



Funding Contract

between the

Commonwealth of Australia
as represented by the
Australian Research Council

and

{Institution's Name}

regarding funding for
**Discovery—Indigenous Researchers
Development**
to commence in
2002

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Parties & Recitals

THIS CONTRACT is made on the {**state day*} day of {**state month*} {**state year*}

between the

COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), as represented by and acting through the Australian Research Council ('the ARC') [ABN 51 452 193 160]

and

{**name the Institution fully#*} ('the Institution')

WHEREAS:

- A. The ARC operates a Programme, being the *Discovery—Indigenous Researchers Development*.
- B. The Commonwealth accepts that the Institution is an eligible body for the purposes of the Programme, and the Commonwealth may provide financial assistance to enable the Institution to conduct the Projects, being those described in Schedule A.
- C. The Commonwealth is required by law to ensure the accountability of Funding and, accordingly, the Institution is required to be accountable for all Commonwealth Funding it receives under this Contract.
- D. The Commonwealth wishes to provide Funding under the Programme to the Institution for the purposes, and subject to the terms and conditions, set out in this Contract.

NOW IT IS HEREBY AGREED as follows:

1 Definitions

In this Contract, unless the contrary intention appears:

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

'**the Act**' means the *Australian Research Council Act 2001* or subsequent relevant legislation, as amended from time to time;

'**Approved Proposal**' means a proposal for expenditure for purposes that will assist programmes of research undertaken by Institutions under section 51 of the Act approved by the Minister and, in this Contract, includes all Projects funded at a particular Institution and set out in Schedule A;

‘**ARC**’ means the Australian Research Council, as established under the *Australian Research Council Act 2001* or subsequent relevant legislation, as amended from time to time, to make recommendations to the Minister on the allocation of research funds, and includes the members of its Board and Committees;

‘**ARC’s website**’ is <<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 Institution by 30 June each year in accordance with subsection 58(b) of the Act;

‘**Chief Investigator**’ means the person or persons named in the Project Application as Chief Investigator for a particular Project;

‘**the Commonwealth**’ means the Commonwealth of Australia;

‘**End of Year Report**’ means the report described in clause 28.2;

‘**Exceptions Report**’ means the report described in clause 28.1;

‘**the Director**’ means the occupant from time to time of the position of the Director of the Programme Coordination Section of the Australian Research Council, or of any other Section to which the administration of the *Discovery-Indigenous Researchers Development Projects* may be allocated;

‘**Final Report**’ means the report described in clause 28.4;

‘**Funding**’ or ‘**Funds**’ means the amount or amounts payable under this Contract for each project as specified in Schedule A;

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

‘**Institution**’ means the higher education institution or administering organisation approved by the Minister under section 51 of the Act as the institution responsible for administering the Funding;

‘**Intellectual Property**’ includes all copyright and neighboring 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;

‘**Mentor**’ means the person named in the Project Application as the mentor for a particular applicant.

‘**the Minister**’ means the Minister responsible for the administration of the Act, or the Minister’s delegate;

‘Personnel’ means those persons involved in the conduct of the Project;

‘Progress Report’ means the report described in clause 28.3;

‘Project’ means the Project or Projects which form part of the Approved Proposal and which are set out in Schedule A;

‘Project Application’ means the application for a Project which was lodged with the ARC and given the application number which appears in Schedule A;

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

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

‘Specified Personnel’ means the Chief Investigators, mentors and supervisors named for each Project detailed in the Approved Proposal and Fellows named in Schedule A to perform the Project.

‘Supervisor’ means the person or persons named in the Project Application as the supervisor for a particular applicant.

2 Interpretation

2.1 In this Contract, 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) 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 to clauses in this Contract;
- (f) all references to dollars are to Australian dollars and this Contract 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;
- (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 Contract is subject to the Act. If there is any conflict between this Contract and the Act, then the Act prevails.

3 Entire Agreement and Variation

- 3.1 The Schedules and the *Guidelines for Discovery—Indigenous Researchers Development Projects for funding commencing in 2002* form part of this Contract. If any part of this Contract 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 Contract;
 - (b) the Schedules;
 - (c) the *Guidelines for Discovery—Indigenous Researchers Development Projects for funding commencing in 2002*.
- 3.2 This Contract, including Schedules, will constitute the entire agreement between the parties and supersede all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.
- 3.3 The Institution and the Commonwealth can agree to vary this Contract. To be legally binding any variation must be in writing and signed by both parties.

