

**[Note to Drafters:** where a Project has multiple Collaborating Institutions, create a copy for each Collaborating Institution]

## Schedule 1 to Additional Terms – Collaboration Services Agreement

<b>Project</b>	[Project Title], as further described in the Project Document.
<b>Commissioned Organisation</b>  <i>Name:</i> <i>Address</i> <i>Representative</i>	[Name] [Postal Address] Name                      Name                      Name                      Name Tel. No.                      Tel. No.                      Tel. No.                      Tel. No.
<b>Collaborating Institution</b>  <i>Name:</i> <i>Address</i> <i>Representative</i>	[Name] [Postal Address] Name                      Name                      Name                      Name Tel. No.                      Tel. No.                      Tel. No.                      Tel. No.
<b>Background</b>	<p>ACIAR has, pursuant to an executed agreement (<b>Research Agreement</b>), engaged the Commissioned Organisation to undertake certain services, including certain project management and coordination services in relation to the Project.</p> <p>The Collaborating Institution has proposed to carry out certain ancillary services and activities in connection with the Project, as specified in the Project Document (<b>Collaboration Services</b>).</p> <p>The Commissioned Organisation has agreed to engage the Collaborating Institution, and the Collaborating Institution has agreed to be engaged, to provide the Collaboration Services under the terms and conditions of this Agreement.</p>
<b>Jurisdiction</b>	<p>[insert]</p> <p><b>[Note for Commissioned Organisation – As per Clause 18 (Applicable Law), the Commissioned Organisation and Collaborating Institution may agree on a different Jurisdiction than that is specified in the Research Agreement - laws of the State of Victoria]</b></p>
<b>IP Arrangements</b>	<p>[IP arrangement or N/A]</p> <p><b>[Note for Commissioned Organisation - As per Clause 6 (IP Rights), if the Commissioned Organisation or Collaborating Institution propose different IP Arrangements, they are to be detailed here for ACIAR review and approval]</b></p>

### THE PARTIES AGREE AS FOLLOWS:

#### 1. Definitions and Interpretation

1.1 **Definitions.** In this Agreement, unless a contrary intention appears, capitalised terms have the meaning provided in the table at the front of this Agreement (**Agreement Details**) and in the Research Agreement, and

**Collaboration Services Budget** means the budget for the Collaboration Services incorporating those elements of the Budget allocated to the Collaborating Institution.

1.2 **Interpretation.** This Agreement will be interpreted in accordance with clause 1.2 of the Research Agreement, save that unless the contrary intention appears, references to:

- (a) an Agreement will be to this agreement
- (a) a Party will be to a party of this Agreement, and
- (b) a clause will be to a clause of this Agreement.

## 2. Term

This Agreement will commence on the date it is signed by the last Party to sign and, subject to earlier termination in accordance with this Agreement, will end upon expiry of the Research Agreement or upon the scope of the Research Agreement being reduced such that the Collaboration Services no longer form part of the Project.

## 3. Payment

3.1 In consideration of performance of the Collaboration Services, and subject to having received amounts relevantly allocated to the Collaborating Institution in the Budget from ACIAR (**Collaboration Payments**), the Commissioned Organisation will provide the Collaborating Institution the Collaboration Payments, in advance and in accordance with the Collaboration Services Budget.

3.2 The Collaborating Institution acknowledges it is responsible for payment of, and accounting to the Commissioned Organisation for, all expenditure of Collaboration Payments and all costs and expenses incurred in performing the Collaboration Services, and will only apply the funding it receives under this Agreement for the purpose of carrying out the Collaboration Services in accordance with the Project Document and this Agreement.

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

## 4. Enabling the Commissioned Organisation to comply with the Research Agreement

The Collaborating Institution acknowledges that the Commissioned Organisation is responsible to ACIAR for the conduct and progress of the Project under the terms of the Research Agreement. The Collaborating Institution agrees it will not, through any act or omission, place the Commissioned Organisation in breach of the Research Agreement. Without limitation, the Collaborating Institution will:

- (a) provide its Collaboration Services as though legally bound by clause 5 of the Research Agreement
- (b) promptly notify the Commissioned Organisation of any (actual or potential) delay of Collaboration Services to enable the Commissioned Organisation to comply with clause 7 of the Research Agreement
- (c) not sub-contract the Collaboration Services unless the Commissioned Organization has obtained prior written approval from ACIAR in accordance with the Research Agreement
- (d) provide the Commissioned Organisation details of the expenditure (and non-expenditure) of Collaboration Payments to enable the Commissioned Organisation to provide Acquittal Reports in compliance with clause 9.4 of the Research Agreement
- (e) at the cost of the Collaborating Institution, replace Personnel of the Collaborating Institution where ACIAR has directed that such Personnel be replaced pursuant to the Research Agreement
- (f) in respect of any travel of Collaborating Institution Personnel, provide the Commissioned Organisation with:

