



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

Attachment A

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



Part of Australia's development
assistance program

www.aciar.gov.au

as at 20 September 2017

STANDARD CONDITIONS FOR PROJECT AGREEMENTS BETWEEN ACIAR AND THE COMMISSIONED ORGANISATION

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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 (International Centre - CGIAR)

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 our 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 and conditions 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 Rights that are:

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

and which are 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;

“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, this Project Agreement;
- (g) by law is required to be disclosed including under court subpoena, parliamentary order, under the *Freedom for Information Act 1982* (Cth) or as part of discovery during legal proceedings; or
- (h) is required to be disclosed to any government agency, authority, department or Minister, or to any parliamentary committee,
- (i) and the burden of establishing any exceptions referred to in paragraphs(c) to (h) above is on the other party;

“Expended Funds” means sum of all paid and incurred 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” against the Commonwealth is defined as ‘dishonestly obtaining a benefit, or causing a loss, by deception or other means’

“Intellectual Assets” means any results or products of the research and development activities under the Project (including, but not limited to, knowledge, publications and other information products, databases, improved germplasm, technologies, inventions, know-how, processes, software, and distinctive signs), whether or not they are protected by Intellectual Property Rights, and Project Material;

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

“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;

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

“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;

“person” includes a natural person, a body corporate and an unincorporated association;

“Project” means the project described in the Project Document and referred to in the 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 the Intellectual Property Rights in the Project Material that is brought into existence by or on behalf of the Commissioned Organisation 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 29

“*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 clauses 10.3 and 10.8.

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 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 17.6 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 17.

3. Sub-Contracting

- 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 17.
- 3.2 The Commissioned Organisation shall be fully responsible for the performance of the Services notwithstanding that the Commissioned Organisation has sub-contracted the performance of any part of those Services.
- 3.3 Where requested, the Commissioned Organisation shall provide a copy of any such subcontract to ACIAR within 7 days of its execution.

4. Term of Project Agreement

- 4.1 The Project Agreement commences on the date specified in the Letter of 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
 - (j) 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 16.1, 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 16.2. 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 acquitting 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 (“payment 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.
- 6. Negation of Employment, Partnership and Agency**
- 6.1 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 ACIAR, or as having power or authority to bind or represent ACIAR, and shall not represent itself, and shall ensure that its officers, employees, agents and sub-contractors do not represent themselves, as such.
- 7. Personnel**
- 7.1 The Commissioned Organisation shall provide adequate and competent personnel to perform the Services and shall ensure that they undertake the Services in accordance with the terms of the Project Agreement.
- 7.2 Subject to clause 7.6 the Commissioned Organisation shall ensure that the Specified Personnel undertake work in respect of the Services in accordance with the terms of this Agreement. Where Specified Personnel are unable to undertake work in respect of the Services, the Commissioned Organisation shall notify ACIAR immediately. The Commissioned Organisation shall, if so requested by ACIAR, provide replacement personnel acceptable to ACIAR at no additional charge and at the earliest opportunity.
- 7.3 Personnel of the Commissioned Organisation (including Specified Personnel, employees, agents and sub-contractors) who are undertaking Services in a country of which they are not citizens shall in no way become involved in the political affairs of that country. If, in the opinion of ACIAR such personnel have become involved in the political affairs of such country, ACIAR may require the Commissioned Organisation, at its own cost, to promptly remove the personnel involved from work in respect of the Services and for their replacement with personnel of equal competence approved in writing by ACIAR prior to their appointment.
- 7.4 ACIAR may, on reasonable grounds, give notice requiring the Commissioned Organisation to remove personnel (including Specified Personnel, employees, agents and sub-contractors) from work in respect of the Services. The Commissioned Organisation shall at its own cost, promptly arrange for the removal of such personnel from work in respect of the Services and their replacement with personnel acceptable to ACIAR. If the Commissioned Organisation is unable to provide acceptable replacement personnel under this clause 7.4, clause 7.2 or clause 7.3, ACIAR may terminate the Project Agreement in accordance with clause 17.
- 7.5 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.
- 7.6 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.

8. Travel

- 8.1 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 sub-contractors. 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>).
- 8.2 At the completion of the travel referred to in clause 8.1, the Commissioned Organisation shall provide to ACIAR within thirty days of travel, a trip report that shall include the travel itinerary and information relevant to ACIAR's monitoring of the Project.
- 8.3 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 Australian Department of Foreign Affairs and Trade (DFAT) Travel Advices before Project personnel travel. Neither ACIAR nor its officers, employees or sub-contractors accept any responsibility or liability for any injury, loss, damage or expense incurred by personnel of the Commissioned Organisation and/or its sub-contractors, in any circumstances and in

particular, who travel in areas where security or safety risks exist or who travel against the advice of DFAT in these matters.

