



Australian Government

Australian Research Council

Funding Agreement

between the

Commonwealth of Australia

as represented by the

Australian Research Council

and

(title of institution)

regarding funding for
ARC Centres of Excellence
to commence in
2005

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Parties and recitals

THIS Agreement is made on the day of 200....

BETWEEN the

COMMONWEALTH OF AUSTRALIA ('the **Commonwealth**'), as represented by and acting through the Australian Research Council ('the **ARC**') [ABN 35 201 451 156];

AND (title of university) ('the **Administering Institution**) (together 'the **Parties**')

WHEREAS:

- A. The ARC operates a Program, being the ARC Centres of Excellence Program.
- B. The Commonwealth accepts that the Administering Institution is an eligible body for the purposes of the Program, and the Commonwealth may provide financial assistance to enable the Administering Institution to conduct the research activities undertaken by the Centre of Excellence, being that described in Schedule A.
- C. The Commonwealth is required by law to ensure the accountability of Funding and accordingly, the Administering Institution is required to be accountable for all Commonwealth Funding it receives under this Agreement.
- D. The Commonwealth wishes to provide Funding under the Program to the Administering Institution for the purposes, and subject to the terms and conditions, set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

1.1. In this Agreement, unless the contrary intention appears:

'**ABN**' has the meaning given in Section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

'**the Act**' means the *Australian Research Council Act 2001* as amended from time to time;

'**Administering Institution**' means the higher education institution responsible for administering the Funding, as detailed under the Parties heading;

'**Annual Report**' means the report to be submitted by the Centre, through the Research Office of the Administering Institution, in accordance with clause 19.2;

'**Approved Proposal**' means the proposal for expenditure by the Administering Institution that will assist the research programs undertaken by the Centres of Excellence set out in Schedule A, approved by the Minister under Section 51 of the Act;

'**ARC**' means the Australian Research Council, as established under section 5 of the Act to make recommendations to the Minister on the allocation of research funds, and to administer certain regimes of Commonwealth financial assistance, and includes the members of its Board and Committees;

'**ARC Program**' means a Program funded by the ARC under the National Competitive Grants Program;

'**ARC's website**' means <http://www.arc.gov.au/>;

'**Asset**' includes personal, real or incorporeal property, but shall not mean Intellectual Property;

- ‘Audited Financial Statement’** means the statement to be submitted by the Administering Institution by 30 June each year in accordance with Section 58(1)(b) of the Act;
- ‘Centre’** means the entity conducting and managing the research activities described in Schedule A and the Centre Application;
- ‘Centre Application’** means the application for an ARC Centre of Excellence which was lodged with the ARC and given the Project ID specified in Schedule A;
- ‘Centre Director’** means the person appointed to lead the research programs of the Centre as described in Schedule B of this Agreement;
- ‘Centre Participant’** means Specified Personnel, employee of the Centre or a person who is formally associated with the Centre;
- ‘Chief Executive Officer’** means the occupant of the position from time to time of the Chief Executive Officer of the Australian Research Council;
- ‘Chief Investigator’** means the person or persons named in Schedule A as Chief Investigator for the Centre;
- ‘Chief Operations Officer’** means the person appointed to administer the Centre;
- ‘Collaborating Institutions/Organisations’** means the institutions/organisation(s) named in Schedule A excluding the Administering Institution;
- ‘Commonwealth’** means the Commonwealth of Australia;
- ‘Commonwealth Assets’** means Assets owned by the Commonwealth;
- ‘Commonwealth Material’** means any Material provided by the Commonwealth to the Administering Institution for the purposes of this Agreement or which is copied or derived from that Material;
- ‘End of Year Report’** means the report described in clause 19.3;
- ‘Program Coordinator’** means the ARC officer designated by the ARC to manage the Centres of Excellence Program;
- ‘Final Report’** means the report submitted by the Centre through the Research Office of the Administering Institution in accordance with clause 19.5;
- ‘Funding’** or **‘Funds’** means the financial assistance payable under the Act and is the amount or amounts payable under this Agreement for the Centre specified in Schedule A;
- ‘Funding Approval’** means the proposal approved for expenditure by the Minister under the Act;
- ‘Funding Rules’** means the *ARC Centres of Excellence Funding Rules for funding commencing in 2005*;
- ‘GST’** has the meaning given in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*;
- ‘Information Privacy Principles’** – means the principles set out in section 14 of the *Privacy Act 1988*;

‘Intellectual Property’ includes 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, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

‘Interim Director’ means the person named in the Centre Application as the Interim Director;

‘Material’ includes documents, equipment, software, goods, information and data stored by any means;

‘the Minister’ means the Minister from time to time responsible for the administration of the Act, or the Minister’s delegate;

‘National Privacy Principles’ means a clause of Schedule 3 of the *Privacy Act 1988*;

‘Participant’ means a person who is a Centre Director, Research Director, Interim Director, Chief Operations Officer, Chief Investigator or Partner Investigator;

‘Partner Investigator’ means the person or persons named in Schedule A as a Partner Investigator for the Centre;

‘Personnel’ means those persons involved in the conduct of the Centre and named on the Centre Application at Part B;

‘Program’ means National Competitive Grants Program;

‘Program Coordinator’ means the occupant from time to time of the position of Program Coordinator (*Centres Programs*) in the Australian Research Council, or any other person to whom the administration of the *Centres of Excellence Program* may be allocated;

‘Reports’ means the Annual Report, End of Year Report; Final Report and the Audited Financial Statement;

‘Research Director’ means the person or persons appointed to lead the research programs of the Centre as described in Schedule B of this Agreement;

‘Research Office’ means that part of the Administering Institution responsible for liaison on Funding matters;

‘Responsible Officer’ of the Administering Institution means the Vice-Chancellor or Chief Executive Officer or an officer nominated by him/her; and

‘Specified Personnel’ means the Centre Director, Research Director, Chief Operations Officer, Chief Investigators and Partner Investigators named in Schedule A.

