



**Australian Government**

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**Australian Research Council**

## Funding Agreement

between the

**Commonwealth of Australia**

as represented by the

**Australian Research Council**

and

<<Administering Organisation>>

regarding funding for  
*ARC Centres of Excellence*  
to commence in  
**2011**

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## Parties and Recitals

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_.

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

[Administering Organisation name] ('the Administering Organisation')

### WHEREAS:

- A. The Commonwealth through the ARC operates the *ARC Centres of Excellence* Scheme ('the Scheme');
- B. The Commonwealth accepts that the Administering Organisation is an eligible body for the purposes of the Scheme, and the Commonwealth may provide financial assistance to enable the Administering Organisation to conduct the research activities undertaken by an ARC 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 Organisation is required to be accountable for all Commonwealth Funding it receives under this Agreement; and
- D. The Commonwealth wishes to provide Funding under the Scheme to the Administering Organisation for the purposes, and subject to the terms and conditions, set out in this Agreement.

### IT IS HEREBY AGREED as follows:

#### 1. Definitions

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*.

**Annual Report** means the report to be submitted by a Centre, through the Research Office of the Administering Organisation, in accordance with clause 30.3.

**ARC** means the Australian Research Council, as established under the ARC Act.

**ARC Act** means the *Australian Research Council Act 2001* as amended from time to time.

**ARC Centre** means a research centre wholly or partly funded by the ARC and includes *ARC Centres of Excellence*, *ARC Centres*, *ARC Special Research Centres* and co-funded Centres.

**ARC website** is [www.arc.gov.au](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 Organisation by 30 June each year in accordance with section 58(1)(b) of the Act.

**Centre** means the entity, listed in Schedule A, conducting and managing the research activities as set out in the Centre Proposal or in any revised research aims or research program submitted by the Administering Organisation and approved by the Commonwealth.

**Centre Director** means a person named in Schedule A with primary responsibility for a Centre and is appointed to lead a Centre as set out in Schedule B of this Agreement. This role will encompass the role of Research Director when a separate appointment of Research Director is not applicable.

**Centre Participant** means Specified Personnel, employee of a Centre or a person who is formally associated with a Centre.

**Centre Proposal** means the application for an *ARC Centre of Excellence* which was lodged with the ARC and given the Project ID listed in Schedule A.

**Chief Executive Officer** or **CEO** means the occupant of the position from time to time of the Chief Executive Officer of the Australian Research Council, or delegate, as established under the ARC Act.

**Chief Investigator** means a person or persons named in Schedule A as Chief Investigator for a Centre.

**Chief Operations Officer** means a person named in Schedule A who is appointed to administer a Centre.

**Collaborating Organisation** means an Eligible Organisation which is not the Administering Organisation but which is identified in the Centre Proposal as a contributor to the project and is named in Schedule A.

**Commonwealth** means the Commonwealth of Australia.

**Confidential Information** means any information which the parties agree is confidential or that is by its nature confidential.

**Conflict of Interest** means an actual or perceived conflict between a person's public duty and their private or personal interest.

**Director** means a Centre Director or a Research Director who leads a Centre.

**Eligible Organisation** means an organisation which is eligible to apply for and receive funding under the Funding Rules.

**End of Year Report** means the report described in clause 30.4.

**Final Report** means the report to be submitted by the Centre, through the Research Office of the Administering Organisation, in accordance with clause 30.5.

**Funding** or **Funds** means the financial assistance payable under this Agreement for a Centre as set out in Schedule A.

**Funding Agreement** means this document.

**Funding Period** means the approved period set out in Schedule A for a Centre, or as otherwise approved in writing by the Minister.

**Funding Rules** means the *ARC Centres of Excellence* Funding Rules for funding commencing in 2011.

**GST** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**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;

**Material** includes documents, equipment, software, goods, information and data stored by any means.

**Minister** means the Minister from time to time responsible for the administration of the ARC Act, or the Minister's delegate.

**Node** means the separate locations of a Centre at an Administering Organisation, Collaborating Organisations or Partner Organisations at which the research program is undertaken.

**Partner Investigator** means a person or persons named in Schedule A as Partner Investigator for a Centre.

**Partner Organisation** means an organisation which is not an Eligible Organisation, but which is identified in the Centre Proposal as a contributor to the project and is named in Schedule A.

**Personnel** means those persons involved in the conduct of a Centre.

**Privacy Commissioner** means the person occupying the position of Privacy Commissioner from time to time pursuant to the *Privacy Act 1988*.

**Recipient Created Tax Invoice** means a tax invoice that is issued by the recipient of the goods and/or services rather than the supplier.

**Research Director** means a person named in Schedule A with primary responsibility for the research activities of a Centre and is appointed to this position as set out in Schedule B of this Agreement.

**Research Office** means a business unit within an organisation that is responsible for administrative contact with the ARC regarding Centre Proposals and research projects.

**Responsible Officer** means the Vice-Chancellor or other corporate head of the Administering Organisation or an officer nominated by him/her.

**Scheme** has the meaning given in Recital A.

**Scheme Coordinator** means the occupant from time to time of the position of Scheme Coordinator (*Centres Scheme*) in the ARC, or any other person to whom the administration of the *ARC Centres of Excellence* Scheme may be allocated.

**Special Condition** means the conditions set out in Schedules A, B and C that govern the use of Funding.

**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;
- c. words importing persons include a partnership and a body whether corporate or otherwise;
- d. section 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 sections are sections in this Agreement and all references to a Schedule refer to a Schedule to this Agreement;
- f. all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- g. 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, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented; 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 ARC Act. If there is any conflict between this Agreement and the ARC Act, then the ARC Act prevails to the extent of any inconsistency.

## **3. Entire Agreement and Variation**

3.1 This Agreement, including Schedules, the Centre Proposal and the Funding Rules, constitutes 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 Notwithstanding section 3.1, the Minister may at any time impose other requirements or conditions in connection with any Funding covered by this Agreement as provided for under

the ARC Act. The Administering Organisation must, as soon as possible, or as otherwise agreed in writing with the Commonwealth, comply (or gain compliance) with any other Ministerial requirements or conditions notified by the Commonwealth from time to time. In the event of any inconsistency between this agreement and any such further requirements, the Administering Organisation will not be taken to have breached this Agreement where it has acted consistently with any further requirements or conditions notified under this section.

- 3.3 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 sections of this Agreement;
  - b. the Schedules;
  - c. the Funding Rules; and
  - d. the Centre Proposal.
- 3.4 The Administering Organisation and the Commonwealth may agree to vary this Agreement. Other than as expressly provided for in this Agreement, any variation to this Agreement must be in writing and be signed by both parties.
- 3.5 The Administering Organisation is required to do all things incidental or reasonably necessary to give effect to this Agreement, including procuring any researchers or third parties to do such incidental or reasonably necessary things. This includes, but is not limited to, the Administering Organisation securing the agreement of all parties involved in a Centre to abide by the terms and conditions of this Agreement.

#### **4. Term of Agreement and Funding Period**

- 4.1 This Agreement takes effect on the date it has been executed by the Administering Organisation and the Commonwealth. It continues to operate until all parties have fulfilled their obligations under this Agreement.
- 4.2 Subject to sections 4.3 and 5 of this Agreement, the Funding Period for a Centre is the approved period set out in Schedule A for that Centre, or as otherwise approved in writing by the Commonwealth, unless the Funding is terminated earlier in accordance with this Agreement.
- 4.3 The Funding Period for any Centre 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 54 of the ARC Act to vary the Funding, this Agreement will continue to apply to any Centre granted Funding under such a determination.

#### **5. Payment of Funding**

- 5.1 Subject to the provisions of the ARC Act, the terms of this Agreement and sufficient funding being available for the Scheme, the Commonwealth will pay the amount of Funding, exclusive of GST, set out in Schedule A to the Administering Organisation for the Centre in progressive monthly instalments.
- 5.2 Unless otherwise indicated or required by law, all consideration of any supply made under this Agreement is exclusive of GST imposed on the supply. If the Administering Organisation makes a taxable supply to the Commonwealth under this Agreement, the Commonwealth, on receipt of a tax invoice from the Administering Organisation or the issuing of a Recipient Created Tax Invoice by the Commonwealth, will pay without setoff an additional amount to the Administering Organisation equal to the GST imposed on the supply in question. No party may claim or retain from the other any amount under this Agreement for which the first party can obtain an input tax credit.