- (i) a 'Travel Advice Note' for the Commissioned Organisation to provide to ACIAR in accordance with clause 12.1(c) of the Research Agreement, and
- (ii) a travel report for the Commissioned Organization to provide to ACIAR in accordance with clauses 12.1(d) and 15.3 of the Research Agreement
- (g) provide all relevant information and reasonable assistance enabling the Commissioned Organisation to prepare and provide reports pursuant to clauses 15.1 and 15.2 of the Research Agreement
- (h) maintain the confidentiality of any Confidential Information of ACIAR as though legally bound by clause 14 of the Research Agreement
- (i) not engage in conduct that is detrimental to the reputation of ACIAR or the Commonwealth
- (j) maintain, and provide the Commissioned Organisation and ACIAR with access to, Records and Scientific Records relating to the Collaboration Services, to enable the Commissioned Organization to comply with clauses 15.7 and 15.8 of the Research Agreement
- (k) enable ACIAR and/or its nominees to conduct audits in accordance with additional term A8
- (l) cooperate with any review(s) of the Project conduct by or at the behest of ACIAR in accordance with clause 15.9 and 15.10 of the Research Agreement, and
- (m) only publish an article or paper of an academic, scientific or technical nature in regard to the Services or this Agreement with the approval of the Commissioned Organisation (such approval not to be unreasonably withheld, delayed or conditioned) and in a manner that acknowledges the funding and other support provided by ACIAR and the Commissioned Organisation in regard to the Project and in a manner complying with ACIAR Branding Guidelines available on the ACIAR website <https://www.aciar.gov.au/branding-guidelines>.
- (n) comply with laws and policies as though legally bound by clause 19 of the Research Agreement.

## 5. Project Supplies

5.1 Subject to clause 5.2, the Collaborating Institution will be responsible for obtaining and maintaining equipment and supplies necessary to provide the Collaboration Services (**Collaboration Supplies**).

5.2 Where specified in the Project Document:

- (a) the Collaborating Institution may apply Collaboration Payments to procure certain Collaboration Supplies, and
- (b) the Commissioned Organisation may arrange the supply of certain Collaboration Supplies, which will thereafter be maintained and (if necessary) replaced by the Collaborating Institution,

and Collaboration Supplies obtained or procured under clause 5.2(a) or 5.2(b) will vest in the Collaborating Country in which they are located upon completion of the Project.

## 6. IP Rights

Subject to consistency with the terms of the Research Agreement, the Commissioned Organisation and the Collaborating Institution acknowledge and agree that arrangements in respect of IP Rights, including Project IP, follow the IP Arrangements. If the IP Arrangements are not consistent with the terms of the Research Agreement, the Parties will negotiate revision of the IP Arrangements in good faith so that the revised IP Arrangements are consistent with the terms of the Research Agreement.

## 7. Travel

For all travel of Collaborating Institution Personnel pursuant to this Agreement:

- (a) the Collaborating Institution is responsible for arranging and paying for the travel and allowances of its Personnel, which may be paid from the Collaboration Payments if allocated for in the Collaboration Services Budget and provided that:
  - (i) all air travel is to be purchased in economy/excursion class or at lower fares and the applicable fare be purchased for the most direct and economical routing (the Collaborating Institution may reroute or upgrade at its expense), and
  - (ii) any per diem paid from the Collaboration Payments to the Personnel while on travel must not exceed the schedule of maximum per diems in effect at ACIAR, and
- (b) the Collaborating Institution is solely responsible for the security and safety of its Personnel and must make its own enquiries in relation to travel advice.

## 8. Personnel

As between the Parties, the Collaborating Institution will be solely responsible for the remuneration and the work, health and safety of its Personnel; and must ensure that such personnel comply with the Collaborating Institution's obligations under this Agreement (including in relation to the ownership of IP Rights and obligations of confidentiality).

## 9. Confidentiality

Confidentiality arrangements between the Parties will be governed in accordance with the terms of clause 14 of the Research Agreement, as if that clause were incorporated into this Agreement.

## 10. Insurance

Unless otherwise agreed, the Collaborating Institution will obtain insurances corresponding to those required of the Commissioned Organisation under clause 17 of the Research Agreement, and will provide the Commissioned Organisation with a copy of any insurance policy (or related certificates of currency) effected in accordance with this clause 10 and of all receipts for payments of premiums.

## 11. Indemnity

- 11.1 The Collaborating Institution will indemnify the Commissioned Organisation and the Personnel of the Commissioned Organisation (**Those Indemnified**) from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, incurred or suffered by any of Those Indemnified arising from any claim, suit, demand, action or proceeding by any person where such loss or liability was caused by any breach of a term or condition of this Agreement or wilful misconduct or unlawful or negligent act or omission of the Collaborating Institution and the Personnel of the Collaborating Institution in connection with the Collaboration Services.
- 11.2 The Collaborating Institution's liability to indemnify Those Indemnified under clause 11.1 will be reduced proportionally to the extent that any unlawful or negligent act or omission of Those Indemnified contributed to the loss or liability.

## 12. Dispute Resolution

- 12.1 Subject to clause 12.4, before resorting to external dispute resolution mechanisms, the Parties will attempt to settle by negotiation any dispute in relation to this Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.
- 12.2 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.
- 12.3 Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement.