2. Interpretation

2.1. In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender; and

- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings, words capitalised or in bold format and notes in square brackets (“[]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference;
- (e) all references to clauses are clauses in this Agreement;
- (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (g) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2.2. This Agreement is subject to the Act. If there is any conflict between this Agreement and the Act, then the Act prevails.

3. Entire Agreement and Variation

3.1. This Agreement, including the Schedules, the *Funding Rules for ARC Centres of Excellence for funding commencing in 2005* and the Centre Application will constitute the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

3.2. If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) the Schedules;
- (c) the *Funding Rules for ARC Centres of Excellence for funding commencing in 2005*; and
- (d) the Centre Application.

3.3. The Administering Institution and the Commonwealth may agree to vary this Agreement. Any variation to the Agreement must be in writing and be signed by both Parties.

4. Funding Period

4.1. Subject to clause 5 of this Agreement and the Act, the Funding period is for the period(s) set out in Schedule A, unless the Funding is terminated earlier.

5. Payment of Funding

5.1. Subject to parliamentary appropriation and the provisions of the ARC Act, the Commonwealth shall pay the Funds, in accordance with the Act, to the Administering Institution in the manner specified in the Schedules and in accordance with the provisions of this Agreement.

5.2. The Commonwealth will pay to the Administering Institution, by way of financial assistance in accordance with the Act, the amount set out in Schedule A which is exclusive of GST.

5.3. The duration of the Funding for the ARC Centre of Excellence is indicative only of the intent of the Minister at the time of making the offer of Funding and is not binding on the Commonwealth. In the event that the Minister subsequently makes a determination under section 51 of the Act to continue the Funding, this Agreement may, at the ARC's complete discretion:

- a) be allowed to expire and an entirely new Agreement be entered into under such a determination; or
- b) will continue to apply to the Centre granted financial assistance under such a determination.

5.4 Under section 54 of the Act, the Minister or Minister's delegate as provided for under section 66 of the Act may vary a Funding Approval in accordance with the Funding Rules and the provisions of the Act. Following a decision by the Minister or Minister's delegate to vary a Funding Approval, the Commonwealth shall have the right to unilaterally vary the Funding under this Agreement to reflect the Minister's decision or decision of the Minister's delegate.

5.5 Where the Commonwealth exercises its rights under clause 5.4 above, it shall inform the Administering Institution of the variation within forty-five (45) days of that variation.

6. Accuracy of Information/Malpractice

6.1 The Funding is subject to the condition that the information contained in the Centre Application from the Administering Institution is complete, accurate and not misleading. The Commonwealth will regard inaccurate and misleading information as including, but not being limited to, claiming fictitious track records, erroneously inflating or deflating funds obtained from other sources and false claims in the publication record, e.g. describing a paper as being published when it has only been submitted.

7. Use of the Funding: activities and facilities

7.1 The Administering Institution and all Collaborating Institutions/Organisations must enter into a written agreement or agreements covering:

- (a) the role of each institution/organisation in the Centre;
- (b) contributions by each institution/organisation as set out in the Centre Application and any additional certification provided by the Administering Institution;
- (c) payment of salaries for ARC Centre Fellows and Personnel
- (d) Intellectual Property arrangements;
- (e) provision for exit and entry of all institutions and organisations in the Centre;
- (f) granting to the ARC of the same rights of Access to premises and records at the Collaborating Institution, as are conferred by section 18.1 & 18.2 of this Agreement in respect of the Administering Institution;
- (g) fair access to resources for all Centre Participants, and;
- (h) an undertaking by all Collaborating Institutions/Organisations to abide by this Funding Agreement.

7.1.1 The Administering Institution must retain the agreement(s) for the lifetime of the Centre, and forward a copy to the ARC on request. The Administering Institution must notify the ARC within a reasonable time, but in any case within three months of any amendments to the agreement(s) as a result of changes in Personnel or substantial changes in contributions.

7.2 The Administering Institution will endeavour to ensure that the Centres described in Schedule A are conducted in accordance with this Agreement, in a diligent and competent manner. In addition, the Administering Institution must ensure that the Centres will be conducted in accordance with the aims contained in the Centre Application, or any approved revised budget and research plan approved by the ARC.

7.3 The Administering Institution shall endeavour to ensure that expenditure on the Centres described in Schedule A is in accordance with the aims of the Centre and within the broad structure of the Centre budget contained in the Centre Application or any approved revised budget.

7.4 The Administering Institution must use the Funds to provide the basic facilities required for the Centre. Basic facilities include (but are not limited to):

- (a) suitably equipped and furnished office accommodation;
- (b) for any laboratory-based Centre, adequate access to workshop services ie, machine tools and qualified technicians available to each Participant, according to need, for research;
- (c) access to a basic library collection;
- (d) access to basic computer facilities including access to the Internet;
- (e) adequate computer time; and
- (f) photocopying, telephone and microfilm reading facilities.