9. Project Equipment and Supplies

- 9.1 The Commissioned Organisation shall arrange, from the funds payable by ACIAR to the Commissioned Organisation for the Services, the procurement and delivery of all equipment and supplies that are specified in the Project Document.
- 9.2 The Commissioned Organisation shall exercise administrative control of and maintain and keep equipment and supplies referred to in clause 9.1 in good repair.
- 9.3 The Parties agree that the ownership of equipment and supplies procured by the Commissioned Organisation for the purposes of the Project in the Collaborating Country shall vest in the government of the Collaborating Country at the completion of the project.
- 9.4 Unless otherwise agreed in writing, the Commissioned Organisation shall effect with reputable and substantial underwriters and maintain insurance against all loss or damage to the Project equipment referred to in clause 9.1 until the Services are completed.
- 9.5 Notwithstanding clause 9.4, the Commissioned Organisation may undertake self-insurance arrangements with ACIAR's prior written approval.

10. Intellectual Assets and Intellectual Property Rights

- 10.1 ACIAR and the Commissioned Organisation shall have regard to the provisions of and fulfil all relevant obligations under international arrangements to which Australia is a signatory relating to intellectual property and biological resources including but not limited to:
- the International Treaty on Plant Genetic Resources;
 - the FAO trustee arrangements with international agricultural research centres;
 - the Convention on Biological Diversity;
 - the Agreement on Trade Related Aspects of Intellectual Property rights; and

- the provisions of the International Union for the Protection of New Varieties of Plant.

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

10.2 The Parties agree that all Intellectual Assets, as defined in the CGIAR Principles on the Management of Intellectual Assets (“CGIAR IA Principles”) and Intellectual Property Rights created under or as part of the Project will be dealt with in accordance with CGIAR IA Principles and that all Intellectual Assets will be used for the public good.

10.3 Unless otherwise expressly agreed in writing by the Parties, the Project Agreement does not affect the ownership of Background IP. The Commissioned Organisation:

- (a) must conduct, and ensure that the Collaborating Institution conducts, an appropriate due diligence to ensure that any Background IP, or Intellectual Property Rights, owned by third parties, will not infringe the rights of any other party;
- (b) grants to ACIAR, or shall secure the grant, of a permanent, irrevocable, royalty free, world wide, non-exclusive licence (including a right to sublicense its rights to third parties) to use, reproduce, modify, publish, adapt and communicate to the public Background IP in conjunction with Project IP.

Where ACIAR proposes to sub-licence its rights under this clause 10.3, ACIAR will ensure that any sub-licence will be on the same or substantially the same terms as the licence ACIAR has from the Commissioned Organisation.

10.4 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):

- (a) it is the owner of, or is otherwise entitled to use, the Background IP;
- (b) it is entitled to grant the licences under clauses 10.3 and 10.9; and
- (c) the exercise by ACIAR of its rights under clauses 10.3 and 10.9; shall not infringe any Intellectual Property rights of any third party.

10.5 The Commissioned Organisation shall notify ACIAR of the details of any Intellectual Property Rights created as a result of the performance of the Services. Any notification shall be treated as Confidential Information by ACIAR.

10.6 The Commissioned Organisation acknowledges that:

- (a) as a member of the Consortium of International Agricultural Research Centres, the Collaborating Institution must ensure that all agreements and contracts it enters (including the Project Agreement and any confidentiality, partnership, collaboration, development, licensing, distribution, material transfer agreements), comply with the CGIAR IA Principles;
- (b) ACIAR supports the vision and objectives of the CGIAR, and supports the dissemination of the results of research as a public good; and
- (c) accordingly, Intellectual Assets and Project IP created under the Project Agreement will be managed in a manner consistent with CGIAR IA Principles.

