the next business day.
- 6.2 In all other circumstances, ACIAR will pay the amount of a Correctly Rendered Invoice to the Commissioned Organisation within twenty (20) calendar days after receiving it, or if this day is not a business day, on the next business day.



6.3 If the total initial value of the Contract (excluding any options, extensions, renewals or other mechanisms that may be executed over the life of the contract) is less than A\$1 million (GST inclusive) and ACIAR fails to make a payment to the Commissioned Organisation by the business day it is due, ACIAR will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

6.4 Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that ACIAR effects payment, calculated using the General Interest Charge Rate available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

## **7. Goods and Services Tax**

7.1 Amounts that ACIAR is required to pay under the 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 the Project Agreement ("GST liability"), the amount otherwise payable by ACIAR under the 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 the Project Agreement.

7.2 Where required, the Commissioned Organisation shall provide a tax invoice that may enable ACIAR, if permitted by the *A New Tax System (Goods and Services Tax Act) 1999* (Cth) (the "GST Act"), to claim a credit or refund, a notional credit or refund, of GST.

7.3 In clause 7, a word or expression defined in the GST Act has the meaning given to it in that Act.

## **8. Negation of Employment, Partnership and Agency**

8.1 The Commissioned Organisation shall not by virtue of the 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 subcontractors do not represent themselves, as such.

## **9. Personnel**

9.1 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 of the Project Agreement.

9.2 Subject to clause 9.6 the Commissioned Organisation shall ensure that the Specified Personnel undertake work in respect of the Services in accordance with the terms of the Project 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.

9.3 Personnel of the Commissioned Organisation (including Specified Personnel, employees, agents and subcontractors) 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.

9.4 ACIAR may, on reasonable grounds, give notice requiring the Commissioned Organisation to remove personnel (including Specified Personnel, employees, agents and subcontractors) 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 9.4, clause 9.2 or clause 9.3,

- ACIAR may terminate the Project Agreement in accordance with clause 20.
- 9.5 The Commissioned Organisation is responsible for arranging and paying for travel for, and payment of salaries and allowances to, its personnel including Specified Personnel and subcontractors from the Budget provided for in the Project Document.
- 9.6 Where not specified in the initial CEO approved Project Document, 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 must promptly provide any relevant information 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.

## **10. Travel**

- 10.1 The Commissioned Organisation shall provide prior written notice to ACIAR detailing all visits scheduled to a Collaborating Country by its personnel, including Specified Personnel and subcontractors. Details of any dependants accompanying the personnel shall also be provided in the notice. The written notice is to be provided as a Travel Advice Note available on the ACIAR website (<http://aciar.gov.au/travel>).
- 10.2 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.

- 10.3 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.
- 10.4 At the completion of the travel referred to in clause 10.1, 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 ACIAR's monitoring of the Project.
- 10.5 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 subcontractors accept any responsibility or liability for any injury, loss, damage or expense incurred by personnel of the Commissioned Organisation and/or its subcontractors, 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.

## **11. Project Equipment and Supplies**

- 11.1 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.
- 11.2 The Commissioned Organisation shall exercise administrative control of and maintain and keep equipment and supplies referred to in clause 11.1 in good repair.
- 11.3 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.
- 11.4 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.
- 11.5 Unless otherwise agreed in writing, the Commissioned Organisation shall effect