7.5 The Administering Institution shall not use the Funding:

- (a) for purposes specifically excluded in the Funding Rules for ARC Centres of Excellence for funding commencing in 2005; or
- (b) for purposes specifically excluded in this Agreement.

8. Over-expenditure by the Institution

8.1 Any Centre expenditure incurred by the Administering Institution for a Centre additional to the approved amount for that Centre specified in Schedule A in the columns headed 'Indicative Funds' is the responsibility of the Administering Institution. Subject to a variation to the Funding in accordance with clause 5.4 of this Agreement, the Commonwealth will not reimburse the Administering Institution for such costs under any circumstances.

9. Negation of Employment by the Commonwealth

9.1 Centre Participants, the Administering Institution, Collaborating Organisations and/or Institutions shall not by virtue of this Agreement or for any purpose be deemed to be employees, partners, or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

9.2 Centre Participants, the Administering Institution, Collaborating Organisations and/or Institutions, shall not represent themselves as being employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

10. Conduct of Research

10.1 Research undertaken by a Centre, Centre Participants and agents shall be conducted in accordance with the Special Conditions specified in Schedule A and Schedule B of this Agreement.

10.2 The Administering Institution shall ensure that no research under this Agreement will be permitted to proceed without appropriate ethical clearances having been obtained from the relevant committees and/or authorities referred to in Schedule C or prescribed by the Administering Institution's research rules. Responsibility for ensuring such clearances have been obtained remains with the Administering Institution.

11. Material produced under this Agreement

11.1 The Administering Institution shall establish and comply with its own procedures and arrangements for the ownership of all Material produced as a result of any research under this Agreement.

11.2 For any Material produced under this Agreement, the Administering Institution shall ensure that all Centre Participants:

- (a) take reasonable care of, and safely store any data or specimens or samples collected during, or resulting from, the conduct of the Centre;
- (b) make arrangements acceptable to the ARC for lodgement with an appropriate museum or archive in Australia of data, specimens or samples collected during, or resulting from, the Initiative; and
- (c) include details of the lodgement or reasons for non-lodgement in the Final Report for the Initiative.

12. Intellectual Property

12.1 The Administering Institution must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* (http://www.arc.gov.au/publications/arc_pubs/01.pdf).

12.2 Subject to clause 12.1 the Administering Institution must adhere to an Intellectual Property policy approved by the Administering Institution's governing body, which has as one of its aims the maximisation of benefits arising from research. The Commonwealth makes no claim on Intellectual Property brought into being as a result of the Centre research activities for which Funding is provided.

12.3 The Administering Institution shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as '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 in respect of any infringement of Intellectual Property rights by the Administering Institution, its employees, agents or subcontractors in the course of, or incidental to, performing the Project or the use by the Commonwealth of Reports provided by the Administering Institution in accordance with this Agreement.

12.4 The indemnity referred to in clause 12.3 shall survive the expiration or termination of this funding.

13. Protection of Personal Information

13.1 The Administering Institution agrees with respect to all activities related to or in connection with the performance of the Centre or in connection with this Agreement:

- (a) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to personal information for the purposes of this Agreement, as if it were an agency as defined in the *Privacy Act 1988*;
- (b) to use personal information received, created or held by the Administering Institution for the purposes of this Agreement only for the purposes of fulfilling its obligations under this Agreement;

- (c) not to disclose personal information received, created or held by the Administering Institution for the purposes of this Agreement without the prior written approval of the Program Coordinator;
- (d) not to use or disclose personal information received, created or held by the Administering Institution for the purposes of this Agreement to engage in a practice that would breach section 16F of the *Privacy Act*, unless the use or disclosure is necessary to meet (directly or indirectly) an obligation under this Agreement;
- (e) not to transfer personal information received, created or held by the Administering Institution for the purposes of this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Program Coordinator;
- (f) to co-operate with reasonable demands or inquiries made by the Federal Privacy Commissioner or the Program Coordinator in relation to the management of personal information by the Administering Institution in connection with this Agreement;
- (g) to ensure that any person whom the Administering Institution allows to access personal information which is received, created or held by the Administering Institution for the purposes of this Agreement is made aware of, and undertakes in writing, to observe the Information Privacy Principles;
- (h) to comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of personal information;
- (i) subject to law to ensure that records (as defined in the *Privacy Act*) containing personal information received, created or held by the Administering Institution for the purposes of this Agreement are, at the expiration or earlier termination of the Agreement, either returned to the ARC or deleted or destroyed in the presence of a person duly authorised by the ARC to oversee such deletion or destruction;
- (j) to the naming or other identification of the Administering Institution in reports by the Federal Privacy Commissioner;
- (k) to ensure that any subcontract or sub-agreement made in connection with this Agreement contains enforceable obligations requiring the subcontractor or parties to a sub-agreement including but not limited to those made with Collaborating Institutions/Organisations implemented under Clause 7.1 of this Agreement to comply with the obligations in this clause 13, as if the subcontractor or the party to the sub-agreement were the Administering Institution;
- (l) to enforce the obligations referred to in paragraph (k), in accordance with such directions as the Program Coordinator may give; and
- (m) to indemnify the Commonwealth in respect of loss, liability or expense suffered or incurred or assumed by the Commonwealth arising out of, or in connection with:
 - (i) a breach of the obligations of the Administering Institution under this clause 13; or
 - (ii) a breach of a subcontractor's or parties to a sub-agreement obligations under a subcontract or sub-agreement as contemplated by clause 13.1(k); or
 - (iii) the misuse of personal information held in connection with this Agreement by the Administering Institution or a subcontractor or party to a sub-agreement; or
 - (iv) the disclosure of personal information held in connection with this Agreement by the Administering Institution or a subcontractor or

party to a sub-agreement in breach of an obligation of confidence whether arising under the Privacy Act or otherwise.

13.2 The Administering Institution shall immediately notify the Program Coordinator if the Administering Institution:

- (a) becomes aware of a breach of its obligations under clause 13.1;
- (b) becomes aware of a breach of a subcontractor's or party to a sub-agreement's obligations under a subcontract or sub-agreement as contemplated by clause 13.1(k);
- (c) becomes aware that a disclosure of personal information may be required by law; or
- (d) is approached or contacted by, or becomes aware that a subcontractor or party to a sub-agreement has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.

13.3 An act done or a practice engaged in by the Administering Institution or a subcontractor or party to a sub-agreement for the purposes of meeting (directly or indirectly) an obligation under this Agreement:

- (a) is authorised by this clause for the purposes of sub-sections 6A(2) and 6B(2) of the *Privacy Act* even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code that applies to the Administering Institution or the subcontractor or party to a sub-agreement; but
- (b) is subject to the other obligations in this Agreement including this clause 13.

13.4 For the purposes of this clause 13, "received" includes "collected".

13.5 This clause survives the expiration or earlier termination of this Agreement.

Note: more information about the Privacy Act and the Information about Privacy Principles is available at <http://www.privacy.gov.au/act/index.html>.

14. Compliance with Commonwealth Policies

14.1 The Administering Institution shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

14.2 The Administering Institution shall comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and shall not enter into a subcontract or sub-agreement with a subcontractor or party to a sub-agreement named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with that Act.

14.3 The Administering Institution shall, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.

15. Acknowledgments, Publications and Publicity

15.1. The Administering Institution must determine whether to communicate the results of research projects to the research community and the general public. In making a determination under this subclause, the Administering Institution must act in accordance with the principle that it is desirable that the results be communicated to the research community and the general public unless there are specific reasons that make this inappropriate, having regard to the confidentiality of a Centre's Intellectual Property or the Intellectual Property of any third party.

15.2 When, at any time during or after completion of research programs by a Centre, the Administering Institution publishes scholarly books or articles, or promotional material, books, articles, television or radio programs, newsletters or other literary or artistic works which relate to the Centre, the Administering Institution shall acknowledge, at a prominent place in the publication, the support of the ARC. For example by using the words “this work was produced with the assistance of the Australian Research Council under the ARC Centres of Excellence Program”.

15.3 Equipment and facilities funded under the ARC Centres of Excellence Program must have clear signage, indicating the support of the ARC.

15.4 Each Centre shall establish a website to communicate with the research community and the community at large. The website will acknowledge on its homepage the support of the ARC for the Centre.

16. Administration of the Funding and of Records

16.1 The Administering Institution must maintain proper records relating to the Funding in general and the research programs undertaken by the Centres with the Funding in particular, to ensure its compliance with this Agreement.

16.2 The Administering Institution shall provide Collaborating Institutions/Organisations and all Specified Personnel with a copy of this Agreement within a reasonable time after the beginning of the Funding period.

17. Audit and Monitoring

17.1 The Administering Institution is responsible for monitoring the expenditure of the Centres and certifying that expenditure to the ARC in the End of Year Report(s). If at any time, in the opinion of the Responsible Officer, the expenditure is not being carried out with competence and diligence, or in accordance with this Agreement, the Administering Institution shall take all action necessary to minimise further expenditure in relation to the Funding and to inform the Commonwealth immediately.

17.2 The ARC may conduct reviews at any time to ensure that the terms of this Agreement are being, or have been met and that reports submitted to the ARC are an accurate statement of compliance by the Administering Institution. Persons nominated by the ARC to conduct these reviews are to be given full access by the Administering Institution, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funding in general.

18. Access to Premises and Records

18.1 The Administering Institution shall give, at all reasonable times, to the Chief Executive Officer of the ARC or any person authorised in writing by the CEO, the Auditor General or the Privacy Commissioner, for purposes which are relevant to the performance of this Agreement:

- (a) reasonable access to:
 - (i) the Administering Institution’s employees;
 - (ii) premises occupied by the Administering Institution; and
 - (iii) Material; and/or

- (b) reasonable assistance to:

- (i) inspect the performance of the Centre;
- (ii) locate and inspect Material; and
- (iii) make copies of Material relevant to the Centre and remove those copies.

18.2 Upon receipt of reasonable written notice from the CEO of the ARC, the Administering Institution shall provide any information required by the Commonwealth for monitoring and evaluation purposes.

18.3 If a matter is being investigated which, in the opinion of the CEO of the ARC, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, clause 18.4 will not apply.

18.4 The access rights in clause 18.1 are subject to:

- (a) the provision of reasonable prior notice to the Administering Institution; and
- (b) the Institution's reasonable security procedures.