- 5.3 The Commonwealth will pay the Administering Organisation Funding for a Centre if all information contained in the Centre Proposal, and in all reports required by this Agreement, is complete, accurate and not misleading. The Commonwealth considers inaccurate and misleading information as including, but not limited to:
- a. claiming fictitious track records;
  - b. inflating funds obtained from other sources; or
  - c. false claims in the publication record.
- 5.4 If the Administering Organisation does not meet the terms of this Agreement, or the Commonwealth considers that inaccurate or misleading information has been provided, the Commonwealth may do any or all of the following:
- a. not pay the Administering Organisation any further Funds for a Centre;
  - b. recover all or some of the Funds paid under this Agreement for a Centre, including all unspent Funds and any Funds not spent in accordance with this Agreement; or
  - c. vary the amount of Funding approved for a Centre.
- 5.5 The Commonwealth will have the right to unilaterally vary the amount of Funding for a Centre.
- 5.6 Where the Commonwealth exercises its rights under sections 5.4 or 5.5, it will inform the Administering Organisation of the variation within 30 days of that variation being made.
- 5.7 Where the Commonwealth notifies the Administering Organisation of a variation under section 5.4(b), the Administering Organisation must, within 30 days of the date on the notice, pay the amount specified in that notice to the Commonwealth.

## **6. Use of the Funding**

- 6.1 The Administering Organisation must not use the Funding for purposes specifically excluded in:
- a. this Agreement; or
  - b. the Funding Rules.
- 6.2 The Administering Organisation will ensure that a Centre is conducted in a diligent and competent manner in accordance with this Agreement. In addition, a Centre's research program will be conducted in accordance with the 'Case for the Centre' contained in the Centre Proposal, or in any revised research aims or research program submitted by the Administering Organisation and approved by the Commonwealth.
- 6.3 The Administering Organisation will ensure that a Centre's expenditure is in accordance with the 'Case for the Centre', 'Budget' and 'Budget Justification' contained in the Centre Proposal, or in any revised budget submitted by the Administering Organisation and approved by the Commonwealth.
- 6.4 The Administering Organisation must provide the basic facilities required for a Centre, as set out in section 8.4 of the Funding Rules.
- 6.5 The Administering Organisation must provide the resources, as specified in the Centre Proposal, to allow a Centre to operate, unless otherwise approved by the Commonwealth.
- 6.6 The Administering Organisation will ensure that Specified Personnel have adequate time to participate in a Centre.
- 6.7 Funds may be used by the Administering Organisation to employ Personnel, other than the Centre Director, Research Director, Chief Investigators or Partner Investigators, where provision for such was contained in the Centre Proposal and subject to the conditions set out in Schedule B. They may be employed full-time or part-time as required.

- 6.8 When recruiting and employing Personnel, other than the Centre Director, Research Director, Chief Investigators or Partner Investigators, the Administering Organisation will:
- a. follow its normal recruitment procedures;
  - b. be responsible for salaries, recreation leave, sick leave and other conditions of employment; and
  - c. be responsible for any on-costs provisions beyond the Commonwealth contribution of 28% (e.g. extended periods of leave, severance pay, etc). On-costs provisions beyond the Commonwealth contribution must not be paid from the Funding.
- 6.9 The Administering Organisation must ensure that any Personnel who are employed full-time in a Centre, and whose salary is provided from the Funding, will not accept any remuneration whatsoever from any source other than the Administering Organisation in respect of work performed in a Centre, unless prior agreement is gained from the Commonwealth.
- 6.10 The Administering Organisation must ensure that Funding is not expended on excluded items, as set out in section 8.4 of the Funding Rules.
- 6.11 The Funding must not be used to fund any research and/or activity which is, or will be, funded from other Commonwealth sources, unless otherwise approved by the Commonwealth.
- 6.12 If other Commonwealth funding is approved for any research and/or activity which predominantly duplicates research and/or activity being undertaken by a Centre, the Commonwealth must be notified immediately. The Commonwealth may consider whether or not to terminate, or recover Funding to the extent that it is duplicated by another Commonwealth source.
- 6.13 The Administering Organisation must not allow a Centre to commence, or Funding to be expended, until it has entered into a written agreement with each Collaborating and Partner Organisation in accordance with section 9. The Administering Organisation must reach agreement, and enter into a written agreement, with each Collaborating and Partner Organisation before the final date for commencement of the Centre as set out in section 11.
- 7. Over-expenditure by the Administering Organisation**
- 7.1 Any Centre expenditure incurred by the Administering Organisation, additional to the approved amount for that Centre as set out in Schedule A, is the responsibility of the Administering Organisation. The Commonwealth will not reimburse the Administering Organisation for such costs under any circumstances.
- 8. Recovery of Unspent Funds or Overpayments of Funds**
- 8.1 Any unspent Funds may be recovered by the Commonwealth. Any amount of Funding paid to the Administering Organisation which exceeds the amount that is properly payable to it may be recovered under paragraph 58(1)(d) of the ARC Act.
- 8.2 The Commonwealth may offset the unspent or overpaid Funds against the total of any further Funds payable to the Administering Organisation.
- 8.3 This section survives the expiration or earlier termination of this Agreement.
- 9. Collaborating Organisation and Partner Organisation Agreements**
- 9.1 The Administering Organisation will provide all Collaborating and Partner Organisations with a copy of this Agreement within a reasonable time after the commencement of Funding.
- 9.2 A written agreement, or agreements, must be negotiated and entered into between the Administering Organisation and all Collaborating and Partner Organisations. The

agreement, or agreements, must satisfy the requirements of section 9 at all times during the Funding Period for a Centre.

- 9.3 An agreement, or agreements, entered into with Collaborating and Partner Organisations must include provisions which:
- a. state the role and contribution to a Centre's research program of each Collaborating and Partner Organisation;
  - b. state the financial commitment (both cash and in-kind) from each Collaborating and Partner Organisation;
  - c. describe the processes for the entry and exit of all Collaborating and Partner Organisations;
  - d. confirm compliance with the requirements related to Collaborating and Partner Organisations as stated in the Funding Rules;
  - e. are consistent with the details in the Centre Proposal, except as set out in section 9.4;
  - f. confirm the participation of Specified Personnel;
  - g. outline the payment of salaries for Personnel;
  - h. grant fair access to resources for Personnel;
  - i. state the Intellectual Property arrangements that apply to the outcomes or results generated by a Centre. Such arrangements must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research*, unless otherwise approved by the Commonwealth; and
  - j. confirm an undertaking by all Collaborating and Partner Organisations to not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement.
- 9.4 The Administering Organisation must ensure that each Collaborating and Partner Organisation provides funding and other contributions as set out in the Centre Proposal. Where Funding for a Centre is less than the amount requested in the Centre Proposal, funding from the Collaborating and Partner Organisations may be reduced by the same proportion.
- 9.5 If an agreement, or agreements, between the Administering Organisation and a Collaborating or Partner Organisation is revised to vary the funding provided by a Collaborating or Partner Organisation, the Specified Personnel or a Collaborating or Partner Organisation, the Administering Organisation must notify the Commonwealth in writing to seek approval of the variation, as set out in section 10.3.
- 9.6 The Administering Organisation will retain the agreement, or agreements, and make it available to the Commonwealth on request.