4 Funding Period

Subject to this Contract and the Act, the Funding period is from 1 January to 31 December of the year(s) set out in Schedule A, unless the Funding is terminated earlier.

5 Payment of Funding

- 5.1 Subject to parliamentary appropriation, the Commonwealth shall pay the Funds, in accordance with the Act, to the Institution in the manner specified in the Schedules.
- 5.2 The Commonwealth will pay to the Institution, by way of financial assistance in accordance with the Act, the amount set out in Schedule A, which is exclusive of GST, where ‘GST’ has the meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. For government-related entities (such as a government funded university or research institute) there will be no GST payable on the funding transaction between the entity and the ARC. Non-government-related entities, which are liable to pay GST on this transaction with the ARC, will receive a base-funding amount and an additional amount to cover the GST.
- 5.3 The durations of the funding for *Discovery-Indigenous Researchers Development Projects* are indicative only of the intent of the Minister at the time of making the offer of Funding and are 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 Contract will continue to apply to any Project, including Fellowships, granted financial assistance under such determination.
- 5.4 The Commonwealth shall have the right to unilaterally vary the amounts set out in the Approved Proposal.

- 5.5 The Commonwealth shall have the right to unilaterally vary Schedules to reflect annual adjustments in the ARC Salary and Allowances Provisions.
- 5.6 Where the Commonwealth exercises its right under clause 5.4, 5.5 or 5.6 above, it shall inform the 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 all Project Applications is accurate and not misleading. The Commonwealth will regard inaccurate and misleading information as including, but not being limited to, claiming fictitious track records, inflating 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 and types of work

- 7.1 The Institution will ensure that each Project described in Schedule A is carried out in accordance with this Contract, in a diligent and competent manner, subject to the provision of indicative funds. In addition, each Project will be conducted in accordance with the aims and research plan contained in the Project Application, or any approved revised budget, aims and research plan, submitted by the Institution.
- 7.2 The Institution shall ensure that expenditure on each Project described in Schedule A is in accordance with the aims and research plan of the Project and within the broad structure of the Project budget contained in the Project Application or any approved revised budget, aims and research plan.
- 7.3 The Institution shall not use the Funding:
 - (a) for purposes specifically excluded in the *Discovery—Indigenous Researchers Development Projects Guidelines for applicants for funding commencing in 2002*; or
 - (b) for purposes specifically excluded in this Contract.
- 7.4 The Institution must ensure that the researcher has adequate time to do the Project and must provide the basic facilities required for each Project described in Schedule A. Basic facilities include but are not limited to:
 - (a) suitably equipped and furnished office accommodation;
 - (b) for any laboratory-based Project, adequate access to workshop services ie. machine tools and qualified technicians available to each member of staff, according to need, for research;
 - (c) access to a basic library collection, standard references and funds for abstracting services;
 - (d) access to basic computer facilities, including word processing and access to the Internet;
 - (e) adequate computing time (excluding access to high performance computers unless specified in the Project Application),

- (f) photocopying, telephone and microfilm reading facilities;
- (g) time for the Specified Personnel to do the Project; and
- (h) transcription services where the project is linked to higher degree studies.

7.5 As set out in the *Discovery—Indigenous Researchers Development Guidelines for funding commencing in 2002*, Funds may not be used for:

- (a) Investigator salaries, in whole or in part;
- (b) Special Studies Programmes;
- (c) Research support outside Australia;
- (d) international students' fees and Higher Education Contribution (HECS) liability;
- (e) computing facilities for molecular analysis (unless specified in Schedule A);
- (f) basic facilities (accommodation, access to workshop services, access to a basic library collection, adequate computing time, standard reference materials or funds for abstracting services, basic computing, word processing and microfilm reading facilities, the use of photocopiers, telephones, fax, mail email and Internet services, transcription services where the project is linked to higher degree studies.)
- (g) publication costs.