18.5 Nothing in clause 18.1 to 18.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.

18.6 The Auditor-General, or a delegate of the Auditor-General, for the purpose of performing the Auditor-General's statutory functions, at reasonable times and on giving reasonable notice to the Administering Institution, may:

- (a) require the Administering Institution to provide records and information which are directly related to this Agreement;
- (b) have access to the premises of the Administering Institution for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Administering Institution which are directly related to this Agreement; and
- (c) where relevant, inspect any Commonwealth Assets and Commonwealth Material held on the premises of the Administering Institution.

18.7 This clause shall survive the expiration or earlier termination of this Agreement.

19. Reporting Requirements

19.1 The Administering Institution must submit the following reports and statements, in accordance with this Agreement and the Act, in the format required by the ARC.

19.2 Annual Report

The Administering Institution shall submit, by 31 March in the year following each calendar year for which the funding was awarded, an Annual Report for each Centre. The Annual Report will include details regarding the following matters:

- (a) the extent to which the objectives of the ARC Centres of Excellence Program and the Approved Proposal have been met;
- (b) the achievements in research and other outputs achieved resulting from the use of the funds, including any advances in knowledge, relevant publications or international collaboration;
- (c) the performance of the Centre against the performance measures in the key result areas listed in Schedule E;

- (d) a detailed activity plan for the next twelve months;
- (e) all expenditure for the calendar year under the Approved Proposal by the Centre, including any specific Assets or Intellectual Property;
- (f) funding and/or other resources provided by the Administering Institution, Participants Collaborating Institutions/Organisations and any other institutions and organisations and any other parties towards meeting the aims of the Approved Proposal; and
- (g) any other matters which from time to time the ARC may specify on its web page (www.arc.gov.au) as matters which must be included in Annual Reports of Centres.

19.3 End of Year Report – Carry forward Request

- (a) The Administering Institution shall submit, by 31 March in the year following each calendar year for which the Funding was awarded, an End of Year Report for each Centre. The ARC will provide the Administering Institution with a proforma form and instructions for completion of this report.
- (b) The End of Year Report will contain information on all expenditure under the Approved Proposal, including:
 - i) any unspent funds to be recovered by the Commonwealth;
 - ii) any unspent funds that the Administering Institution is seeking to have carried over into the next year; and
 - iii) the reasons why the unspent funds are required to be carried over.
- (c) Under paragraph 58(1)(e) of the Act, Funding provided by the Commonwealth to the Administering Institution which is not spent during the year of the Funding period to which those funds were allocated may be carried over where the Minister approves the carrying over of unspent funds. The usual mechanism for the Administering Institution to seek this approval is through the End of Year Report.
- (d) Approval for Funds to be carried over for more than twelve months will be given only in exceptional circumstances.

19.4 Audited Financial Statement

- (a) In accordance with section 58 of the Act, the Administering Institution shall submit an Audited Financial Statement by 30 June of the year following the calendar year for which the Funding was awarded. The Statement must be prepared in the format specified in Schedule D.
- (b) In completing the Audited Financial Statement, the Administering Institution must ensure that the amount shown in that statement as 'approved carry forward funds' is the same as the amount (if any) that the Institution sought and for which approval was given to carry over in the End of Year Report.

19.5 Final Report

- (a) The Administering Institution shall ensure that Final Reports are provided for each Centre within 6 months of the final payment to the Centre (including any approved carry forward). The proforma for this report will be made available on the ARC's website (www.arc.gov.au). The ARC will review the outcomes against the objective(s) of the Centre as stated in the Centre Application or any approved revised budget, aims and research plan.
- (b) If a Final Report is deemed inadequate, the Centre Director will be contacted for further information. If the ARC is not satisfied with the outcomes of the Centre, this will be noted

against any further applications under any ARC Program submitted by, or on behalf of, the Centre Director and will be taken into account in the assessment of those applications.

- (c) If the Final Report is not submitted on time this will be noted against any further applications under any ARC Program submitted by, or on behalf of the Centre Director and will be taken into account in the assessment of those applications.
- (d) Applications under any ARC Program submitted by, or on behalf of a Centre Director of the Centre for which the Final Report is outstanding may be deemed ineligible.

19.6 Copyright in Reports

- (a) Copyright in all Reports required by this Agreement will vest in the Administering Institution at the time of creation but the Administering Institution grants to the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence to use and reproduce these Reports and publish them on a non-profit basis. The Commonwealth's licence is subject to the requirements of clause 20A.2 below, except where disclosure is required or authorised by law.

20. Recovery of Unspent Funds or Overpayments of Funds

20.1 Any unspent Funds may be recovered by the Commonwealth under paragraph 58(1)(e) of the Act. Any overpayment of Funds made to an Institution may be recovered under paragraph 58(1)(d) of the Act. The Commonwealth may offset the unspent or overpaid Funds against the total of any further Funds paid to the Administering Institution.

20A. Disclosure of Information

20A.1 Subject to clause 20A.2, the Commonwealth reserves the right to publicise the awarding of the Funds to the Administering Institution for the Centre. The Commonwealth may include in media releases, in general announcements about the Funding and in annual reports, the:

- (a) Administering Institution's name;
- (b) amount of the Funds;
- (c) title and a brief description of the Project; and
- (d) any Material published in the Annual Report of the Centre.

20A.2 Subject to clause 20A.3, the Commonwealth must not, without the Administering Institution's prior written approval, disclose any of the Administering Institution's confidential information to a third party.

20A.3 The obligations on the Commonwealth under this clause 20A will not be breached if information:

- (a) is disclosed by the Commonwealth to the responsible Minister;
- (b) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (c) is authorised or required by law to be disclosed; or
- (d) is in the public domain otherwise than due to a breach of this clause 20A.