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

### 13. Termination

13.1 Without prejudice to any other rights the Commissioned Organisation may have under this Agreement or at law, the Commissioned Organisation may terminate or reduce this Agreement by providing the Collaborating Institution written notice:

- (a) if the Research Agreement is terminated, or reduced in a manner relevant to the Collaboration Services
- (b) if the Collaborating Institution breaches any term of this Agreement where that breach is not capable of remedy
- (c) if the Collaborating Institution undergoes a change in Control or is subject to an Adverse Event, or
- (d) if the Collaborating Institution breaches any term of this Agreement where the breach is capable of remedy and the breach is not remedied within 14 days of receipt of notice in writing from the Commissioned Organisation.

13.2 If notice is given to the Collaborating Institution to terminate this Agreement under clause 13.1(b) to 13.1(d), the Commissioned Organisation may, in addition to terminating this Agreement:

- (a) recover any Collaboration Payments provided to the Collaborating Institution on any account or for Collaboration Services that have not been fulfilled or performed
- (b) be regarded as discharged from any further obligations under this Agreement, and
- (c) pursue any additional or alternative remedies provided by law.

### 14. Taxes

14.1 Subject to clauses 14.2 to 14.3, the Collaborating Institution must pay all applicable:

- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and in providing the Collaboration Services, and
- (b) taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

#### GST

14.2 In clause 14.3:

- (a) subject to clause 14.2(b), a word or expression defined in the *A New Tax System (Goods and Services Tax Act) 1999 (Cth) (GST Act)* has the meaning given to it in the GST Act, and
- (b) where a taxable supply takes place outside Australia in a territory that imposes a goods and services tax, value added tax, or similar, then references in clause to GST, GST Liability, and GST Law will refer to the applicable tax, tax liability and legislation in that territory and clause 14.3 will be read and construed accordingly.

14.3 Unless otherwise specified in the Collaboration Services Budget, amounts that ACIAR is required to pay under this Agreement are calculated on a GST-exclusive basis. Where the Commissioned Organisation becomes liable to remit any amount of GST in respect of any Supply it makes to ACIAR in accordance with this Agreement (**GST Liability**), the amount otherwise payable by ACIAR under this Agreement will be increased by the amount of the GST Liability, or any lesser amount required by law. The increased amount will be payable by ACIAR in the same manner and at the same time as other amounts payable under this Agreement; and where required, the Commissioned Organisation will provide a tax invoice that may enable ACIAR, if permitted by the, to claim a credit or refund, a notional credit refund, of GST.

## **15. Notices**

All notices, requests, demands and other communications under this Agreement will be in writing directed to the representative specified in the Agreement Details (which may be updated by providing a notice to the other Party in accordance with this clause 15) and will be deemed to have been given: (i) immediately if delivered by hand, (ii) on the seventh day following postage if delivered by express post; and (iii) on the next business day in the location of the recipient's address if sent by email.

## **16. Waiver**

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

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

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

## **18. Applicable Law**

This Agreement will be governed by and construed in accordance with the laws of the Jurisdiction. Each Party submits to the jurisdiction of the courts of the Jurisdiction and any court competent to hear appeals from those courts.

## **19. Consent**

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

## **20. Variation to this Agreement**

- 20.1 This Agreement may only be amended by a written instrument signed by the Parties.
- 20.2 If the Research Agreement is varied in any way, then the Parties shall in good faith negotiate variation of this Agreement to ensure it remains consistent with the Research Agreement. The Commissioned Organisation will promptly advise the Collaborating Institution in writing if the Research Agreement is varied.

## **21. Execution**

- 21.1 This Agreement may be executed by:
  - (a) each Party separately executing a counterpart and exchanging those counterparts. The counterparts together will constitute one legally binding agreement; or
  - (b) one party signing this Agreement and sending a scanned or digital version to the other Party by electronic means, and the second Party countersigning the copy of the Agreement signed by the first Party, at which point the Agreement becomes binding.
  - (c) Delivery of a signed copy of this Agreement by electronic means will have the same effect as delivering a signed original.

## **22. Survival**

Without limitation to the express provisions of this Agreement or those clauses of this Agreement which are intended or capable of having effect following the expiry or termination of this Agreement, the following clauses will survive the expiry or termination of this Agreement: clauses 1, 3.2, 4, 5.2, 8, 9, 10, 11, 13.2, 14, 18, 21, and this clause 22.

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**Signed** for and on behalf of the **Commissioned Organisation** by its duly authorised delegate

\_\_\_\_\_  
Signature of delegate ←

\_\_\_\_\_  
Name of delegate (**print**)

\_\_\_\_\_  
Position of delegate (**print**)

ON: [**insert date**] \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ←

**Signed** for and on behalf of the **Collaborating Institution** by its duly authorised delegate

\_\_\_\_\_  
Signature of delegate ←

\_\_\_\_\_  
Name of delegate (**print**)

\_\_\_\_\_  
Position of delegate (**print**)

ON: [**insert date**] \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ←