



Australian Government

**Australian Centre for
International Agricultural Research**

ANNEX 1

**Standard Conditions for Small R&D Activities
between the
Commonwealth of Australia
represented by the
Australian Centre for International Agricultural Research
and the
Commissioned Agent**



Part of Australia's development
assistance program

www.aciar.gov.au

as at April 2023

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Standard Conditions for Small R&D Activities

between the

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

and the

Commissioned Agent

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 SRA Document (which together form the SRA Agreement).

THE PARTIES AGREE AS FOLLOWS:

Whereas:

ACIAR has requested certain research services to be carried out and the Commissioned Agent has agreed to provide the services in order to complete the Small R&D Activity (SRA) on the terms of the SRA 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 Agent, 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 and conditions of the agreement.
Act	means the <i>Australian Centre for International Agricultural Research Act 1982 (Cth)</i> ;
Annual Report	means the annual report on the SRA to be delivered to ACIAR;
Background IP	means Intellectual Property that is in existence prior to the date of this Agreement; or is brought into existence independently of this SRA, and which is used in, or is otherwise required for the use of, the SRA IP;
Budget	means the financial document as part of the SRA that details the high level application and distribution of funds within the Project.
Commissioned Agent	means the person named as the Commissioned Agent in the SRA Letter of Agreement who by executing and returning a duplicate of the SRA Letter of Agreement to ACIAR has undertaken to provide the Services in accordance with the SRA 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 SRA 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 SRA Agreement;
 - g) by law is required to be disclosed including under court subpoena, parliamentary order, under the *Freedom for Information Act 1982* (Cth) or as part of discovery during legal proceedings; or
 - h) is required to be disclosed to any government agency, authority, department or Minister, or to any parliamentary committee,
- and the burden of establishing any exceptions referred to in subclauses (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 SRA Agreement;
- b) Relates only to Goods and/or Services that have been accepted by ACIAR in accordance with the SRA 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 SRA Agreement price; and
- e) Is a valid tax invoice in accordance with the GST Act.

Expended Funds

means the sum of all paid and incurred expenditure;

Final Acquittal

means the Financial Acquittal of all remaining unexpended funds not reported in previous Financial Acquittals;

Final Report

means the final report on the SRA which must be delivered to ACIAR;

Financial Limitation

means the total amount of funds payable by ACIAR to the Commissioned Agent for the Services specified in the SRA Letter of Agreement or as amended by a Letter of Variation.

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;

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;
Letter of Agreement SRA	means the letter forwarded by ACIAR to the Commissioned Agent offering to enter into an agreement with the Commissioned Agent to perform the Services on the terms set out in the SRA 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 <i>Copyright Act 1968</i> (Cth);
Month	means a calendar month;
Net Monies Received	means all monies received by the Commissioned Agent net of any expenses that are properly paid on an arms-length basis by the Commissioned Agent in exploiting the SRA IP;
Parties	means ACIAR and the Commissioned Agent;
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 SRA Agreement falls within the period;
Person	includes a natural person, a body corporate and an unincorporated association;
SRA (Small R&D Activity)”	means the activity described in the SRA Document and referred to in the SRA Letter of Agreement;
SRA (Small R&D Activity) Agreement	means the Letter of Agreement between ACIAR and the Commissioned Agent, these Standard Conditions and the SRA Document;
SRA Document	means the document including budget which was provided to ACIAR by the Commissioned Agent in relation to the SRA and which document has been approved by ACIAR. The active version of the SRA Document including budget is that which appears on the ACIAR projects management system;;
SRA IP	means Intellectual Property that is brought into existence by or on behalf of the Commissioned Agent as a result of performing the Services under this Agreement;
Services	means the tasks to be performed by the Commissioned Agent as set out in the SRA Agreement;
Specified Personnel	means professional, technical, support and administrative staff who have been nominated in the Activity Document by the Commissioned Agent to perform all or part of the Services;
Standard Conditions	means the terms set out in this ‘Standard Conditions for SRA Agreements’ document from clauses 1 to 36;

Unexpended Funds	means all remaining funds after consideration of all incurred expenditure;
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 12.8.