## **10. Default of Collaborating Organisation or Partner Organisation**

- 10.1 If the Administering Organisation is notified that a Collaborating or Partner Organisation wishes to reduce or withdraw its support for a Centre, within 90 days of receiving that notification the Administering Organisation must notify the Commonwealth in writing. The Administering Organisation may attempt to find a replacement Collaborating or Partner Organisation for a Centre, or modify remaining Collaborating or Partner Organisation arrangements.
- 10.2 If the Administering Organisation reasonably believes that a Collaborating or Partner Organisation is in default of any of its obligations under an agreement entered into as set out in section 9, within 90 days of becoming aware of the default the Administering Organisation must notify the Commonwealth in writing. Upon receipt of that information the Administering Organisation may attempt to find a replacement Collaborating or Partner

Organisation for a Centre, or modify remaining Collaborating or Partner Organisation arrangements.

- 10.3 The notification to the Commonwealth, as set out in sections 10.1 and 10.2, must include:
- a. the Collaborating or Partner Organisation reducing its support, withdrawing or in default;
  - b. the proposed new or replacement Collaborating or Partner Organisation, if any;
  - c. justification as to the suitability of the new or replacement Collaborating or Partner Organisation to contribute to a Centre;
  - d. a written undertaking from the new or replacement Collaborating or Partner Organisation to provide funding and/or other contributions to a Centre;
  - e. the removal, replacement or addition of Specified Personnel as a result of the withdrawal and/or replacement of a Collaborating or Partner Organisation;
  - f. justification as to the suitability, including curriculum vitae, of new or replacement Specified Personnel to contribute to a Centre, and their participation in a Centre's research program; and
  - g. a request to the Commonwealth to approve a variation to this Agreement.
- 10.4 Any new or replacement Collaborating or Partner Organisation must meet the eligibility criteria for organisations as set out in section 10 of the Funding Rules.
- 10.5 Any new or replacement Specified Personnel must meet the eligibility criteria for researchers as set out in section 11 of the Funding Rules.
- 10.6 If the Commonwealth approves a variation to this Agreement, the Administering Organisation must revise an existing agreement or enter into an agreement with the new or replacement Collaborating or Partner Organisation, as set out in section 9.
- 10.7 If the Commonwealth does not approve a variation to this Agreement, the Commonwealth may terminate this Agreement in accordance with section 35.

## **11. Commencement of a Centre**

- 11.1 Subject to section 12, a Centre must commence by 30 June 2011.

## **12. Deferment of Commencement of a Centre**

- 12.1 If the Administering Organisation wishes to defer commencement of a Centre beyond 30 June 2011, a written request justifying the proposed deferral in terms of special circumstances must be made to the Scheme Coordinator through the Administering Organisation's Research Office. Any request for deferral must be made before 30 June 2011.
- 12.2 The Administering Organisation must not defer commencement of a Centre unless the Administering Organisation has received written approval from the Commonwealth.
- 12.3 The Commonwealth will not approve a Centre commencement beyond 31 October 2011 except in exceptional circumstances. The Commonwealth may terminate or recover Funding for any Centre which has not commenced by 31 October 2011.

## **13. Specified Personnel**

- 13.1 The Administering Organisation will ensure that all Specified Personnel will participate in a Centre in a diligent and competent manner, and will not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement.
- 13.2 The Administering Organisation will provide all Specified Personnel with a copy of this Agreement within a reasonable time after the commencement of Funding.

- 13.3 The Administering Organisation warrants that it has made proper enquiries of all Specified Personnel in relation to their eligibility as set out in section 11 of the Funding Rules and their ability to participate in a Centre.
- 13.4 The Administering Organisation warrants that, through an agreement as set out in section 9.3, all Specified Personnel have confirmed their participation in a Centre and have the approval of their employing organisation to do so.

#### **14. Change of Specified Personnel**

- 14.1 The Administering Organisation must notify the Commonwealth in writing as soon as possible of any variation to Centre Specified Personnel at any time during the Funding Period.
- 14.2 Such variations to Specified Personnel include, but are not limited to:
- a. departure of Specified Personnel;
  - b. replacement of departing Specified Personnel;
  - c. transfer of Specified Personnel from one organisation to another;
  - d. a change in the eligibility of a Specified Personnel; or
  - e. appointment of new Specified Personnel.
- 14.3 If, at any time during the Funding Period, the Director is unable to continue in this role through death, incapacity, resignation, withdrawal or by being granted a leave of absence greater than two months, a Centre may be continued under another Director provided that:
- a. he/she meets the eligibility requirements for a Centre Director as set out in section 11.2 of the Funding Rules;
  - b. a request is made by the Administering Organisation to the Commonwealth in writing to approve a variation to this Agreement; and
  - c. the request is approved by the Commonwealth.
- 14.4 The request to the Commonwealth, as set out in section 14.3, must include:
- a. the reason for the departure of the current Director;
  - b. a curriculum vitae of the proposed Director;
  - c. agreement from the proposed Director to undertake the role;
  - d. letters of support from all Collaborating or Partner Organisations agreeing to the appointment of the proposed Director; and
  - e. a brief explanation of the Centre's continued operation under the proposed Director, including, but not limited to, arrangements for the management of the Centre and administration of the Funding.
- 14.5 When the Commonwealth receives notice that the Director is unable to continue in this role, the Scheme Coordinator will undertake a review of the Centre and its activities to examine the research planning and management arrangements of the Centre. The Administering Organisation must provide any reasonable assistance requested by the Commonwealth to undertake the review.
- 14.6 If, at any time during the Funding Period, a Chief Investigator or Partner Investigator is unable to continue in this role, he/she may be replaced by a new Chief Investigator or Partner Investigator provided that:
- a. he/she meets the eligibility requirements for a Chief Investigator or Partner Investigator as set out in sections 11.3 or 11.4 of the Funding Rules;
  - b. a request is made by the Administering Organisation to the Commonwealth in writing to approve a variation to this Agreement; and

- c. the request is approved by the Commonwealth.
- 14.7 The request to the Commonwealth, as set out in section 14.6, must include:
- a. a curriculum vitae of the proposed Chief Investigator or Partner Investigator;
  - b. agreement from the proposed Chief Investigator or Partner Investigator to undertake the role;
  - c. a letter of support from the Collaborating or Partner Organisation agreeing to the appointment of, and any contribution to, the proposed Chief Investigator or Partner Investigator; and
  - d. a brief explanation of the role the proposed Chief Investigator or Partner Investigator will play within the Centre and her/his participation in the Centre's research program.
- 14.8 If, at any time during the Funding Period, a Chief Operations Officer is unable to continue in this role, he/she may be replaced by a new Chief Operations Officer provided that:
- a. a request is made by the Administering Organisation to the Commonwealth in writing to approve a variation to this Agreement; and
  - b. the request is approved by the Commonwealth.
- 14.9 The request to the Commonwealth, as set out in section 14.8, must include:
- a. a curriculum vitae of the proposed Chief Operations Officer;
  - b. agreement from the proposed Chief Operations Officer to undertake the role;
  - c. letters of support from all Collaborating or Partner Organisations agreeing to the appointment of the proposed Chief Operations Officer; and
  - d. a brief explanation of the functions the proposed Chief Operations Officer will undertake in the Centre.
- 14.10 If the request to vary the Centre Specified Personnel is approved by the Commonwealth, a variation to Schedule A of this Agreement will be signed by both parties.
- 14.11 If the Administering Organisation does not comply with the requirements set out in sections 14.3, 14.4 and 14.5, or the Commonwealth does not approve the appointment of a replacement Director, the Centre may be terminated and any unspent Funds recovered by the Commonwealth.

## **15. Transfer of a Centre**

- 15.1 The transfer of a Centre to another Administering Organisation will be considered only in exceptional circumstances.
- 15.2 If, at any time during the Funding Period, the Administering Organisation becomes aware that a Centre proposes to transfer its operations to another Eligible Organisation ('the recipient Eligible Organisation'), the Administering Organisation must notify the Commonwealth in writing as soon as possible.
- 15.3 The notification to the Commonwealth, as set out in section 15.2, must include evidence that:
- a. the following parties agree to the transfer:
    - i. the Administering Organisation;
    - ii. the recipient Eligible Organisation;
    - iii. the Collaborating Organisation(s); and
    - iv. the Partner Organisation(s).
  - b. the recipient Eligible Organisation agrees to provide support (including funding and facilities of commensurate quality) equivalent to or greater than that which would have

been provided by the Administering Organisation and which meets the requirements of this Agreement and the Funding Rules;

- c. the eligibility and accountability requirements set out in the Funding Rules and the terms and conditions of this Agreement will be met;
- d. the proposed transfer of the Centre will not adversely affect the collaboration, critical mass and research capability developed at the Administering Organisation;
- e. there is sufficient time available during the remainder of the Funding Period to build collaboration, critical mass and research capability at the recipient Eligible Organisation;
- f. the research already undertaken will not be put at risk as a result of the proposed transfer; and
- g. Centre Personnel and the administration of the Funding will not be adversely affected by the proposed transfer.

15.4 When the Commonwealth receives notice that a Centre proposes to transfer its operations to another Eligible Organisation, the Scheme Coordinator will undertake a review of the Centre and its activities to examine the research planning and management arrangements of the Centre, the Administering Organisation and the recipient Eligible Organisation. The Administering Organisation and the recipient Eligible Organisation must provide any reasonable assistance requested by the Commonwealth to undertake the review.

15.5 The Commonwealth will have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as the Commonwealth considers appropriate.

15.6 If the transfer is approved by the Commonwealth, unspent Funds and indicative Funding for the Centre and any Assets as set out in section 21.4 will be provided to the recipient Eligible Organisation, subject to section 15.7 below.

15.7 If the transfer of Funding and any Assets is approved by the Commonwealth:

- a. the Administering Organisation must:
  - i. agree to any variation or termination (as applicable) of this Agreement proposed by the Commonwealth to give effect to the changed Funding arrangements;
  - ii. provide to the Commonwealth in writing, the amount of all unspent Funds for the Centre and pay the Commonwealth such unspent Funds;
  - iii. report expenditure of Funding for the Centre prior to the transfer in its End of Year Report and identify the transfer in that Report; and
  - iv. comply with any other directions reasonably given by the Commonwealth to give effect to the transfer.
- b. the recipient Eligible Organisation must:
  - i. enter into a new, or vary an existing, Funding Agreement with the Commonwealth to give effect to the changed Funding arrangements;
  - ii. enter into a written agreement, or agreements, with all Collaborating and Partner Organisations which satisfy the requirements of section 9 of this Agreement; and
  - iii. report expenditure of Funding for the Centre after the transfer in its End of Year Report and identify the transfer in that Report.

15.8 If the transfer is approved by the Commonwealth, the Commonwealth will not pay relocation expenses for the transfer of any Personnel or Assets from the Administering Organisation to the recipient Eligible Organisation.

- 15.9 The Centre and any equipment purchased with either the Funding or contributions from Collaborating or Partner Organisations must not be transferred to the recipient Eligible Organisation until Commonwealth approval for the transfer of Funding is granted.
- 15.10 If the transfer is not approved by the Commonwealth, the Centre may be terminated and any unspent Funds recovered by the Commonwealth.

## **16. Relinquishment of a Centre**

- 16.1 If, at any time during the Funding Period, the Administering Organisation chooses to relinquish a Centre, Funding for the Centre will be terminated. In such cases, any unspent Funding for the Centre will be recovered by the Commonwealth.

## **17. Negation of Employment by the Commonwealth**

- 17.1 Centre Personnel, the Administering Organisation, Collaborating Organisations or Partner Organisations shall not by virtue of this Agreement be, or be deemed to be, employees, partners or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

## **18. Conduct of Research**

- 18.1 A Centre must be conducted in accordance with any Special Conditions specified in this Agreement, including Schedule B, and with any other requirements or conditions imposed by the Commonwealth in connection with any Funding covered by this Agreement.
- 18.2 The Administering Organisation must ensure that a Centre operating under this Agreement will not proceed without appropriate ethical clearances from the relevant committees and/or authorities referred to in Schedule C or prescribed by the Administering Organisation's research rules. Responsibility for ensuring that such clearances have been obtained remains with the Administering Organisation.
- 18.3 Unless approved in writing by the Commonwealth, a Centre must conform to the principles outlined in the following and their successor documents:
- a. NHMRC/ARC/UA *Australian Code for the Responsible Conduct of Research* (2007);
  - b. as applicable, the NHMRC *National Statement on Ethical Conduct in Human Research* (2007); and
  - c. as applicable, the NHRMC codes on animal research.
- 18.4 All parties involved in, or associated with, a Centre are required to disclose to the Commonwealth and the other parties involved in the Centre, any actual or potential Conflict of Interest. Such a Conflict of Interest will have the potential to influence, or appear to influence, the research, activities or operations of the Centre, publications and media reports, or requests for funding related to the Centre.
- 18.5 If the Administering Organisation or any Personnel become aware of any actual or potential Conflict of Interest relating to all party involved in a Centre, the Administering Organisation must:
- a. immediately notify the Commonwealth of the nature and details of the Conflict of Interest; and
  - b. comply with the established processes for managing Conflicts of Interest which must be in place as set out in section 7.3.3 of the Funding Rules.
- 18.6 If the Administering Organisation or any Personnel have failed to disclose a Conflict of Interest, the Commonwealth may do any of the things as set out in section 5.4.

## **19. Material Produced Under this Agreement and Dissemination of Research Outputs**

- 19.1 The Administering Organisation must 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.
- 19.2 For any Material produced under this Agreement, the Administering Organisation must ensure that all Specified Personnel:
- a. take reasonable care of, and safely store, any data or specimens or samples collected during, or resulting from, the conduct of a Centre;
  - b. make arrangements acceptable to the Commonwealth for lodgement with an appropriate museum or archive in Australia of data or specimens or samples collected during, or resulting from, a Centre; and
  - c. include details of the lodgement or reasons for non-lodgement in the Final Report for a Centre.
- 19.3 The Administering Organisation will consider the benefits of depositing the data and any publications arising from a Centre in an appropriate subject and/or institutional repository wherever such a repository is available. If the Administering Organisation is not intending to deposit the data from a Centre in a repository either before, or within six months after, the completion of a Centre, the reasons for not doing so must be stated in the Final Report. Any research outputs that have been or will be deposited in appropriate repositories should be identified in the Final Report.
- 19.4 This section survives the expiration or earlier termination of this Agreement.

## **20. ARC Assessments**

- 20.1 For the term of this Agreement, the Administering Organisation must ensure that the Director and Chief Investigators agree to assess up to 20 proposals for ARC funding per annum for each year of the Funding Period, if requested by the Commonwealth.
- 20.2 If the Commonwealth determines that the Director and/or Chief Investigator has failed to meet the obligation to assess as set out in section 20.1, the Commonwealth will notify the Administering Organisation of that failure in writing.
- 20.3 If the Director and/or Chief Investigator does not undertake the assessments within a period specified in the Commonwealth notification referred to in section 20.2, the Administering Organisation will be considered to be in breach of this Agreement and Funding for the relevant Centre may be terminated.

## **21. Assets**

- 21.1 Unless otherwise approved by the Commonwealth, Assets purchased with Funding must be purchased for the exclusive purposes of a Centre for the duration of the Funding Period.
- 21.2 The Administering Organisation, Collaborating Organisations and Partner Organisations must, so far as is practicable, permit Centre Participants to have priority access to equipment purchased for a Centre in preference to other personnel.
- 21.3 The Administering Organisation will establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring all items of equipment purchased with the Funds.
- 21.4 The ownership of any Asset purchased wholly or partly with the Funding shall be vested in the Administering Organisation or one of the Collaborating Organisations, located on its campus and listed in its assets register unless:
- a. otherwise approved by the Commonwealth;
  - b. otherwise specified in the Centre Proposal;

- c. a Centre is terminated, in which case the Commonwealth may require the transfer of any such item of equipment to the Commonwealth; or
- d. a Centre is transferred to another organisation as set out in section 15. In such a case, subject to the agreement of the Administering Organisation and the recipient Eligible Organisation under that section, the equipment purchased with the Funds for the relevant Centre may be transferred as set out in section 15.9.