<p>with reputable and substantial underwriters and maintain insurance against all loss or damage to the Project equipment referred to in clause 11.1 until the Services are completed.</p> <p>11.6 Notwithstanding clause 11.5, the Commissioned Organisation may undertake self-insurance arrangements with ACIAR's prior written approval.</p>	<p>ACIAR has from the Commissioned Organisation.</p>
<p><b>12. Intellectual Property</b></p>	
<p>12.1 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:</p> <ul style="list-style-type: none"> <li>• the International Treaty on Plant Genetic Resources;</li> <li>• the FAO trustee arrangements with international agricultural research centres;</li> <li>• the Convention on Biological Diversity;</li> <li>• the Agreement on Trade Related Aspects of Intellectual Property rights;</li> <li>• and the provisions of the International Union for the Protection of New Varieties of Plant.</li> </ul> <p>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 12.1 shall be interpreted such that the relevant obligation is that which was in effect at the time of the action in question.</p>	<p>12.3 The Commissioned Organisation warrants that to its actual knowledge and belief, following all diligent and reasonable enquiries, at the date of the Project Agreement or the date on which Background IP is first used in the Project (whichever is applicable to the circumstances):</p> <ol style="list-style-type: none"> <li>(a) it is the owner of, or is otherwise entitled to use, the Background IP;</li> <li>(b) it is entitled to grant the licences under clauses 12.2 and 12.11; and</li> <li>(c) the exercise by ACIAR of its rights under clauses 12.2 and 12.11 will not infringe any Intellectual Property rights of any third party.</li> </ol> <p>12.4 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 12.3.</p> <p>12.5 For the purposes of this clause 12, "infringe" and "infringement" means unauthorised acts which would, but for the operation of section 183 of the Copyright Act 1968 (Cth), constitute an infringement.</p> <p>12.6 The warranties and indemnities contained in this clause 12 shall survive the expiration or termination of the Project Agreement.</p> <p>12.7 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.</p>
<p>12.2 Unless otherwise expressly agreed in writing by the Parties, the Project 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-license its rights under this clause 12.2, ACIAR will ensure that any sub-licence will be on the same or substantially the same terms as the licence</p>	<p>12.8 The Parties agree that Project IP shall:</p> <ol style="list-style-type: none"> <li>(a) in Australia, vest in the Commissioned Organisation; and</li> <li>(b) in the Collaborating Country, vest in the Collaborating Institution or an authority designated by the government of the Collaborating Country.</li> </ol>

- 12.9 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 12.11;
  - (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 12.2; 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.
- 12.10 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.
- 12.11 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 12.11, ACIAR will ensure that any sublicense will be on the same or substantially the same terms as the licence ACIAR has from the Commissioned Organisation.
- 12.12 The Commissioned Organisation agrees that it will not sub-license or assign Project IP without first obtaining ACIAR's prior written consent. Despite this, a Commissioned Organisation may sub-license Project IP on a non-exclusive basis to subcontractors specified in the initial CEO approved Project Document without first seeking ACIAR's approval.
- 12.13 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 each year 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.
- 12.14 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.
- 12.15 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.
- 12.16 The Commissioned Organisation may report details of the Project in the non-specialist media provided:
- (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 or may be



potentially controversial, the Commissioned Organisation shall, prior to submitting any information for publication, request ACIAR's written consent.

### **13. Moral Rights**

13.1 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 IP;
- (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 clause 13.1(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 clause 13.1(b);
- (d) will, following notice under clause 13.1(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.

### **14. Disclosure of Information**

- 14.1 The Commissioned Organisation shall not, without prior written approval of ACIAR, disclose to any person other than ACIAR, any Confidential Information of ACIAR.
- 14.2 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.
- 14.3 Either Party may at any time require the other Party to give and arrange for its employees, officers, agents and subcontractors 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.

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

### **15. Privacy**

- 15.1 The Commissioned Organisation, to the extent that it deals with Personal Information, when and for the purpose of, the Project – is a 'contracted service provider' within the meaning of the *Privacy Act 1988* (Cth), and in accordance with that Act must:
- (a) comply with the Australian Privacy Principles ('APP') and with any registered, applicable APP Code or Registered CR Code, and
  - (b) cooperate 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.

### **16. Coordinator**

- 16.1 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.

### **17. Project Committee**

- 17.1 ACIAR may establish a Project Committee that shall include a representative of each of the Parties and, where appropriate, the Collaborating Institution.
- 17.2 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.

### **18. Review and Evaluation**

- 18.1 ACIAR may at any time undertake to review and evaluate the Project.
- 18.2 ACIAR may within three years of the completion of the Project undertake a review to assess the adoption and uptake of the Project results.
- 18.3 To facilitate any review under clauses 18.1 and 18.2, the Commissioned Organisation shall promptly 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.