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 Agent shall perform the Services within the period for performing the Services specified in the Letter of Agreement and the SRA Document and in accordance with the SRA Agreement.
- 2.2 The Parties acknowledge and agree that from time to time there may be events which delay the Commissioned Agent's ability to perform its obligations under the SRA Agreement which are beyond the reasonable control of the Commissioned Agent. The Parties agree to deal with such unavoidable delays as follows:
- (a) the Commissioned Agent 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 SRA Agreement and which it believes are beyond its reasonable control; and
 - (ii) specify all the facts and circumstances which have caused the Commissioned Agent to form the view that there will be a delay, and the delay is unavoidable and is beyond the reasonable control of the Commissioned Agent;

- (b) where there is likely to be a delay in performance of the Commissioned Agent obligations, ACIAR shall not exercise its rights and remedies for default under clause 19.6 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 Agent, or was not reasonably foreseeable at the time the SRA 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 SRA Document and any relevant timeframes;
- (d) if the causes of the delay cannot be resolved within 3 months, ACIAR may terminate the SRA Agreement in accordance with clause 19.

3. Sub-contracting

- 3.1 The Commissioned Agent 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 approved SRA Document. Where ACIAR approves subcontracting, either as part of the initial approved SRA Document or as a result of a subsequent request by the Commissioned Agent to vary the Project, the Commissioned Agent shall comply with any terms imposed by ACIAR. Any failure by a Commissioned Agent or its subcontractor to comply will entitle ACIAR to terminate the SRA Agreement in accordance with clause 19.
- 3.2 The Commissioned Agent shall be fully responsible for the performance of the Services notwithstanding that the Commissioned Agent has sub-contracted the performance of any part of those Services.
- 3.3 Where requested the Commissioned Agent shall provide a copy of any such sub-contract to ACIAR within 7 days of its execution.
- 3.4 The Commissioned Agent agrees that ACIAR may publicly disclose the names, Australian Business Numbers and addresses of the subcontractors approved under this Agreement and their role in fulfilling this Agreement.
- 3.5 The Commissioned Agent must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent provision to clause 3.4 permitting ACIAR to disclose the information specified in that clause.

4. Term of SRA Agreement

- 4.1 The SRA Agreement shall commence on the date specified in the SRA Agreement Letter.
- 4.2 An SRA 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 Agent for the Services is the Financial Limitation specified in the SRA Letter of Agreement.
- 5.2 In performing the Services the Commissioned Agent 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 Agent outside the scope of the Services.
- 5.4 Subject to clause 5.1, in consideration of the performance of the Services by the Commissioned Agent, 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 Agent the funds specified in the SRA Document.