8 Use of the Funding: provision of salaries and relief for teaching and for other duties

- 8.1 *Discovery—Indigenous Researchers Development* does not provide salary support for Chief Investigators, mentors and supervisors.
- 8.2 If expenditure is incurred as allowed for in clause 8.2 above, the Institution shall ensure that expenditure is in accordance with the broad structure of the budget, aims and research plan contained in the Project Application or any approved revised budget, aims and research plan.
- 8.3 Unless relating to a project specified in Schedule A, the Institution must ensure that a person who is studying full-time for a postgraduate degree or other postgraduate qualification shall not be employed on a Project for more than 20 hours per week or such lesser time as the internal policies and procedures of the Institution provide.
- 8.4 In respect of Personnel other than Chief Investigators, unless the Minister otherwise determines:
- (a) in recruiting Personnel, the Institution shall follow its normal recruitment procedures;
 - (b) in providing salaries, recreation leave, sick leave and other conditions of employment for Personnel shall be those of the Institution.
- 8.5 Funding may only be used for relief of Specified Personnel from teaching or other duties for a maximum of six months per annum if it is specified as a special condition for a Project (and specified in Schedule A).

- 8.6 Funding specified as a special condition for a Project for the relief of Specified Personnel from teaching or other duties must not be used for any other purpose.

9 Over-expenditure by the Institution

Any Project expenditure incurred by the Institution for a Project additional to the approved amount for that Project specified in Schedule A in the columns headed 'Indicative Funds', is the responsibility of the Institution. The Commonwealth will not reimburse the Institution for such costs under any circumstances.

10 Application for Increase in Funding for a Project Already Receiving Financial Assistance

A researcher may request, in a new Project Application submitted through the Institution, increased financial assistance in either value or duration for a Project already receiving financial assistance under *Discovery—Indigenous Researchers Development*. In this case, the Institution acknowledges that:

- (a) the new Project Application will compete against all other new applications, with the indicative commitment for the existing Project being forfeited; and
- (b) if the new Project Application is unsuccessful, the Project will be terminated at the end of the funding period; or
- (c) if the new Project Application is successful, the Minister may approve financial assistance for the new Project at a level less than, or greater than, the amount approved for the original Project;
- (d) the ARC reserves the right to determine whether Project for which funding is sought is a Project already receiving financial assistance under *Discovery—Indigenous Researchers Development*.

11 Commencement of Projects

Subject to clause 12 below, all new *Discovery: Indigenous Researchers Development* Projects must commence by **31 August** in the first year of the Funding. Failure to do so will result in the withdrawal of Commonwealth funding and termination of any individual Projects, including Fellowships, which have not commenced.

12 Deferment of Commencement of Project

- 12.1 If the Institution wishes to defer commencement of a Project, a written request seeking permission to commence between 31 August and 31 October in the first year of the Funding, justifying the requested deferral in terms of special circumstances, must be made to the Director, through the Institution's Research Office prior to 31 August in the first year of the Funding.
- 12.2 The Institution must not defer commencement of the Project unless the Institution has received written permission from the ARC, based on a decision made by the Minister.

13 Specified Personnel

The Institution shall ensure that the Specified Personnel will conduct the Project in a diligent and competent manner and will comply with this Contract.

14 Change of Chief Investigators

- 14.1 If a Chief Investigator is no longer able to continue the Project, the Project may be continued under another Chief Investigator provided that:
- (a) he/she meets the eligibility criteria, as specified in the *Discovery – Indigenous Researchers Development Projects Guidelines for funding commencing in 2002*;
 - (b) approval is sought from the Director for the change in Specified Personnel:
 - (i) in writing;
 - (ii) within three months of the date of notification that the Specified Personnel would not be able to continue on the Project; and
 - (iii) including the proposed Personnel's Curriculum Vitae.
 - (c) the change is approved, in writing, by the Minister.

14.2 Failure to fulfil the above clauses will result in immediate termination of the Project.

15 Transfer of Project

- 15.1 Funding is made to the institution on the basis of the Projects listed in Schedule A. Chief Investigators take intellectual responsibility for the Project, its conception, any strategic decisions called for in its pursuit, and communication of results. Funding is awarded on the basis that the researcher identified as the first-named or sole Chief Investigator leads and co-ordinates the Project;
- 15.2 The Institution must notify the ARC of any Specified Personnel on the project who change institutions.
- 15.3 If the Personnel involved is a first-name or sole Chief Investigator the Institution must provide, for the Minister's approval, a written proposal outlining arrangements for the continuation of the project and the continued administration of the funding.
- 15.4 Where the proposed arrangements include a transfer of the Funding from one institution ('the relinquishing institution') to another institution ('the recipient institution'), the Minister shall have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as are considered appropriate. The written request must include evidence that the following parties agree to the transfer:
- (a) the relinquishing Institution;
 - (b) all Specified Personnel on the Project; and
 - (c) the recipient Institution.