## 19. Report

- 19.1 The Commissioned Organisation shall provide ACIAR with Annual Reports by 14 July each year until the final year. If the project has been active for more than five months on 14 July an Annual Report is required to be submitted. Annual reports must be prepared in accordance with the Guidelines that are current at the time of preparation of the report and which are available through the ACIAR project management system. The Annual Report for the final year (or part year) of the Project should be subsumed into the Final Report.
- 19.2 Upon the completion of the Project in accordance with the Project Agreement, the Commissioned Organisation shall provide ACIAR with a Final Report. Final Reports must be prepared in accordance with the Guidelines that are current at the time of preparation of the Report and which are available through the ACIAR project management system. The Final Report is due within 60 days of the completion of the Project.
- 19.3 Where requested, the Commissioned Organisation shall provide ACIAR additional reports prepared in accordance with the Guidelines available through the ACIAR project management system. Such additional reports may include an Interim Final Report, Project Factsheets and/or other *ad hoc* reports.
- 19.4 Where, during the development, approval and life of a Project a Self Assessment of the potential for significant environmental impacts under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has been accepted, the Commissioned Organisation shall 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.

## 20. Termination

- 20.1 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.

- 20.2 In addition to clause 20.1, 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 20.1 or 20.2, 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 20.3, 20.4 and 20.5 any reasonable costs incurred by the Commissioned Organisation and directly attributable to the termination or partial termination of the Project Agreement.
- 20.3 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.
- 20.4 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.
- 20.5 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.
- 20.6 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.

## 21. Insurance

- 21.1 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 per claim and \$10,000,000 in aggregate;
  - (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.
- 21.2 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.
- 21.3 The requirement of clause 21.1(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.
- 21.4 Notwithstanding the clause 19.1(c), the Commissioned Organisation may undertake self-insurance arrangements with ACIAR's prior written approval.
- 21.5 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 subcontractors of the Commissioned Organisation or for the dependants of any such persons as may travel for the purposes of the Services.

## 22. Indemnity

- 22.1 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 subcontractors in connection with the Services.

- 22.2 The Commissioned Organisation's liability to indemnify ACIAR under clause 22.1 shall be reduced proportionally to the extent that any unlawful or negligent act or omission of ACIAR or its officers, employees, agents or sub-licencees contributed to the loss or liability.

## 23. Waiver

- 23.1 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 the Project Agreement at any time shall in no way be interpreted as a waiver of such provisions.

## 24. Compliance with laws and policies

### 24.1 General

Without limiting specific provisions of the Project 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);
- (vi) any obligations it has under the *Work Health Safety Act 2011* (Cth) or equivalent state or territory law and regulations;
  - (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.
- 24.2 The Commissioned Organisation must ensure that it and any individuals, persons, entities or organisations involved in delivering Goods and or Services under this Contract, including its officers, employees, agents and subcontractors, 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/Listedterroristorganisations/Page/default.aspx>);
  - (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://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>);
  - (d) listed on the 'World Bank's Listing of Ineligible Firms and Individuals' posted at: <https://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Pages/fraud-frameworks-legislation-policies.aspx>;
  - (e) owned, controlled by, acting on behalf of, or at the direction of individuals, persons, entities or organisations referred to in clauses 24.2(a) to 24.2(d) above; or
  - (f) providing direct or indirect support, resources or assets (including any grant monies) to individuals, persons, entities or organisations referred to in clauses 24.2(a) to (e) above.
- 24.3 Where the Commissioned Organisation becomes aware that there are reasonable grounds to suspect it or any of its officers, employees, agents and subcontractors has or may have contravened any part of clause 24.2, 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.
- 24.4 The Commissioned Organisation must ensure that any subcontract entered into by the Commissioned Organisation must ensure that any subcontract entered into by the Commissioned Organisation for the purposes of fulfilling its obligations under this Contract imposes on the Subcontractor the same obligations that the Commissioned Organisation has under this clause, including this requirement to impose obligations on any further subcontractor.
- 25. Child safety**
- 25.1 If any part of the Project involves the Commissioned Organisation employing or engaging a person (whether as an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Project or any part of the Project, the Commissioned Organisation agrees:
- (a) to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Award, including mandatory reporting and working with children checks however described; and
  - (b) if requested, provide the Commonwealth at the Commissioned Organisation's cost, an annual statement of compliance with this clause, in such form as may be specified by the Commonwealth.

25.2 When Child Safety obligations may be relevant to a Subcontract, the Commissioned Organisation must ensure that any subcontract entered into by the Supplier for the purposes of fulfilling the Commissioned Organisation's obligations under the contract imposes on the Subcontractor the same obligations regarding Child Safety that the Commissioned Organisation has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

## **26. Workplace Gender Equality**

26.1 This clause 26 applies only to the extent that the Commissioned Organisation is a 'Relevant Employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

26.2 The Commissioned Organisation must comply with all of its obligations under the WGE Act.

26.3 If the Commissioned Organisation becomes non-compliant with the WGE Act during the term of the Project Agreement, the Commissioned Organisation must notify ACIAR.