- 5.5 ACIAR shall pay the Commissioned Agent in advance during the term of the SRA Agreement the funds referred to in clause 5.4 in accordance with the budget for the SRA set out in the SRA Document as follows:
- (a) each payment shall only be made following ACIAR's receipt of:
 - (i) a satisfactory written report as detailed in clause 5.7, for the previous period; and
 - (ii) where required by clause 18.1, a satisfactory Annual Report.
 - (b) any funds that are unexpended by the Commissioned Agent at the expiration of the period for which they were allocated shall be carried over for expenditure in the following period and the advance made for the following period by ACIAR to the Commissioned Agent shall be reduced accordingly, unless ACIAR approves otherwise in writing.
- 5.6 Notwithstanding clause 5.5, ACIAR shall withhold from the final payment a Withholding Payment of A\$20,000 pending acceptance of a satisfactory Final Report as detailed in clause 18. The Withholding Payment shall be made to the Commissioned Agent within thirty (30) days of ACIAR's acceptance of the Final Report. Within thirty (30) days of receipt of the Withholding Payment, the Commissioned Agent must provide a Final Acquittal for the Project including acquitting all unexpended funds.
- 5.7 No later than 30 days after the expiration of each payment period for which the funds were allocated ("payment period"), the Commissioned Agent shall provide to ACIAR an acquittal in the ACIAR project management system that includes the following details:
- (a) the unexpended amount from the prior period (if any), the amount received from ACIAR for the payment period and the amounts expended in the payment period;
 - (b) An explanation detailing the reasons for the delay in spending or committing 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 Agent that the details set out pursuant to clause 5.7(a) above accurately reflect expenditure which has been incurred against each item for the purposes of the Project.
- 5.8 The report to be provided pursuant to clause 5.7 must be substantially in the form set out at Schedule 1.
- 5.9 The Commissioned Agent acknowledges it is totally responsible for payment of and accounting to ACIAR for all expenses incurred in performing the Services.
- 5.10 Taxes
- The Commissioned Agent must pay all:
- (a) stamp duty (including penalties and interest) assessed or payable in respect of the SRA 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 SRA Agreement.

6. Interest on Late Payments

- 6.1 Where ACIAR and the Commissioned Agent 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 Agent 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 Agent 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 Agent 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 SRA Agreement are calculated on a GST-exclusive basis. Where the Commissioned Agent becomes liable to remit any amount of GST in respect of any Supply it makes to ACIAR in accordance with this Agreement (“GST liability”), the amount otherwise payable by ACIAR under the SRA Agreement shall be increased by the amount of the GST liability, or any lesser amount required by law. The increased amount shall be payable by ACIAR in the same manner and at the same time as other amounts payable under the SRA Agreement.
- 7.2 Where required, the Commissioned Agent 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 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 Agent shall not by virtue of this SRA Agreement be or for any purpose be deemed to be an officer, employee, partner or agent of ACIAR or the Commonwealth, or as having power or authority to bind or represent ACIAR or the Commonwealth, and shall not represent itself, and shall ensure that its officers, employees, agents and sub-contractors do not represent themselves, as such.

9. Personnel

- 9.1 The Commissioned Agent 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 SRA Agreement.
- 9.2 Personnel of the Commissioned Agent (including Specified Personnel, employees, agents and sub-contractors) 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 Agent, 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.
- 9.3 Where any Specified Personnel are unable to undertake work in respect of the Services, the Commissioned Agent shall notify ACIAR immediately. The Commissioned Agent shall, if so requested by ACIAR, provide replacement personnel acceptable to ACIAR at no additional charge and at the earliest opportunity.
- 9.4 ACIAR may, on reasonable grounds, give notice requiring the Commissioned Agent to remove personnel (including Specified Personnel, employees, agents and sub-contractors) from work in respect of the Services. The Commissioned Agent 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.
- 9.5 If the Commissioned Agent is unable to provide acceptable replacement personnel under this clause 9, ACIAR may terminate this Contract in accordance with the provisions of clause 19.

- 9.6 The Commissioned Agent 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.

10. Project Equipment and Supplies

- 10.1 The Commissioned Agent shall arrange, from the funds payable by ACIAR to the Commissioned Agent for the Services, the procurement and delivery of all equipment and supplies that are specified in the Project Document.
- 10.2 The Commissioned Agent shall exercise administrative control of and maintain and keep equipment and supplies referred to in clause 10.1 in good repair.
- 10.3 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 Agent from the date of purchase.
- 10.4 The Parties agree that the ownership of equipment and supplies procured by the Commissioned Agent 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.
- 10.5 Unless otherwise agreed in writing, the Commissioned Agent shall effect with reputable and substantial underwriters and maintain insurance against all loss or damage to the Project equipment referred to in clause 10.1 until the Services are completed.
- 10.6 Notwithstanding clause 9.5, the Commissioned Agent may undertake self-insurance arrangements with ACIAR's prior written approval.