## **22. Intellectual Property**

- 22.1 The Administering Organisation must adhere to an Intellectual Property policy, approved by the Administering Organisation's governing body, which has as one of its aims the maximisation of benefits arising from research. The Commonwealth makes no claim on the ownership of Intellectual Property brought into being as a result of a Centre's research for which Funding is provided.
- 22.2 Unless otherwise approved by the Commonwealth, the Administering Organisation's Intellectual Property policy must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* as amended from time to time.
- 22.3 The Administering Organisation will indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement (or alleged infringement) of Intellectual Property rights by the Administering Organisation, its employees, agents or subcontractors in the course of, or incidental to, conducting a Centre, of the use by the Commonwealth of reports provided by the Administering Organisation under this Agreement.
- 22.4 The indemnity referred to above survives the expiration or termination of this Agreement.

## **23. Protection of Personal Information**

- 23.1 The Administering Organisation agrees with respect to all activities related to, or in connection with, the performance of a Centre or in connection with this Agreement:
  - a. to comply with the Information Privacy Principles as set out in section 14 of the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use and disclosure of personal information to the extent that the content of those principles applies to the types of activity the Administering Organisation is undertaking under this Agreement, as if it were a record-keeper as defined in the *Privacy Act 1988*;
  - b. not to transfer personal information held in connection with this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Commonwealth;
  - c. to co-operate with any reasonable demands or inquiries made by the Privacy Commissioner or the CEO in relation to the management of personal information by the Administering Organisation, or breaches, or alleged breaches, of privacy;
  - d. to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the *Privacy Act 1988*) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph a. above;
  - e. to comply with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of personal information;
  - f. to comply with any reasonable direction of the CEO to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Administering Organisation that the Privacy Commissioner considers to be a breach of obligations in paragraph a. above;

- g. to comply with any reasonable direction of the CEO to provide the Privacy Commissioner access for the purpose of monitoring the Administering Organisation's compliance with this section;
- h. to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of, or in connection with, a breach of the obligations of the Administering Organisation under this section or any misuse of personal information held, or any disclosure by the Administering Organisation in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise;
- i. to ensure that any record (as defined in the *Privacy Act 1988*) containing personal information provided to the Administering Organisation by the Commonwealth or any other person pursuant to this Agreement is, at the expiration or earlier termination of this Agreement, either returned to the Commonwealth or deleted or destroyed in the presence of a person authorised by the Commonwealth to oversee such deletion or destruction; and
- j. to the naming or other identification of the Administering Organisation in reports by the Privacy Commissioner.

23.2 The Administering Organisation must immediately notify the Commonwealth if the Administering Organisation becomes aware of a breach of its obligations under section 23.1.

23.3 This section survives the expiration or earlier termination of this Agreement.

#### **24. Confidentiality**

24.1 Subject to section 24.2 below, the Commonwealth agrees not to disclose any Confidential Information of the Administering Organisation without the Administering Organisation's consent.

24.2 The Commonwealth will not be taken to have breached its obligations under section 24.1 to the extent that the Commonwealth discloses Confidential Information:

- a. to its officers, employees, agents, external professional advisers or contractors solely to comply with obligations, or to exercise rights, under this Agreement;
- b. to its internal management personnel solely to enable effective management or auditing of this Agreement or the National Competitive Grants Program or the Scheme;
- c. for a purpose directly related to the enforcement or investigation of a possible breach of Commonwealth, State, Territory or local law;
- d. to the Minister, or in response to a demand by a House or a Committee of the Commonwealth Parliament;
- e. within the Commonwealth, where this serves the Commonwealth's legitimate interests;
- f. as required or permitted by any other law or an express provision of this Agreement, to be disclosed; or
- g. that is in the public domain other than due to a breach of this section 24.

24.3 The Commonwealth warrants that, for a period of three years from the date of submission of the Final Report, it will consult with the Administering Organisation before any information which is contained in any reports related to a Centre and which the Administering Organisation has indicated is confidential and should not be disclosed, is disclosed to any person other than an officer, employee, agent or member of the ARC or the Minister. If disclosure is required to other persons, the Commonwealth will discuss the intended terms of disclosure with the Administering Organisation.

## **25. Compliance with Commonwealth Policies**

- 25.1 The Administering Organisation must, in carrying out its obligations under this Agreement, comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority.
- 25.2 The Administering Organisation must, when using the Commonwealth's premises or facilities, comply with all reasonable directions and Commonwealth procedures relating to occupational health (including the Commonwealth's smoke-free workplace 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.
- 25.3 The Administering Organisation must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and shall not enter into a subcontract with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with that Act.
- 25.4 The Administering Organisation will, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Fair Work Act 2009*, and obligations under relevant occupational health and safety laws.

## **26. Acknowledgments, Publications, Publicity**

- 26.1 Subject to commercial sensitivities or Intellectual Property considerations, the outcomes of a Centre are expected to be communicated to the research community and, where appropriate and possible, to the community at large.
- 26.2 Any ARC contribution to the research conducted as part of a Centre must be appropriately and prominently acknowledged (wherever possible) by the Administering Organisation and/or Personnel associated with the Centre in any research output, or communication in any media. Advice on acceptable forms of acknowledgement and use of the logo is provided on the ARC website.
- 26.3 Each Centre will establish a website to communicate with the research community and the community at large. The website homepage will acknowledge the support of the Commonwealth through the ARC.
- 26.4 This section survives the expiration or earlier termination of this Agreement.

## **27. Administration of the Funding**

- 27.1 The Administering Organisation must maintain reasonable, up-to-date and accurate records relating to the Funding in general, and a Centre conducted with the Funding in particular, to verify its compliance with this Agreement.
- 27.2 Records maintained under section 27.1 must be retained by the Administering Organisation for each Centre for a period of no less than seven years after whichever is the later of:
- a. the final payment of Funds by the Commonwealth; or
  - b. the final approved carryover of Funds.

## **28. Audit and Monitoring**

- 28.1 The Administering Organisation is responsible for monitoring the expenditure of the Funding for each Centre and certifying to the Commonwealth that the Funding has been expended in accordance with this Agreement in the End of Year Report. If at any time, in the opinion of the Responsible Officer, the Funding is not being expended in accordance with this Agreement, the Administering Organisation must take all action necessary to minimise further expenditure in relation to the Centre and to inform the Commonwealth immediately.

- 28.2 The ARC may conduct ad hoc on-site reviews in relation to financial and other reports to ensure that the terms of this Agreement are being, or were, met and that reports submitted to the Commonwealth are an accurate statement of compliance by the Administering Organisation. Persons nominated by the ARC to conduct these reviews are to be given full access by the Administering Organisation, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funds in general.
- 28.3 The Administering Organisation must:
- a. provide information to the Scheme Coordinator, or a person nominated by the Scheme Coordinator, as reasonably required by the Scheme Coordinator;
  - b. comply with all reasonable requests, directions, or monitoring requirements received from the Scheme Coordinator; and
  - c. cooperate with and assist the Commonwealth in any review or other evaluation that the Commonwealth undertakes.

## **29. Access to Premises and Records**

- 29.1 The Administering Organisation will, at all reasonable times, give to the CEO of the ARC or any person authorised in writing by the CEO:
- a. unhindered access to:
    - i. the Administering Organisation's employees;
    - ii. premises occupied by the Administering Organisation; and
    - iii. Material; and
  - b. reasonable assistance to:
    - i. inspect the performance of any or all Centres;
    - ii. locate and inspect Material relevant to a Centre or the Administering Organisation's compliance with this Agreement or the Scheme; and
    - iii. make copies of any such Material and remove those copies and use them for any purpose connected with this Agreement or the Scheme.
- 29.2 The access rights in section 29.1 are subject to:
- a. the provision of reasonable prior notice by the Commonwealth; and
  - b. the Administering Organisation's reasonable security procedures.
- 29.3 If a matter is being investigated which, in the opinion of the Commonwealth, may involve an actual or apprehended breach of the law, section 29.2 will not apply.
- 29.4 Upon receipt of reasonable written notice from the Commonwealth, the Administering Organisation must provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 29.5 Nothing in sections 29.1 to 29.4 affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.
- 29.6 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 Organisation, may:
- a. require the Administering Organisation to provide records and information which are directly related to this Agreement;
  - b. have access to the premises of the Administering Organisation for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Administering Organisation 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 Organisation.