26.4 If the term of the Project Agreement exceeds 18 months, the Commissioned Organisation must provide a current letter of compliance with the WGE Act within 18 months from the Commencement Date of any Project Agreement, and following this annually to ACIAR.

26.5 Compliance with the WGE Act does not relieve the Commissioned Organisation from its responsibilities to comply with its other obligations under the Project Agreement.

## **27. Fraud Control**

27.1 Without derogating from its obligations in the Project Agreement, 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 <http://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Documents/CommonwealthFraudControlFramework2017.DOCX>

27.2 ACIAR's Fraud Policy Statement and guidance on reporting any allegations or concerns regarding fraud within the Project is available at

<https://www.aciar.gov.au/Standard-Contract-Conditions-and-Intellectual-Property-Policy>

27.3 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 by its personnel and/or third party members including subcontractors of any Fraud and any suspected Fraud incident. The Control Plan will specify what audit procedures and audit frequency will be applied.

## **28. Conflict of interest**

### **28.1 Warranty that there is no conflict of interest**

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

### **28.2 Notification of a conflict of interest**

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.

## **29. Applicable Law**

29.1 The Project Agreement shall be governed by and construed in accordance with the laws of the Australian Capital Territory. The Commissioned Organisation submits to the jurisdiction of the courts of that Territory and any court competent to hear appeals from those courts.

29.2 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.

## **30. Authority and consents**



30.1 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.

30.2 Except as expressly provided in the Project Agreement, ACIAR may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under the Project Agreement, ACIAR will not unreasonably withhold consent.

### **31. Cooperation**

31.1 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.

### **32. Variation to the Project Agreement**

32.1 The Project Document including Budget is the latest ACIAR approved version within the ACIAR projects management system.

32.2 ACIAR or the Commissioned Organisation may make minor variations to the Project Document within the ACIAR project management system. Minor variations include changes to the scope of activities and to Collaborating Institution personnel.

32.3 Significant 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. A significant variation would include changes in objectives, or changes to the 'Payment Schedule' of the Budget.

### **33. Dispute Resolution**

33.1 Subject to clause 33.4, 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.

33.2 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.

33.3 Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under the Project Agreement.

33.4 A Party may commence court proceedings relating to any dispute arising under the Project Agreement at any time where that Party seeks urgent interlocutory relief.

### **34. Books and records**

34.1 Commissioned Organisation to keep books and records

The Commissioned Organisation must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the Commonwealth under the Project Agreement to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of the Project Agreement all books and records relating to the Services.

34.2 **Costs**

The Commissioned Organisation must bear its own costs of complying with this clause 34.

34.3 **Survival**

This clause 34 applies for the Term of Project Agreement and for a period of seven years from the expiry or termination of the Project Agreement.

### **35. Audit and access**

35.1 **Right to conduct audits**

The Commonwealth through ACIAR or a representative may conduct audits relevant to the performance of the Commissioned Organisation's obligations under the Project Agreement. Audits may be conducted of:

- (a) the Commissioned Organisation's operational practices and procedures as they relate to the Project Agreement, including security procedures;
- (b) the Commissioned Organisation's compliance with its confidentiality, privacy and security obligations under the Project Agreement;
- (c) Material (including books and records) in the possession of the Commissioned Organisation relevant to the Services or the Project Agreement; and



- (d) any other matters determined by the Commonwealth to be relevant to the Services or the Project Agreement.
- 35.2 Access by the Commonwealth**
- (a) 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 the Project Agreement;
  - (ii) require the provision by the Commissioned Organisation, its employees, agents or subcontractors, 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 employees, agents or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the Services or the Project 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.
- (b) 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 clause 33, and provide the Commonwealth through ACIAR or its representative with any reasonable assistance requested by the Commonwealth to use that hardware and software.
- 35.3 Conduct of audit and access**
- The Commonwealth through ACIAR or a representative must use reasonable endeavours to ensure that:
- (a) audits performed under clause 33.1; and
  - (b) the exercise of the general rights