11. Travel

- 11.1 The Commissioned Agent 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>).
- 11.2 In the event it is advised that officials from the Collaborating Country involved in the Project intend to visit Australia, the Commissioned Agent 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.
- 11.3 The Commissioned Agent shall provide promptly to ACIAR a copy of any such notices to the Australian Embassy, the Australian High Commission or the Australian Consulate.
- 11.4 At the completion of the travel referred to in clause 11.1, the Commissioned Agent 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.
- 11.5 From time to time Australians are advised for security and safety reasons not to travel to certain countries or areas within countries. The Commissioned Agent 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.
- 11.6 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 Agent 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.

12. Intellectual Property

- 12.1 Unless otherwise expressly agreed in writing by the Parties, this Agreement does not affect the ownership of Background IP. The Commissioned Agent 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, communicate to the public and exploit Background IP in conjunction with SRA IP. Where ACIAR proposes to sub-license its rights under this clause 12.1, 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 Agent.
- 12.2 The Commissioned Agent warrants that to its actual knowledge and belief, following all diligent and reasonable enquires, at the date of this SRA Agreement or the date on which Background IP is first used in the SRA (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 12.1 and 12.8; and
 - (c) the exercise by ACIAR of its rights under clauses 12.1 and 12.8 shall not infringe any Intellectual Property rights of any third party.
- 12.3 The Commissioned Agent 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 12.2.
- 12.4 For the purposes of this clause 11, “infringe” and “infringement” means unauthorised acts which would, but for the operation of section 183 of the *Copyright Act* 1968, constitute an infringement.
- 12.5 The warranties and indemnities contained in this clause 12 shall survive the expiration or termination of the Services.
- 12.6 The Commissioned Agent 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.
- 12.7 The Parties agree that SRA IP shall vest in the Commissioned Agent.
- 12.8 The Commissioned Agent 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.
- 12.9 The Commissioned Agent agrees that it will not sub-license or assign SRA IP without first obtaining ACIAR’s prior written consent. Despite this, a Commissioned Agent may sub-license SRA IP on a non-exclusive basis to subcontractors specified in the initial approved SRA Document without first seeking ACIAR’s approval.
- 12.10 The Commissioned Agent agrees that it shall pay to ACIAR within 30 days of the expiration of 30 June and 31 December 25%, or such percentage as is otherwise agreed, of Net Monies Received by the Commissioned Agent 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 Agent shall continue for a period of twenty (20) years from the commencement of the SRA Agreement.
- 12.11 The Commissioned Agent shall maintain proper books of account which evidence receipt of any licence fees, sale price or royalties payable to it in respect of SRA 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 SRA Agreement.
- 12.12 Where the Commissioned Agent intends to publish any article or paper of an academic, scientific or technical nature in regard to the Services or the SRA, 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 SRA.
- 12.13 The Commissioned Agent may report details of the SRA in the non-specialist media provided:
- (a) it acknowledges the funding and support provided to the SRA by ACIAR; and

- (b) in the event that the subject of the proposed media report is or may be potentially controversial, the Commissioned Agent shall, prior to submitting any information for publication, request ACIAR's written consent.

13. Moral Rights

13.1 ACIAR and the Commissioned Agent:

- (a) acknowledge the collaborative nature of the SRA and the mutual benefit derived by the Parties from the SRA;
- (b) acknowledge the existence of Moral Rights conferred on the authors of any Works which are created in carrying out the SRA 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 Agent 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 Agent, disclose to any person other than the Commissioned Agent, any Confidential Information of the Commissioned Agent. In giving written approval, the Commissioned Agent 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 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.
- 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.
- 14.5 This clause shall survive the expiration or termination of the SRA Agreement.