10.7 The Commissioned Organisation and the Collaborating Institution shall jointly own the Project IP and use it in a manner consistent with the CGIAR IA Principles, but prior to the commencement of the Services, shall enter into an agreement covering the following:

- (a) how the Project IP may be used and disseminated by the Parties in accordance with the CGIAR IA Principles;
- (b) the terms of any licence of Project IP between the Parties, including securing such rights as are necessary for the Commissioned Organisation to grant the licence to ACIAR under clause 10.9

- (c) the terms of any licence of Background IP, including securing such rights as are necessary for the Commissioned Organisation to grant the licence to ACIAR under clause 10.3;
 - (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 the 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 Intellectual Property rights between the Commissioned Organisation and the Collaborating Institution.
- 10.8 ACIAR, the Commissioned Organisation and the Collaborating Institution 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.
- 10.9 ACIAR and the Commissioned Organisation shall grant or shall secure the grant to each other 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, communicate to the public the Project Material and Project IP. Where Parties propose to sublicense its rights under this clause 10.9, 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.
- 10.10 The Commissioned Organisation shall indemnify, and keep indemnified ACIAR, its officers, employees and agents, from and against any and all liability, loss, damage,
- cost (including the cost of any settlement and legal costs and expenses on a solicitor/client basis), compensation or expense incurred by them arising out of any action, claim, suit, dispute, or proceeding brought by any third party in connection with the breach of the warranties set out in clause 10.3.
- 10.11 The warranties and indemnities contained in this clause 10 shall survive the expiration or termination of the Services.
- ## 11. Moral Rights
- 11.1 ACIAR and the Commissioned Organisation:
- (a) acknowledge the collaborative nature of the Project and the mutual benefit derived by the Parties from the Project;
 - (b) acknowledge the existence of Moral Rights conferred on the authors of any Works which are created in carrying out the Project or which exist as part of the Background Intellectual Property;
 - (c) will immediately notify the other Party in writing:
 - (i) upon becoming aware of a possible infringement of Moral Rights of an author of any Works referred to in clause 11.1(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 11.1(b);
 - (d) will, following notice under clause 11.1(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.
- ## 12. Disclosure of Information
- 12.1 The Commissioned Organisation shall not, without prior written approval of ACIAR, disclose to any person other than ACIAR, any Confidential Information of ACIAR.
- 12.2 ACIAR shall not, without prior written approval of the Commissioned Organisation, disclose to any person other than the Commissioned Organisation, any Confidential Information of the

- Commissioned Organisation. In giving written approval, the Commissioned Organisation may impose such terms and conditions as it thinks fit.
- 12.3 Either Party may at any time require the other Party to give and arrange for its employees, officers, agents and sub-contractors to give written undertakings relating to the non-disclosure of its Confidential Information. The other Party shall promptly arrange for all such undertakings to be given.
- 12.4 The obligations under this clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.

13. Coordinator

- 13.1 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.

14. Project Committee

- 14.1 ACIAR may establish a Project Committee that shall include a representative of each of the Parties.
- 14.2 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.

15. Review and Evaluation

- 15.1 ACIAR may at any time undertake to review and evaluate the Project.
- 15.2 ACIAR may within three years of the completion of the Project undertake a review to assess the adoption and uptake of the Project results.
- 15.3 To facilitate any review under clauses 15.1 and 15.2 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.

16. Report

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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 4 July each year on the implementation and effectiveness of the risk management procedures identified in the Self Assessment.

17. Termination

- 17.1 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.
- 17.2 In addition to clause 17.1, 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 17.1 or 17.2, 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 17.3, 17.4 and 17.5 any reasonable costs incurred by the Commissioned Organisation and directly attributable to the termination or partial termination of the Project Agreement.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 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.

18. Insurance

- 18.1 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) adequate insurance against claims by third parties resulting from negligent acts performed by the Commissioned Organisation in carrying out the Services; and
 - (b) adequate travel and medical insurance for any domestic and international travel undertaken on behalf of the Project by its personnel including Specified Personnel.
- 18.2 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.
- 18.3 Notwithstanding the clause 17.1(a), the Commissioned Organisation may undertake self-insurance arrangements with ACIAR's prior written approval.
- 18.4 ACIAR undertakes no responsibility in respect of loss or damage to Project equipment or supplies or in respect of any life, accident, travel or any other insurance coverage that may be necessary or desirable for the personnel or sub-contractors of the Commissioned Organisation or for the dependants of any such persons as may travel for the purposes of the Services.

19. Indemnity

- 19.1 The Commissioned Organisation shall indemnify ACIAR, its officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person where such loss or liability was caused by any wilful misconduct or unlawful or negligent act or omission of the Commissioned Organisation, its officers, employees, agents or sub-contractors in connection with the Services.

19.2 The Commissioned Organisation's liability to indemnify ACIAR under clause 19.1 shall be reduced proportionally to the extent that any act or omission of ACIAR or its officers, employees, agents or sub-licensees contributed to the loss or liability.