- granted by clause 33.2 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Commissioned Organisation's performance of its obligations under the Project Agreement or its business.
- 35.4 Costs**
- Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.
- 35.5 Auditor-General and Privacy Commissioner**
- The rights of the Commonwealth through ACIAR or its representative under clause 33.2(a)(i) to 33.2(a)(iii) 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.
- 35.6 Commissioned Organisation to comply with Auditor-General's requirements**
- 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 clause 33.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.
- 35.7 No reduction in responsibility**
- 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 the Project Agreement.
- 35.8 Subcontractor requirements**
- The Commissioned Organisation must ensure that any subcontract entered into for the purpose of the Project Agreement contains an equivalent clause granting the rights specified in this clause 33.
- 35.9 No restriction**
- Nothing in the Project 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 the Project 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.

**35.10 Survival**

This clause 33 applies for the Term of the Project Agreement and for a period of seven years from the expiry or termination of the Project Agreement.

**36. Access to documents**

**36.1 Definitions**

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

**36.2 Application of this clause**

This clause 36 only applies where the Project Agreement or a subcontract is a Commonwealth contract.

**36.3 Obligations**

The Commissioned Organisation agrees that where the Commonwealth has received a request for access to a document created by, or in the possession of, the Commissioned Organisation (or any subcontractor) that relates to the performance of the Project Agreement (and not to the entry into the Project 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.

**36.4 Subcontractor requirements**

The Commissioned Organisation must include in any subcontract relating to the performance of the Project Agreement provisions that will enable the Commissioned Organisation to comply with its obligations under clause 34.

**37. Survival**

In addition to any clauses individually expressed to survive, the following clauses survive the expiry or termination of the Project Agreement:

- (a) Clause 7 (GST);
- (b) Clause 12 (Intellectual Property Rights);

- (c) Clause 13 (Moral Rights);
- (d) Clause 14 (Disclosure of Information);
- (e) Clause 15 (Privacy);
- (f) Clause 21 (Insurance);
- (g) Clause 22 (Indemnity);
- (h) Clause 29 (Applicable Law); and
- (i) Clause 33 (Dispute Resolution).

## Change Register

ACIAR has developed Standard Conditions which are a key part of Project Agreements, helping to facilitate research partnerships.

Recent changes to the Standard Conditions are identified below. This information is provided to assist Commissioned Organisations keep up to date with changes to the Standard Conditions. This Change Register 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 subclause 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 Treaty	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
Revised Clause 8 Travel	January 13
Revised Clause 17.1. Timeframe before first Annual Report now more than 5 months	June 2013
Inclusion of Clause 17.3. EPBC Act reporting (if required)	December 2013
Inclusion of Definition to Clause 1.1. Fraud	February 2014
Inclusion of Clause 22. Compliance with laws and policies	February 2014
Inclusion of Clause 23 Workplace Gender Equality	February 2014
Inclusion of Clause 24 Fraud Control	February 2014
Inclusion of Clause 25 Conflict of Interest	February 2014
Clause 5.10 Revision of acquital requirements	May 2014

Clause 13 Protection of Personal Information deleted and replaced with Clause 13 Privacy	May 2014
Change register – ACIAR Acquital revised	May 2014
Layout Change	February 2015
Clauses 7.4 & 7.5 - Expand definition of Commissioned Organisation Personnel to include Specified Personnel, employees, agents and subcontractors)	February 2015
Clause 3 –Subcontracting expanded with new clauses 3.4 and 3.5	February 2015
Addition of Clause 5.14 – Taxes	February 2015
Clause 5.13 deleted and replaced with Clause 31- Books and records, Clause 32 – Audit and Access and Clause 33 – Access to documents	February 2015
Clause 19.1(c) –amended	February 2015
Addition of Clause 34 - Survival	February 2015
Definition amended for Project Agreement Letter to Letter of Agreement	July 2015
Definition amended for Letter of Intent to Letter of Interim Agreement	July 2015
Definition amended for Collaborating Country, Commissioned Organisation, Project and Project Agreement	July 2015
Added new definition International Agreement	July 2015
Clause 1.1 Interpretation; amend definition for “Letter of Interim Agreement”	August 2015
Amend Clause 24 Fraud Control	January 2016
Changes to support ACIAR project management system	September 2017
Amend clause 22 Compliance with laws and policies	January 2020
Addition of new clause 7 - Interest on Late Payments and Definitions	January 2020