15. Privacy

- 15.1 The Commissioned Agent, to the extent that it deals with Personal Information, when and for the purpose of, the Project – is a 'contracted Contractor' within the meaning of the *Privacy Act 1988* (Cth), and in accordance with the 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 SRA Document as the SRA 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 Agent and this person shall liaise with ACIAR regularly in regard to the progress of the SRA.

17. Review and Evaluation

- 17.1 ACIAR may at any time undertake to review and evaluate the SRA.

- 17.2 To facilitate any review under clause 17.1 the Commissioned Agent 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.

18. Report

- 18.1 For SRAs with a term longer than eighteen (18) months, the Commissioned Agent shall provide ACIAR with Annual Reports by 14 July each year until the final year. If the SRA has been active for more than five months on 14 July an Annual Report is required to be submitted.
- 18.2 These reports must be prepared in accordance with the Guidelines for Annual Reports available on the ACIAR website (www.aciar.gov.au). The Annual Report for the final year (or part year) of the SRA should be subsumed into the Final Report.
- 18.3 Upon the completion of the SRA in accordance with the SRA Agreement, the Commissioned Agent shall provide ACIAR with a Final Report that must be prepared in accordance with the Guidelines for Final Reports available through the ACIAR projects management system. The Final Report is due within 30 days of the completion of the SRA.
- 18.4 Where requested the Commissioned Agent shall provide ACIAR additional reports including but not limited to an Interim Final Report, Project Factsheets and/or other *ad hoc* reports in accordance with the Guidelines. The Guidelines are available through the ACIAR projects management system.
- 18.5 Where, during the development, approval and life of a SRA 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 Agent 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.

19. Termination and Reduction

- 19.1 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 SRA Agreement.
- 19.2 In addition to clause 19.1, ACIAR may at any time by written notice, terminate the SRA Agreement, or reduce it in scope. If the SRA Agreement is terminated under clause 19.1 or 19.2, ACIAR shall be liable only for:
- (a) payments under the payment provisions of the SRA Agreement for Services rendered before the effective date of termination; and
 - (b) subject to clauses 19.3, 19.4 and 19.5 any reasonable costs incurred by the Commissioned Agent and directly attributable to the termination or partial termination of the SRA Agreement.
- 19.3 Upon receipt of a notice of termination the Commissioned Agent 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.
- 19.4 In the event of a reduction in scope, ACIAR's liability to provide funds under the SRA Agreement shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.
- 19.5 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 Agent under the SRA Agreement, together exceed the funds set out in the SRA Agreement. The Commissioned Agent shall not be entitled to compensation for loss of prospective profits.

- 19.6 If the Commissioned Agent fails to fulfil or is in breach of any of its material obligations under the SRA 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 SRA Agreement by giving written notice to the Commissioned Agent of the termination which is effective immediately.

20. Insurance

- 20.1 The Commissioned Agent shall, for so long as any obligations remain in connection with the SRA 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 Agent in carrying out the Services; and
 - (d) adequate travel and medical insurance for any domestic and international travel undertaken on behalf of the SRA by its personnel including Specified Personnel.
- 20.2 Within 14 days of a written request from ACIAR, the Commissioned Agent 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.
- 20.3 The requirement of subclause 20.1(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.
- 20.4 Notwithstanding the above, the Commissioned Agent may undertake self-insurance arrangements with ACIAR's prior written approval.
- 20.5 ACIAR undertakes no responsibility in respect of loss or damage to SRA 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 Agent or for the dependants of any such persons as may travel for the purposes of the Services.

21. Indemnity

- 21.1 The Commissioned Agent 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 Agent, its officers, employees, agents or sub-contractors in connection with the Services.
- 21.2 The Commissioned Agent's liability to indemnify ACIAR under clause 21.1 shall be reduced proportionally to the extent that any unlawful or negligent act or omission of ACIAR or its officers, employees or agents contributed to the loss or liability.

22. Waiver

- 22.1 A waiver by either Party in respect of any breach of a condition or provision of the SRA 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 SRA Agreement at any time shall in no way be interpreted as a waiver of such provisions.