29.7 This section survives the expiration or earlier termination of this Agreement.

### **30. Reporting Requirements**

30.1 The Administering Organisation must ensure that the Commonwealth and each Collaborating and Partner Organisation is provided with timely advice on the progress of a Centre.

30.2 The Administering Organisation must submit the following reports and statements to the ARC, in accordance with this Agreement and the ARC Act, in the format required by the ARC, if specified.

30.3 Annual Report

- a. The Administering Organisation must submit an Annual Report for each Centre by 31 March in the year following each full calendar year for which Funding was awarded. The Annual Report will include details regarding the following matters:
  - i. the extent to which the objectives of the Scheme and the Centre Proposal have been met;
  - ii. 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;
  - iii. the performance of the Centre against the performance targets as set out in Schedule D;
  - iv. a detailed activity plan for the next 12 months;
  - v. all expenditure for the calendar year, including any specific Assets or Intellectual Property;
  - vi. funding and/or other resources provided by the Administering Organisation, Collaborating and Partner Organisations, and any other sources of support; and
  - vii. any other matters which from time to time may be specified on the ARC website as matters which must be included in Centre Annual Reports.
- b. The Commonwealth may review the Annual Report against the objectives of the Scheme and the Centre Proposal, or any revised research aims or research program approved by the Commonwealth. Should the information in the Annual Report be found to be inadequate or unsatisfactory, the Director responsible for that Annual Report may be contacted to provide further information and/or a revised Annual Report.
- c. If the Commonwealth is not satisfied with the progress of a Centre, the Scheme Coordinator may undertake a review of the Centre and its activities and/or cease further payment of Funds until, in the opinion of the Commonwealth, satisfactory progress has been made. If satisfactory progress is still not achieved within a reasonable time, the Centre may be terminated and any unspent Funds recovered by the Commonwealth.
- d. Unsatisfactory progress of a Centre may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Director or Chief Investigators and will be taken into account in the assessment of those proposals.
- e. The reporting requirements set out in this section 30.3 survive the expiration or earlier termination of this Agreement.

30.4 End of Year Report

- a. The Administering Organisation must submit an End of Year Report by 31 March in the year following each full calendar year for which Funding was awarded. The

Commonwealth will provide the Administering Organisation with a proforma for this report.

- b. The End of Year Report will contain information on all expenditure for that year under a Centre on a Centre-by-Centre basis, including:
  - i. any unspent Funds to be recovered by the Commonwealth;
  - ii. any unspent Funds that the Administering Organisation 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 ARC Act, Funds provided by the Commonwealth to the Administering Organisation which are not spent during the year of the Funding Period to which those Funds were allocated may be carried over if approved by the Commonwealth. If the Administering Organisation wishes any Funds to be carried over from one year to the next year, the Administering Organisation must request this approval in the End of Year Report for the calendar year for which those Funds were initially paid.
- d. Where a carryover is requested for 75% or more of the Funds allocated for a Centre for a calendar year (excluding any Funds carried over from the previous calendar year), separate written justification must be provided.
- e. Funds may be carried over more than twelve months only in exceptional circumstances and subject to approval by the Commonwealth. Separate written justification must be provided in this instance.

### 30.5 Final Report

- a. Unless otherwise approved by the Commonwealth, the Administering Organisation must ensure that Final Reports are provided for each Centre within six months of the final payment of Funds for the Centre or within six months of the final carryover of Funds approved by the Commonwealth, whichever is the later. The form for this report will be made available on the ARC website. The ARC may review the outcomes against the objectives of the Scheme and the Centre Proposal, or any revised research aims or research program approved by the Commonwealth.
- b. Should the information in the Final Report be found to be inadequate or unsatisfactory, the Director responsible for that Final Report may be contacted to provide further information. If the Commonwealth is not satisfied with the outcomes of a Centre, this may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Director and may be taken into account in the assessment of those applications.
- c. If the Final Report is not submitted on time this may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Director and may be taken into account in the assessment of those applications.
- d. Proposals submitted under any ARC scheme by, or on behalf of, the Director of a Centre for which the Final Report is outstanding may be deemed ineligible for approval or funding.

### 30.6 Audited Financial Statement

- a. In accordance with section 58(1)(b) of the ARC Act, the Administering Organisation must submit an Audited Financial Statement by 30 June for each year following each calendar year for which the Funding was awarded.
- b. In completing the Audited Financial Statement, the Administering Organisation must ensure that the amount shown in that statement as 'approved carry forward Funds' is the

same as the amount (if any) for which approval was given by the Commonwealth to carry over in the End of Year Report.

### **31. Copyright in Proposals and Reports**

31.1 Copyright in any Centre Proposal and all reports provided under this Agreement will vest in the Administering Organisation at the time of creation but the Administering Organisation grants to the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence to use and reproduce information contained in a Proposal or a report and publish it on a non-profit basis for any purpose related to:

- a. the evaluation and assessment of proposals;
- b. verifying the accuracy, consistency and adequacy of information contained in a Proposal, or otherwise provided to the Commonwealth;
- c. the preparation and management of any funding agreement;
- d. the administration, auditing, management or evaluation of the National Competitive Grants Program or any funding scheme administered by the ARC; or
- e. the sharing of information within the Commonwealth, where this serves the Commonwealth's legitimate interests;

or where the use, reproduction or publication of the material is authorised or required by law.

31.2 If a Proposal or report contains information belonging to a third party, the Administering Organisation must ensure that it has in place all necessary consents sufficient to allow the Commonwealth to deal with the information or any report in accordance with this Agreement.

31.3 This section survives the expiration or earlier termination of this Agreement.

### **32. Indemnity**

32.1 The Administering Organisation will indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person, where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the Administering Organisation, its employees, agents or subcontractors in connection with this Agreement.

32.2 The Administering Organisation's liability to indemnify the Commonwealth under section 32.1 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.

32.3 The indemnity referred to above survives the expiration or termination of this Agreement.

### **33. Insurance**

33.1 The Administering Organisation must 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 Organisation will be responsible for effecting all insurances required under Workers' Compensation legislation and for taking all other action required as an employer.

### **34. Dispute Resolution**

34.1 The parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement until the procedure provided by this section 34 has been followed.

34.2 The parties agree that the following procedure will be used in an expeditious way to resolve a dispute:

- a. the party claiming there is a dispute will notify the other party in writing, setting out the nature of the dispute;
- b. the parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- c. the parties have 10 business days from the date of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure;
- d. if:
  - i. there is no resolution of the dispute;
  - ii. there is not agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
  - iii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 30 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 30 business days;

then, either party may commence legal proceedings.

34.3 This section 34 does not apply to action that the Commonwealth takes, or purports to take, under sections 5, 8 or 35 or where a party commences legal proceedings for urgent interlocutory relief.

34.4 Despite the existence of a dispute, the Administering Organisation must (unless requested in writing by the Commonwealth not to do so) continue to perform its obligations under this Agreement.

### **35. Termination**

35.1 The Commonwealth may immediately terminate this Agreement at any time by giving the Administering Organisation notice in writing.

#### **Termination of Funding for a Centre**

35.2 The Commonwealth may immediately terminate Funding for a Centre in writing by notifying the Administering Organisation if:

- a. the Commonwealth reasonably believes that one or more of the Funding conditions, as set out in this Agreement, have not been satisfied in relation to that Centre;
- b. the Commonwealth reasonably believes that it has received inaccurate, incomplete or misleading information in relation to that Centre, including in the Centre Proposal or in any report provided under this Agreement;
- c. the Administering Organisation fails to comply as soon as possible with any additional Commonwealth requirement or condition as notified under section 3.2; or
- d. the Commonwealth receives notification that work on the Centre's research program will cease, or has ceased.