- 15.5 When the ARC receives a proposal requesting the transfer of Funding it will:
- (a) seek the Minister’s approval for the transfer of unspent Funds and indicative Funding for the Project to the recipient Institution; and
 - (b) vary the Funding Contract for the relevant Institutions.
- 15.6 Once approval has been granted to transfer the Funding, the relinquishing institution must provide to the ARC, in writing, the amount of unspent Funds for the Project. The ARC will then recover the unspent Funds from the relinquishing Institution and provide the Funding to the recipient Institution.
- 15.7 Once the transfer of the Funding has been approved:
- (a) the relinquishing Institution must:
 - (i) identify the transfer in its Exceptions Report; and
 - (ii) report expenditure of Funding for the Project prior to the transfer in its End of Year Report and identify the transfer in the ‘Notes’ column; and
 - (b) the recipient Institution must:
 - (i) include the Project in its Exceptions Report; and
 - (ii) report expenditure of Funding for the Project subsequent to the transfer in its End of Year Report and identify the transfer in the ‘Notes’ column.
- 15.8 If the first-named or sole Chief Investigator changes institution and the Minister’s approval is not given for arrangements for the continuation of the project and the continued administration of the funding, the Project may be terminated by the ARC.
- 15.9 Relocation expenses will not be paid on the transfer of any Specified Personnel from the relinquishing Institution to the recipient Institution.
- 15.10 The Project or any equipment purchased with the Funding must not be transferred to the recipient Institution until Ministerial approval for the transfer of the Funding is granted.

16 Negation of Employment by the Commonwealth

Personnel, including Specified Personnel, shall not, by virtue of the Funding or this Contract, be deemed to be in the service or employment of the Commonwealth.

17 Conduct of Research

- 17.1 Research Projects shall be conducted in accordance with any special conditions specified in this Contract.
- 17.2 The Institution shall ensure that a research Project under this Contract will not 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 Institution’s research rules. Responsibility for ensuring such clearances have been obtained remains with the Institution.

18 Material produced under this Contract

- 18.1 The Institution shall establish and comply with its own procedures and arrangements for the ownership of all material produced as a result of any research Project under this Contract.
- 18.2 The Institution shall ensure that Chief Investigators:
- (a) take reasonable care of, and safely store any data or specimens or samples collected during, or resulting from the conduct of their Project;
 - (b) make arrangements acceptable to the ARC for lodgement with an appropriate museum or archive in Australia of data or specimens or samples collected during, or resulting from their Project; and
 - (c) include details of the lodgement or reasons for non-lodgement in the Final Report for the Project.

19 ARC Assessments

- 19.1 The Institution must ensure that, for the duration of the funding under *Discovery—Indigenous Researchers Development*, if requested, Chief Investigators agree to assess up to twenty new applications under *Discovery-Indigenous Researchers Development* and/or *Discovery-Projects* and/or *Linkage-Projects* programmes each year;
- 19.2 If the ARC determines that a Chief Investigator has failed to meet the obligation to assess applications assigned to him/her by the ARC, the ARC will notify the Institution in writing of that failure.
- 19.3 If a Chief Investigator does not undertake assessment of the assigned applications within a period specified by the ARC, in the notice referred to in clause 19.2 above, the Institution will be considered to be in contravention of this Funding Contract and the relevant *Discovery—Indigenous Researchers Development* project funding will be terminated immediately.

20 Assets

- 20.1 Assets purchased with Funding will be purchased for the exclusive purposes of the Project.
- 20.2 The Institution shall establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring an item of equipment purchased with the Funds.
- 20.3 The Institution shall ensure that any Personnel shall have first priority in the use and operation of equipment purchased for the Project and the Institution, and shall, so far as is practicable, permit persons authorised by the Minister's delegate to have priority access to that equipment in preference to other persons.
- 20.4 The ownership of any Asset purchased wholly or partly with the Funding shall be vested in the Institution, located on its campus and listed in its assets register unless:
- (a) otherwise specified in the Project Application;

- (b) the Project is terminated, in which case the Minister may, by notice in writing, require the transfer of any such item of equipment to the Commonwealth; or
- (c) the Project is transferred to another institution, in which case, subject to the agreement of both the relinquishing and recipient institutions, the equipment purchased with funds may be transferred in accordance with clause 15.