23. Compliance with laws and policies

- 23.1 General
- Without limiting specific provisions of the SRA Agreement, the Commissioned Agent 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

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- 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 Agent.
- 23.2 The Commissioned Agent 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/Pages/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.worldbank.org/en/projects-operations/procurement/debarred-firms>;
 - (e) owned, controlled by, acting on behalf of, or at the direction of individuals, persons, entities or organisations referred to in clauses 23.2(a) to 23.2(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 23.1(a) to (e) above.
- 23.3 Where the Commissioned Agent 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 23.2, the Commissioned Agent 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.
- 23.4 The Commissioned Agent must ensure that any subcontract entered into by the Commissioned Agent for the purposes of fulfilling its obligations under this Contract imposes on the Subcontractor the same obligations that the Commissioned Agent has under this clause, including this requirement to impose obligations on any further subcontractor.

24. Child safety

- 24.1 If any part of the Project involves the Commissioned Agent 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 Agent 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 Project, including mandatory reporting and working with children checks however described; and
 - (b) if requested, provide the Commonwealth at the Commissioned Agent's cost, an annual statement of compliance with this clause, in such form as may be specified by the Commonwealth.
- 24.2 When Child Safety obligations may be relevant to a Subcontract, the Commissioned Agent must ensure that any subcontract entered into by the Supplier for the purposes of fulfilling the Commissioned Agent's obligations under the SRA Agreement imposes on the Subcontractor the same obligations regarding Child Safety that the Commissioned Agent has under the SRA Agreement. Each subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

25. Workplace Gender Equality

- 25.1 This clause 25 applies only to the extent that the Commissioned Agent is a 'Relevant Employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* (the WGE Act).
- 25.2 The Commissioned Agent must comply with all of its obligations under the WGE Act.
- 25.3 If the Commissioned Agent becomes non-compliant with the WGE Act during the term of the SRA, the Commissioned Agent must notify ACIAR.
- 25.4 If the term of the SRA exceeds 18 months, the Commissioned Agent must provide a current letter of compliance with the WGE Act within 18 months from the Commencement Date of any SRA, and following this annually to ACIAR.
- 25.5 Compliance with the WGE Act does not relieve the Commissioned Agent from its responsibilities to comply with its other obligations under the SRA Agreement.

26. Corruption

- 26.1 The Commissioned Agent warrants that neither it nor its Personnel will make or cause to be made, receive or seek to receive any offer, gift or payment or benefit of any kind, which could be construed as an illegal or corrupt act, either directly or indirectly to any individual or organisation in relation to the execution of this SRA Agreement. Any breach of this clause will entitle ACIAR to issue a notice under clause 18.1 to terminate this SRA Agreement immediately.

27. Fraud Control

- 27.1 Without derogating its obligations in the SRA Agreement, the Commissioned Agent 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 Agent will provide for ACIAR's review and acceptance a Fraud Control Plan that details actions the Commissioned Agent will undertake in order to identify, report and manage instances by the Project Team and/or 3rd 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

25.1 Warranty that there is no conflict of interest

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

25.2 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 Agent 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 SRA Agreement shall be governed by and construed in accordance with the laws of the State of Victoria. The Commissioned Agent submits to the jurisdiction of the courts of Victoria and any court competent to hear appeals from those courts.

29.2 The Commissioned Agent 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 SRA 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 SRA Agreement, ACIAR may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under the SRA Agreement. ACIAR will not unreasonably withhold consent.

31. Variation to the SRA Agreement

31.1 The SRA Document including budget is the latest version within the ACIAR projects management system.

31.2 ACIAR or the Commissioned Agent may commit minor variations to the SRA Document within the ACIAR projects management system. Minor variations would include, but not be limited to, changes to the scope of activities, personnel etc.;

31.3 Significant variations to the SRA Agreement shall be made by means of a Letter of Variation signed for and on behalf of the Parties to the SRA Agreement. A significant variation would include, but not be limited to, changes in objectives, changes to the Payment Schedule of the budget.