20A.4 In this clause 20A, the Administering Institution's confidential information means information contained in Reports that:

- (a) is described in Schedule F; or
- (b) the Administering Institution identifies, by notice in writing to the Commonwealth after the date of this Agreement, as confidential information for the purposes of this agreement."

21. Indemnity

21.1 Subject to this Agreement, the Administering Institution shall at all times indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as “those indemnified”) from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Administering Institution, its employees, agents or subcontractors in connection with this Agreement.

21.2 The Administering Institution’s liability to indemnify the Commonwealth under clause 21.1 shall be reduced proportionally to the extent that any act or omission of the Commonwealth or its employees or agents contributed to the loss or liability.

21.3 The indemnity referred to in clause 21.1 shall survive the expiration or termination of this Agreement.

22. Insurance

22.1 The Administering Institution shall effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in an *ARC Centre of Excellence* and, if requested, provide the Commonwealth with a copy of the relevant policies or when appropriate a Certificate of Currency. The Administering Institution shall be responsible for maintaining workers’ compensation insurance for an amount required by the relevant State or Territory legislation and for taking all other action required as an employer.

23. Failure to comply with conditions of Funding

23.1 In accordance with subsection 58(1) of the Act, if the Minister informs the Administering Institution that the Minister is satisfied that the Administering Institution has failed to fulfil a condition applicable to the Funding, the Administering Institution will pay to the Commonwealth the amount (if any) specified by the Minister, not exceeding the amount of the Funding.

23.2 If the Administering Institution fails to comply with clause 7.1, the ARC may withhold payment of funding until it has been provided with copies of the agreement or agreements with Collaborating Institutions/Organisations.

24. Termination

24.1 If the Administering Institution fails to comply with any obligations contained in this Agreement then the Minister may, in accordance with Section 58 of the Act, terminate any or all of the Projects and require the Administering Institution to return all or some of the Funds to the ARC.

24.2 The Administering Institution must cease to operate a Centre:

- (a) where progress is not, in the opinion of the Responsible Officer or the Chief Executive Officer, satisfactory;
- (b) on the death, incapacity, resignation or withdrawal of one or more of the Specified Personnel unless suitable alternative arrangements, satisfactory to the participating researchers and the Minister, can be made by the Administering Institution for the continuance of the Funding; or
- (c) where the Parties have agreed to the termination of the Funding.

24.3 Upon the Administering Institution ceasing to operate a Centre under clause 24.2:

- (a) the Administering Institution shall take all action necessary to minimise further expenditure of the Funding ; and
- (b) the Minister may, under Section 58 of the Act, recover monies that have not been expended under the Funding.

25. Compliance with Law

25.1 The Administering Institution shall in carrying out this Agreement comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority.

25.2 The Administering Institution acknowledges that:

- (a) Chapter 7 of the Criminal Code provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (b) it is aware that giving false or misleading information is a serious offence under the Criminal Code;
- (c) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than a person to whom the Administering Institution is authorised to publish or disclose that fact or document) may be an offence under Section 70 of the Crimes Act 1914, punishment for which may be a maximum of two years imprisonment;
- (d) in respect of data, including personal information, held in connection with this Agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Agreement is an offence under Part VIA of the Crimes Act 1914 which may attract a substantial penalty, including imprisonment;
- (e) it is aware of the provisions of Section 79 of the Crimes Act 1914 relating to official secrets;
- (f) it is aware of its obligations under Part 4 of the Charter of United Nations Act 1945 and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002; and
- (g) it may be subject to the provisions of the Trade Practices Act 1974 and the Archives Act 1983.

Note: more information about *the Charter of United Nations Act* and *the Charter of United Nations (Terrorism and Dealing with Assets) Regulations* is available at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html.

25.3 The Administering Institution undertakes with respect to any officer, employee, agent, subcontractor or party to a sub-agreement created pursuant to clause 7.1 of this Agreement who will have access to documents, materials or information within the meaning of Section 79 of the *Crimes Act 1914* that prior to having access the officer, employee, agent and subcontractor will first be required by the Administering Institution to provide the Administering Institution with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of this clause.

26. Liaison

26.1 All communications from the Administering Institution to the ARC, or the Minister, relating to the Funding shall be made through the Responsible Officer of the Administering Institution and shall be directed to the Program Coordinator at the following address:

<i>Postal Address</i>	OR	<i>Courier Address</i>
Program Coordinator		Program Coordinator
<i>ARC Centres of Excellence Program</i>		<i>ARC Centres of Excellence Program</i>
Australian Research Council		Australian Research Council
PO Box 2702		Level 1, 8 Brindabella Circuit
Canberra ACT 2601		Canberra Airport ACT 2609

Phone: 02 6287 6600
Fax: 02 6287 6601
Email: ncgp@arc.gov.au

27. Applicable Law

27.1 This Agreement shall be governed by and construed in accordance with the laws of the Australian Capital Territory and the parties agree, subject to the Agreement that the Courts of the Australian Capital Territory shall have jurisdiction to entertain any action in respect of, or arising out of, this Agreement.

IN WITNESS WHEREOF the Parties have agreed to this Agreement on the date first above written.

SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
)
by)
insert name of signatory above) signatory to sign above
)
the)
insert signatory's title above)
of the Australian Research Council)
)
In the Presence of:)
)
.....)
insert name of witness above) witness to sign above

SIGNED for and on behalf of)
)
The)
insert name of Administering Institution above)
)
by)
insert name of signatory above) signatory to sign above
)
the)
insert signatory's title above)
of the said Administering Institution who, by signing,
certifies that they have the authority so to sign)
)
In the Presence of:)
)
.....)
insert name of witness above) witness to sign above

SCHEDULE B

Special Conditions for a Centre of Excellence

B1. Participants

- B1.1 The Administering Institution shall ensure that any Participant has such access to the ARC Centre of Excellence at all reasonable times and in such appropriate manner as accords with the purposes of the Centre.
- B1.2 The Administering Institution shall use best endeavours to ensure that no Participant causes the Administering Institution to breach this Agreement.

B2. Senior Centre Management

- B2.1 The Administering Institution shall appoint, with the prior approval of the ARC, a person with the title Centre Director or Research Director, to be responsible for the conduct of the research activities undertaken by the Centre.
- B2.2 The Administering Institution shall appoint, with the prior approval of the ARC, a person with the title Chief Operations Officer or a similar description, to be responsible for the management of the Centre.
- B2.3 It is permissible for a single person to perform the functions of the Research Director and the Chief Operations Officer. This person must be known as the Centre Director.
- B2.4 The Centre Director or Research Director is expected to work exclusively on the business of the Centre, and must hold no other executive position either at the Administering Institution, at a Collaborating Institution/Organisation or at another Institution or Organisation.
- B2.5 If the Centre Director or Research Director is unable to perform duties through death, incapacity, resignation, withdrawal, or by being granted leave of absence in excess of two months, the Administering Institution must advise the Program Coordinator, in writing, within five days of the Administering Institution becoming aware of the circumstance.
- B2.6 If the Program Coordinator receives notice of an event occurring under condition B2.5, the Program Coordinator will undertake a review to examine the research planning and management arrangements at the Centre. The Administering Institution shall provide any reasonable assistance requested by the Program Coordinator to undertake the review.
- B2.7 Failure to comply with the requirements of condition B2 may result in the termination of the funding.

B3. Staff of the ARC Centre of Excellence - terms and conditions of employment

- B3.1 Institutions/Organisations shall pay the staff at the ARC Centre of Excellence, at or above the prevailing salary levels for other academic staff at a similar level, so that staff at the ARC Centre of Excellence are no worse off financially than their academic peers of similar seniority at the Institution/Organisation.
- B3.2 Unless the Minister otherwise determines, the provision of recreation leave, sick leave and other conditions of employment for staff of the ARC Centre of Excellence, shall be those of the Institution/Organisation at which the relevant staff are employed.

B4. ARC Centres of Excellence Titles

- B4.1 Unless otherwise agreed in writing by the ARC, the Administering Institution shall ensure that the Centre uses the words “ARC Centre of Excellence” in its title.
- B4.2 The Administering Institution shall not allow the words “national”, “Commonwealth” or “Australia” to be used in the title of the Centre. A Centre may use the word “Commonwealth” in its sub-title, for example, “Cultural Media Policy, a Commonwealth ARC Centre of Excellence”.
- B4.3 Subject to condition B4.4, an ARC Centre of Excellence may continue to designate itself as an “ARC Centre of Excellence” after the funding period.
- B4.4 The Administering Institution shall ensure that the ARC Centre of Excellence complies with any direction from the Program Coordinator concerning the continued use of the title “ARC Centre of Excellence”.

B5 Advisory Board

- B5.1 The Administering Institution shall ensure that an Advisory Board is established.
- B5.2 While the final composition of the Advisory Board is a matter for the Administering Institution, it is expected that it will comprise some of the following: senior staff of the ARC Centre of Excellence, industry or end-user community groups, academic expertise from at least one other higher education institution, visiting senior international fellows and senior university staff such as the Pro Vice-Chancellor (Research).
- B5.3 The purposes of the Advisory Board are to assist the Centre management by contributing to the development of strategies and vision for the future relative to the proposed goals of the ARC Centre of Excellence and by serving as a vehicle for creating better linkages between academia, industry and government.
- B5.4 The Advisory Board must meet at least once a year.

B6. Assets

- B6.1 No expenditure of the Funding shall be made on the following items without the prior consent of the Program Coordinator:
- (a) equipment items estimated to cost in excess of \$150,000; or
 - (b) building works.
- B6.2 The Administering Institution and the Collaborating Institutions/Organisations shall establish and comply with their own procedures and arrangements for purchasing, installing, recording, maintaining and insuring an item of equipment purchased with funding money.
- B6.3 The Administering Institution and the Collaborating Institutions shall ensure that the ARC Centre of Excellence has first priority in the use and operation of the equipment purchased for the Centre and the Administering Institution and the Collaborating Institutions/Organisations shall, so far as is practicable, permit persons authorised by the Minister’s delegate to have reasonable access to that equipment in priority to other persons.

B6.4 The ownership of any Assets purchased with funding money shall vest in the Administering Institution or one of the Collaborating Institutions and be listed in its assets register unless:

- (a) otherwise specified in the Centre Application; or
- (b) the Centre is terminated, in which case the Minister may, by notice in writing, require the transfer of any such item of equipment to the Commonwealth.