35.3 If the Commonwealth terminates Funding for a Centre under the section above:

- a. the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on the Centre;
- b. the Administering Organisation must provide the reports required by this Agreement, within the timeframes specified in this Agreement, unless otherwise notified by the Commonwealth; and
- c. the Commonwealth may recover any or all Funding for the Centre as set out in section 5.4.

## **Termination of Agreement**

- 35.4 The Commonwealth may immediately terminate this Agreement in writing by notifying the Administering Organisation if:
- a. the Commonwealth reasonably considers there is fraud, misleading or deceptive conduct on the part of the Administering Organisation, the Director or other Personnel in connection with any Centre;
  - b. the Administering Organisation fails to comply as soon as possible with any additional Commonwealth requirement or condition as notified under section 3.2;
  - b. the Administering Organisation commits any breach of this Agreement that the Commonwealth, acting reasonably, considers is capable of remedy, and has failed to rectify that breach within 30 days of receiving an earlier notice from the Commonwealth requiring the breach to be remedied; or
  - d. the Administering Organisation commits any material breach of this Agreement which the Commonwealth, acting reasonably, considers is not capable of remedy.
- 35.5 If the Commonwealth terminates this Agreement under the section above:
- a. the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on all Centres;
  - b. the Administering Organisation must provide the reports required by this Agreement, within the timeframes specified in this Agreement, unless otherwise notified by the Commonwealth; and
  - c. the Commonwealth will immediately stop payment of all Funding under this Agreement and may recover any unspent Funds as at the date of termination from the Administering Organisation and any Funds not spent as set out in this Agreement.
- 35.6 Any amount notified to the Administering Organisation as payable under sections 35.3(c) or 35.5(c) is a debt due to the Commonwealth (without further proof of the debt being necessary), payable within 30 days of the date of the notice.
- 35.7 Subject to section 21.4, after the expiration or termination of this Agreement, the Administering Organisation retains ownership of all Assets purchased using the Funding.

## **36. Compliance with Law**

- 36.1 The Administering Organisation 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.
- 36.2 The Administering Organisation 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 her/his knowledge or into her/his possession or custody by virtue of the performance of this Agreement (other than a person to whom the Administering Organisation 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 10.7 of the *Criminal Code* 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 have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and it must comply with those obligations.

36.3 The Administering Organisation undertakes with respect to any officer, employee, agent or subcontractor 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 Organisation to provide the Administering Organisation with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

*[Notes: Administering Organisations should also note that they may be subject to the provisions and applications of the Trade Practices Act 1974 and the Archives Act 1983. 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](http://www.dfat.gov.au/icat/freezing_terrorist_assets.html)].*

### **37. Liaison**

37.1 All communication from the Administering Organisation to the Commonwealth relating to the Funding will be made through the Responsible Officer and will be directed to the Scheme Coordinator at the following address:

Scheme Coordinator (*ARC Centres of Excellence*)  
Australian Research Council

Phone: (02) 6287 6600  
Fax: (02) 6287 6638

*Postal address*  
GPO Box 2702  
CANBERRA ACT 2601

*Email*  
centres@arc.gov.au

*Courier address*  
Level 2, 11 Lancaster Pl  
Majura Park  
CANBERRA AIRPORT ACT 2609

### **38. Applicable Law**

38.1 This Agreement is governed by and is to be construed in accordance with the law in force in the Australian Capital Territory.

38.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**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 )  
**<<Administering Organisation>>** )  
 )  
 )  
by ..... ) .....  
insert name of signatory above ) signatory to sign above  
 )  
the ..... )  
insert signatory's title above )  
 )  
of the said Administering Organisation who, by signing, )  
certifies that he/she has the authority so to sign )  
 )  
In the Presence of: )  
 )  
 )  
..... ) .....  
insert name of witness above ) witness to sign above

**SCHEDULE A**

**Details of *ARC Centres of Excellence* to receive Funding from the Commonwealth**

## **SCHEDULE B**

### **Special Conditions for an *ARC Centre of Excellence***

#### **B1. Personnel**

- B1.1 The Administering Organisation must ensure that all Personnel have such access to a Centre at all reasonable times and in such appropriate manner as accords with the purposes of the Centre.
- B1.2 The Administering Organisation will use best endeavours to ensure that no Personnel cause the Administering Organisation to breach this Agreement.
- B1.3 The Administering Organisation and Collaborating Organisations will pay the Personnel of a Centre at or above the prevailing salary levels for other academic staff at a similar level, so that Personnel at a Centre are no worse off financially than their academic peers of similar seniority at that organisation.
- B1.4 The provision of recreation leave, sick leave and other conditions of employment for Personnel at a Centre will be those of the organisation at which they are employed.

#### **B2. Centre Senior Management**

- B2.1 The Administering Organisation must appoint a person to be responsible for the activities of a Centre. This person may have the title Centre Director. The Commonwealth must approve the appointment of a Centre Director.
- B2.2 A Centre Director is expected to work predominantly on the activities of a Centre, and must hold no other executive position at the Administering Organisation, a Collaborating Organisation or a Partner Organisation that would compromise her/his role as Centre Director.
- B2.3 The Administering Organisation may appoint a person with the title Research Director to be responsible for the research activities of a Centre. A Research Director may lead a Centre subject to the appointment of a Chief Operations Officer. The Commonwealth must approve the appointment of a Research Director.
- B2.4 A Research Director is expected to work predominantly on the research activities of a Centre, and must not undertake administrative or operational functions which are not necessary for the management of the Centre's research program. A Research Director should hold no other executive position at the Administering Organisation, a Collaborating Organisation or a Partner Organisation that would compromise her/his role as Research Director.
- B2.5 The Administering Organisation may appoint a person with the title Chief Operations Officer, to be responsible for the administration and management of a Centre. A Chief Operations Officer must be appointed if the Centre is led by a Research Director. The Administering Organisation must request Commonwealth approval of the appointment of a Chief Operations Officer.
- B2.6 The request to the Commonwealth, as set out in section B2.5, must include:
- a. a curriculum vitae of the proposed Chief Operations Officer;
  - b. agreement from the proposed Chief Operations Officer to undertake the role;
  - c. a letter from the Director outlining the suitability of the proposed Chief Operations Officer for the role; and
  - d. a letter of support from the Administering Organisation agreeing to the appointment of the proposed Chief Operations Officer.
- B2.7 If a Centre operates from more than one location ('Nodes'), a Chief Investigator from each Node may be given the title Node Director. Node Directors, if named, will be responsible to the Director and Chief Operations Officer for the operations of that Node.

### **B3. ARC Centre of Excellence Title**

- B3.1 The Administering Organisation must ensure that a Centre uses the words ‘ARC Centre of Excellence’ in its title, unless otherwise agreed in writing by the Commonwealth.
- B3.2 The Administering Organisation must not allow the words ‘national’, ‘Commonwealth’ or ‘Australia’ to be used in the title of a Centre. A Centre may use the word ‘Commonwealth’ in its sub-title, for example, ‘Cultural Media Policy, a Commonwealth ARC Centre of Excellence’.
- B3.3 Subject to section B3.4, a Centre may continue to designate itself as an ‘ARC Centre of Excellence’ for a period of three years after the Funding Period ends. The Administering Organisation must request Commonwealth approval of the title retention.
- B3.4 A Centre which ceases or is terminated before the end of the Funding Period must not continue to designate itself as an ‘ARC Centre of Excellence’ following the cessation or termination.
- B3.5 If title retention is approved by the Commonwealth, the Centre must provide Annual Reports, as set out in section 30.3, for each calendar year that the title is retained.
- B3.6 The Administering Organisation must ensure that a Centre complies with any direction from the Scheme Coordinator concerning the continued use of the title ‘ARC Centre of Excellence’.
- B3.7 This section survives the expiration or earlier termination of this Agreement.