32. Dispute Resolution

32.1 Subject to clause 32.4, before resorting to external dispute resolution mechanisms, the Parties shall attempt to settle by negotiation any dispute in relation to the SRA Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

32.2 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.

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

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

32.5 This clause shall survive the expiration or termination of the SRA Agreement.

33. Books and records

33.1 Commissioned Agent to keep books and records

The Commissioned Agent 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 this 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 SRA Agreement all books and records relating to the Services.

33.2 Costs

The Commissioned Agent must bear its own costs of complying with this clause 33.

33.3 Survival

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

34. Audit and access

34.1 Right to conduct audits

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

- (a) the Commissioned Agent's operational practices and procedures as they relate to the SRA Agreement, including security procedures;
- (b) the Commissioned Agent's compliance with its confidentiality, privacy and security obligations under this Agreement;
- (c) Material (including books and records) in the possession of the Commissioned Agent relevant to the Services or this Agreement; and
- (d) any other matters determined by the Commonwealth to be relevant to the Services or the SRA Agreement.

34.2 Access by the Commonwealth

- (a) The Commonwealth through ACIAR or a representative may, at reasonable times and on giving reasonable notice to the Commissioned Agent:
 - (i) access the premises of the Commissioned Agent to the extent relevant to the performance of the SRA Agreement;
 - (ii) require the provision by the Commissioned Agent, 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 Agent, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the Services or the SRA 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 Agent must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 34, and provide the Commonwealth through ACIAR or its representative with any reasonable assistance requested by the Commonwealth to use that hardware and software.

34.3 Conduct of audit and access

The Commonwealth through ACIAR or a representative must use reasonable endeavours to ensure that:

- (a) audits performed under clause 34.1; and
- (b) the exercise of the general rights granted by clause 34.2 by the Commonwealth, do not unreasonably delay or disrupt in any material respect the Commissioned Agent's performance of its obligations under the SRA Agreement or its business.

34.4 Costs

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

34.5 Auditor-General and Privacy Commissioner

The rights of the Commonwealth through ACIAR or its representative under clause 34.2(a)(i) to clause 34.2(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.

34.6 Commissioned Agent to comply with Auditor-General's requirements

The Commissioned Agent 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 34.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

34.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Commissioned Agent's responsibility to perform its obligations in accordance with the SRA Agreement.

34.8 Subcontractor requirements

The Commissioned Agent must ensure that any subcontract entered into for the purpose of the SRA Agreement contains an equivalent clause granting the rights specified in this clause 34.

34.9 No restriction

Nothing in the SRA 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 SRA 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.

34.10 Survival

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

35. Access to documents

35.1 Definitions

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

35.2 Application of this clause

This clause 35 only applies where the SRA Agreement or a subcontract is a Commonwealth contract.

35.3 Obligations

The Commissioned Agent agrees that where the Commonwealth has received a request for access to a document created by, or in the possession of, the Commissioned Agent (or any subcontractor) that relates to the performance of the SRA Agreement (and not to the entry into the the SRA Agreement), the Commonwealth may at any time by written notice require the Commissioned Agent to provide the document to the Commonwealth, and the Commissioned Agent must, at no additional cost to the Commonwealth, promptly comply with the notice.

35.4 Subcontractor requirements

The Commissioned Agent must include in any subcontract relating to the performance of this Agreement provisions that will enable the Commissioned Agent to comply with its obligations under clause 35.

36. Survival

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

- (a) Clause 6 (GST);
- (b) Clause 12 (Intellectual Property Rights);
- (c) Clause 13 (Moral Rights);
- (d) Clause 14 (Disclosure of Information);
- (e) Clause 15 (Privacy); and
- (f) Clause 21 (Indemnity).