20. Waiver

20.1 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.

21. Compliance

26.1 General

- (a) Without limiting specific provisions of a Project Agreement, the Commissioned Organisation must ensure that funds provided under this Project Agreement, including subcontracts, do not provide direct or indirect support or resources to organisations and individuals associated with terrorism.
- (b) The attention of the Commissioned Organisation is drawn to the obligations under Part 4 of the Charter of the United Nations Act 1945 (Cth) and the Charter of the United Nations (Dealing with Assets) Regulations 2008 (Cth). These laws require any person who holds assets or funds belonging to a person or organisation on the list of persons and entities designated as terrorist to immediately freeze those assets.
- (c) The list and more information is available at http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html

22. Child protection, displacement and resettlement and environment protection.

22.1 The Commissioned Organisation must, and must ensure that its subcontractors and personnel comply with all ACIAR safeguard policies as listed on the website <http://dfat.gov.au/childprotection>

22.2 ACIAR or its representative may conduct a review of the Commissioned Organisation's compliance with the ACIAR's Child Protection Policy. ACIAR will give reasonable notice to the Commissioned Organisation. The Commissioned Organisation must participate cooperatively in any such review.

22.3 If ACIAR finds that the Commissioned Organisation has failed to comply with the Child Protection Policy, the Commissioned Organisation must promptly, at its cost, take such actions as are required to ensure compliance with the ACIAR's Child Protection Policy compliance standards.

23. Fraud Control

23.1 Without derogating from its obligations in the Project Agreement, the Commissioned Organisation must comply with the requirements of ACIAR's Fraud Policy Statement and guidance on reporting any allegations or concerns regarding fraud within the Project is available at <http://aciar.gov.au/conditions>

23.2 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.

24. Conflict of interest

24.1 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.

24.2 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.

25. Applicable Law

- 25.1 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.
- 25.2 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.

26. Authority and consents

- 26.1 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.
- 26.2 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.

27. Variation to the Project Agreement

- 27.1 The Project Document including Budget is the latest approved version within the ACIAR projects management system.
- 27.2 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.
- 27.3 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.

28. Dispute Resolution

- 28.1 Subject to clause 28.4, 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.

- 28.2 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.
- 28.3 Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under the Project Agreement.
- 28.4 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.

29. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) Clause 10 (Intellectual Assets and Intellectual Property Rights);
- (b) Clause 11 (Moral Rights);
- (c) Clause 12 (Disclosure of Information);
- (d) Clause 19 (Indemnity); and
- (e) Clause 28 (Dispute resolution).

Change Register

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

Inclusion of a definition of "Works" in clause 1, Interpretation	Jan 05
Replacement of clause 11 Moral Rights with a complete new clause relating to moral rights	Jan 05
Deletion of the words "and hold harmless" from clause 19.1	Mar 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 definition of "exploit" in Clause 1	July 07
Clause 10.1: Amended reference to International Treaty	July 07
Clause 10.3: Included wording to Commissioned Organisation warranty on use of background IP	July 07
Clauses 10.2 and 10.8: Deleted "exploit" and included wording on sub-licencing by ACIAR	July 07
Clause 20.2: Included words "unlawful or negligent"	July 07
Clause 20.1: Included words "wilful misconduct"	July 07
Clause 20.2: Included words "and sub-licencees"	July 07
Revised Clause 8 Travel	January 13
Revised Clause 16.1. Timeframe before first Annual Report now more than 5 months	June 2013
Inclusion of Clause 16.3. EPBC Act reporting (if required)	December 2013
Inclusion of Definition to Clause 1.1 - Fraud	February 2014
Inclusion of Clause 24 Fraud Control	February 2014
Inclusion of Clause 25 Conflict of Interest	February 2014
Inclusion of Clause 26 Compliance	February 2014
Clause 5.10 Revision of acquittal requirements	May 2014
Schedule 1 – ACIAR Acquittal revised	May 2014
Document restructured	December 2014
Clauses 7.3 & 7.4 - Expand definition of Commissioned Organisation Personnel to include Specified Personnel, employees, agents and sub-contractors	February 2015
Revision of Clause 10 Intellectual Property to Clause 10 Intellectual Assets and Intellectual Property Rights Principles	December 2014
Inclusion of Clause 28 - Survival	December 2014
Definition amended for Project Agreement Letter to Letter of Agreement	July 2015
Definition amended for Commissioned Organisation, Project and Project Agreement	July 2015
Amend Clause 24	January 2016
Changes to support ACIAR projects management system	September 2017