### **B4 Advisory Committee**

- B4.1 The Administering Organisation must ensure that a Centre Advisory Committee is established and maintained for the duration of the Funding Period.
- B4.2 The purpose of the Advisory Committee is to assist Centre management by contributing to the development of strategies and vision for the future relative to the proposed goals and objectives of the Centre, and by serving as a vehicle for creating better linkages between academia, industry and government. The Committee will offer advice to the Director and the Administering Organisation regarding the research focus of the Centre, the structure and general operating principles of the Centre, and intellectual property and commercialisation management.
- B4.3 While the final composition of the Advisory Committee is a matter for the Administering Organisation and a Centre, it must provide broad representation of the research and end-user communities. An Advisory Committee may comprise some of the following: senior international researchers, industry or end-user representatives, community groups, academic expertise from other higher education institutions, or senior university staff such as the Pro Vice-Chancellor (Research).
- B4.4 The Advisory Committee must meet at least once a year.

### **B5. Assets**

- B5.1 No expenditure of Funding shall be made on equipment items estimated to cost in excess of \$150,000 without the prior approval of the Commonwealth.

### **B6. Reviews**

- B6.1 During the year listed under the heading ‘Year of Centre Review’ in Schedule A, a Centre will undergo a rigorous and comprehensive external performance review undertaken by the Commonwealth.
- B6.2 The review will evaluate a Centre’s performance against the Scheme objectives outlined in the Funding Rules and the specific Centre objectives as set out in the Centre Proposal, and the specific performance targets or milestones identified in the Centre Proposal and in

Schedule D of this Agreement. The operations, management and governance of the Centre will also be evaluated.

- B6.3 Continuation of Funding for the remaining years of the Funding Period will be dependent on the outcome of the review. A Centre may be terminated following the review if, in the opinion of the Commonwealth, that Centre is not performing or operating at the level expected of an *ARC Centre of Excellence*.
- B6.4 A Centre must not apply for funding in subsequent selection rounds for *ARC Centres of Excellence* until the scheduled review, as set out in section B6.1, is completed.
- B6.5 If a Centre review results in the termination of the Centre, that Centre must not apply for funding in the next available selection round for *ARC Centres of Excellence*.
- B6.6 Ad hoc reviews of a Centre may be held at any time.

## SCHEDULE C

### Research special conditions

- C1. *Importation of Experimental Organisms:* The Administering Organisation must ensure that, before experimental organisms are imported into Australia for the purposes of research to be undertaken by a Centre, the Administering Organisation or the Centre Director must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- C2. *Research Involving Humans or other Animals:* If any Centre conducted by the Administering Organisation involves research on or involving humans or other animals, the Administering Organisation must 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 Organisation's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority.
- C3. *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 Organisation must dispose of the material in accordance with the Administering Organisation's established safeguards.
- C4. *Genetically Modified Organisms:* If a Centre involves the use of gene technology (i.e. any technique for the modification of genes or other genetic material either in vitro or on live organisms) or the use of a genetically modified organism (i.e. an organism that has been modified by gene technology of that has inherited particular traits from an organism that were present because of gene technology) which is registered under the *Gene Technology Act 2000*, then before the proposed research commences, the Administering Organisation must ensure that the proposed work is assessed by an Institutional Biosafety Committee and/or licensed by the Gene Technology Regulator. The Administering Organisation must retain all certificates relating to the above and provide evidence to the Scheme Coordinator if required to do so. The Administering Organisation must be accredited with the Office of the Gene Technology Regulator.
- C5. *Ionising Radiation:* If a Centre involves the use of ionising radiation, the Administering Organisation will 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 Organisation must retain all such licences and provide them to the Scheme Coordinator if required to do so.
- C6. *Social Science Data Sets:* Any digital data arising from a Centre involving research relating to the social sciences should be lodged with the Australian Social Science Data Archive (ASSDA) 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, she/he should include the reasons in the Final Report.

**SCHEDULE D**

**Standard Performance Indicators for ARC Centres of Excellence**

**ARC Centre of Excellence for ...**

<b>Key Result Area</b>	<b>Performance Measure</b>	<b>Reporting Frequency</b>	<b>Target 2011</b>	<b>Target 2012</b>	<b>Target 2013</b>	<b>Target 2014</b>	<b>Target 2015</b>	<b>Target 2016</b>	<b>Target 2017</b>
<b><i>Research findings</i></b>									
	Number of research outputs	Annually							
	Quality of research outputs (provide breakdown)	Annually							
	Number of invited talks/papers/keynote lectures given at major international meetings	Annually							
	Number and nature of commentaries about the Centre's achievements (list media releases and articles separately)	Annually							
	Citation data for publications	At review							
<b><i>Research training and professional education</i></b>									
	Number of attended professional training courses for staff and postgraduate students	Annually							
	Number of Centre attendees at all professional training courses	Annually							

(DVC R) Initials: \_\_\_\_\_  
 (ARC) Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
 Date: \_\_\_\_\_

	Number of new postgraduate students working on core Centre research and supervised by Centre staff (include PhD, Masters by research and Masters by coursework)	Annually							
	Number of new postdoctoral researchers recruited to the Centre working on core Centre research	Annually							
	Number of new Honours students working on core Centre research and supervised by Centre staff	Annually							
	Number of postgraduate completions and completion times, by students working on core Centre research and supervised by Centre staff	Annually							
	Number of Early Career Researchers (within five years of completing PhD) working on core Centre research	Annually							
	Number of students mentored	Annually							
	Number of mentoring programs	Annually							
<b><i>International, national and regional links and networks</i></b>									
	Number of international visitors and visiting fellows	Annually							
	Number of national and international workshops held/organised by the Centre	Annually							

(DVC R) Initials: \_\_\_\_\_  
(ARC) Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

	Number of visits to overseas laboratories and facilities	Annually							
	Examples of relevant interdisciplinary research supported by the Centre	Annually							
<b><i>End-user links</i></b>									
	Number of government, industry and business community briefings	Annually							
	Number and nature of public awareness programs	Annually							
	Currency of information on the Centre's website	Annually							
	Number of website hits	Annually							
	Number of public talks given by Centre staff	Annually							
<b><i>Organisational support</i></b>									
	Annual cash contributions from Collaborating Organisations (list each Organisation separately)	Annually							
	Annual in-kind contributions from Collaborating Organisations (list each Organisation separately)	Annually							
	Annual cash contributions from Partner Organisations (list each Organisation separately)	Annually							
	Annual in-kind contributions from Partner Organisations (list each Organisation separately)	Annually							

(DVC R) Initials: \_\_\_\_\_  
(ARC) Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

	Other research income secured by Centre staff (list research income from ARC grants, other Australian competitive grants, grants from the public sector, industry and CRCs and other research income separately)	Annually							
	Number of new organisations collaborating with, or involved in, the Centre	Annually							
	Level and quality of infrastructure provided to the Centre	At review							
<b><i>Governance</i></b>									
	Breadth, balance and experience of the members of the Advisory Committee	At review							
	Frequency, attendance and value added by Advisory Committee meetings	At review							
	Vision and usefulness of the Centre strategic plan	At review							
	The adequacy of the Centre's performance measure targets	At review							
	Effectiveness of the Centre in bringing researchers together to form an interactive and effective research team	At review							
	Capacity building of the Centre through scale and outcomes	At review							
<b><i>National benefit</i></b>									
	Contribution to the National Research Priorities and the National Innovation Priorities	Annually							

(DVC R) Initials: \_\_\_\_\_  
(ARC) Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

	Measures of expansion of Australia's capability in the priority area(s)	At review							
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(DVC R) Initials: \_\_\_\_\_  
 (ARC) Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Centre-specific Performance Indicators for the ARC Centre of Excellence for...**

<b>Key Result Area</b>	<b>Performance Measure</b>	<b>Reporting Frequency</b>	<b>Target 2011</b>	<b>Target 2012</b>	<b>Target 2013</b>	<b>Target 2014</b>	<b>Target 2015</b>	<b>Target 2016</b>	<b>Target 2017</b>

(DVC R) Initials: \_\_\_\_\_  
 (ARC) Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
 Date: \_\_\_\_\_