B7. Evaluation

- (a) B7.1 During the year listed in under the heading 'Year for Centre Review' in Schedule A, a review of the Centre's performance against the objectives outlined in the Centre Application, the specific performance targets or milestones identified in the Centre Application and the objectives of the ARC Centres of Excellence Program will be undertaken by the ARC. Funding for the subsequent period is dependent on a successful result of the review.

SCHEDULE C

Special Conditions

1. *Importation of Experimental Organisms:* The Administering Institution must ensure that, before experimental organisms are imported into Australia for the purposes of research to be undertaken by a Centre, they or the Centre Director must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
2. *Research Involving Humans or Animals:* The Administering Institution must ensure that all activities undertaken at the Centre comply with the *Research Involving Human Embryo's Act 2002 (Cth)*, the *Prohibition of Cloning Act 2002 (Cth)*, and the National Statement on Ethical Conduct in Research involving Humans. If any Project conducted by the Administering Institution involves research on or involving humans or animals, the Administering Institution shall ensure that the codes adopted for these purposes by the National Health and Medical Research Council are complied with and that the Centre may not commence without clearance from the Administering Institution's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority outside of the Administering Institution.
3. *Deposition of Biological Materials:* Any biological material accumulated during the course of a Centre shall be transferred to an Australian body with statutory responsibility for control of such material. If no such body is available to take control of the biological material then the Administering Institution shall dispose of the material in accordance with the Administering Institution's established safeguards.
4. *Genetic Manipulation:* If a Centre involves the preparation and/or use of recombinant nucleic acids constructed *in vitro* from sources that do not ordinarily recombine genetic information, approval in writing by the Administering Institution's Biosafety Committee (or equivalent) or the Office of the Gene Technology Regulator (OGTR) must be obtained.
5. If a Centre involves, or is concerned with the use of, recombinant DNA techniques, the Administering Institution shall ensure that the principles and guidelines established and approved from time to time by the Australian Government's Recombinant DNA Monitoring Committee are observed.
6. If a Centre involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the Administering Institution shall ensure that the research has been approved by the relevant Ethics or Biosafety Committee (or equivalent) of the Administering Institution. The Administering Institution shall retain all Certificates relating to the above and will provide such evidence to the Director if required to do so.
7. *Ionising Radiation:* If a Centre involves the use of ionising radiation, the Administering Institution shall ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority. The Administering Institution shall retain all such licences and shall provide them to the Director if required to do so.
8. *Social Science Data Sets:* Any machine-readable data arising from a Centre involving research relating to the social sciences should be lodged with the Australian Consortium for Social and Political Research Inc. (ACSPRI) or any other appropriate archive for secondary use by other investigators. This should normally be done within two years of the conclusion of any fieldwork relating to the research. If a Chief Investigator is not intending to do so within the two-year period, s/he must inform the ARC in writing before the the expiry of the two- year period.

SCHEDULE D

Format of Audited Statements

The Audited Financial Statement (required under Clause 19.4 and the Act) is to be prepared using the Guidelines for the Preparation of Annual Financial Statements for the relevant reporting period, as published by the Department of Education, Science and Training.

SCHEDULE E
ARC Centre of Excellence for ...
Administering Institution:...
Key Result Areas and Performance Measures

Key Result Area	Performance Measure	Target	Outcome
<i>Research findings</i>			
	Quality of publications		
	Number of publications		
	Number of patents		
	Invitations to address and participate in international conferences		
	Invitations to visit leading international laboratories		
	Number and nature of commentaries about the Centre's achievements		
<i>Research training and professional education</i>			
	Number of postgraduates recruited		
	Number of postgraduate completions		
	Number of Honours students		
	Number of professional courses		
	Participation in professional courses		
	Number and level of undergraduate and high school courses		
<i>International, national and regional links and networks</i>			
	Number of international visitors		
	Number of national and international workshops		
	Number of visits to overseas laboratories		
<i>End-user links</i>			
	Number & nature of commercialisation activities		
	Number of government, industry and business briefings		
	Number of Centre associates trained/ing in technology transfer and commercialisation		
	Number and nature of Public Awareness programs		

Cont.

ARC Centre of Excellence for ... Administering Institution:...

<i>Organisational support</i>			
	Annual cash contributions from Collaborating Institutions/Organisations		
	Annual in-kind contributions from Collaborating Institutions/Organisations		
	Number of new Organisations recruited to or involved in the Centre		
	Level and quality of infrastructure provided to the Centre		
	Annual cash contributions from other Organisations		
	Annual in-kind contributions from other Organisations		
<i>Governance</i>			
	Breadth and experience of the members of the Advisory Board		
	Frequency and effectiveness of Advisory Board meetings		
	Quality of the Centre strategic plan		
	Effectiveness of arrangements to manage Centre nodes		
	The adequacy of the Centre's Key Performance Measures		
<i>National benefit</i>			
	Measures of expansion of Australia's capability in the priority area(s)		
	Case studies of economic, social, cultural environmental or other benefits		

The ARC recommends that a sum of money of the order of 5% of the annual Funding for the Centre named in this Schedule E should be spent each year on Centre community awareness programs, possibly including:

- (a) professional and technical training;
- (b) primary and secondary school awareness;
- (c) 'front-office' service for, and interaction with, Australian end-users; and
- (d) workshops, international visitor programs and other networking activities that engage cognate Australian researchers who might not be formally associated with the Centre.

SCHEDULE F

Administering Institution – Confidential Information

(Details to be provided by the Administering Institution)