21 Intellectual Property

- 21.1 The Institution must adhere to an Intellectual Property policy, approved by the 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 projects for which Funding is provided.
- 21.2 The Institution must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research*.
- 21.3 The 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 Recipient, 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 institution.
- 21.4 The indemnity referred to in clause 21.3 shall survive the expiration or termination of this Contract.

22 Protection of Personal Information

The Institution agrees with respect to all activities related to or in connection with the performance of the Project or in connection with this Contract:

- (a) to comply with the Information Privacy Principles 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 apply to the types of activities the Recipient is undertaking under this Contract, 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 Contract outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
- (c) to co-operate with any reasonable demands or inquiries made by the Federal Privacy Commissioner or the Programme Delegate in relation to the management of personal information by the Recipient 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 Federal Privacy Commissioner from time to time relating to the handling of personal information;
- (f) to comply with any reasonable direction of the Programme Delegate to observe any recommendation of the Federal Privacy Commissioner relating to any acts or practices of the Recipient that the Federal Privacy Commissioner considers to be a breach of the obligations in paragraph (a) above;
- (g) to comply with any reasonable direction of the Programme Delegate to provide the Federal Privacy Commissioner access for the purpose of monitoring the Recipient's compliance with this clause;
- (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 Recipient under this clause or any misuse of personal information by the Recipient or any disclosure by the Recipient 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 Recipient by the Commonwealth or any other person pursuant to this Contract is, at the expiration or earlier termination of this Contract, either returned to the Department or deleted or destroyed in the presence of a person duly authorised by the Department to oversee such deletion or destruction; and
- (j) to the naming or other identification of the Recipient in reports by the Federal Privacy Commissioner.

23 Compliance with Commonwealth Policies

- 23.1 The Institution shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and Departmental 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.
- 23.2 The 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 with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with that Act.
- 23.3 The 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.

24 Acknowledgments, Publications and Publicity

- 24.1 Subject to commercial sensitivities or Intellectual Property considerations, the outcomes of *Discovery–Indigenous Researchers Development Projects* are expected to be communicated to the research community and, where appropriate and possible, to the community at large.
- 24.2 When, at any time during or after completion of a *Discovery-Indigenous Researchers Development* project, the Institution publishes promotional material, books, articles, television or radio programmes, newsletters or other literary or artistic works which relate to the Project, the Institution shall acknowledge, at a prominent place in the publication, the support of the ARC.

25 Administration of the Funding

- 25.1 The Institution must maintain reasonable records relating to the Funding in general and the Project(s) conducted with the Funding, in particular to ensure its compliance with this Contract.
- 25.2 The Institution shall provide all specified Personnel with a copy of this Contract within a reasonable time after the beginning of the Funding period.

26 Audit and Monitoring

- 26.1 The Institution is responsible for monitoring the progress of the Project and certifying to the ARC that progress is satisfactory in the End of Year Report. If at any time, in the opinion of the Responsible Officer, the Project is not being carried out with competence and diligence, or in accordance with this Contract, the Institution shall take all action necessary to minimise further expenditure in relation to the Funding and to inform the Commonwealth immediately.
- 26.2 The ARC may conduct ad hoc on-site reviews in relation to financial and other reports to ensure that the terms of this Contract are being, or were met and that reports submitted to the ARC are an accurate statement of compliance by the Institution. Persons nominated by the ARC to conduct these reviews are to be given full access by the Institution, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Grant funds in general.
- 26.3 Audited Financial Statement
- (a) In accordance with section 58 of the Act, the Institution shall submit an Audited Financial Statement by 30 June of the year following the calendar year for which the Funding was awarded. *DETYA Guidelines for the preparation of annual financial reports for the 2002 reporting period by Australian higher education institutions* contains detailed information on the preparation of these statements.
 - (b) In completing the Audited Financial Statement, the 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 approval was given to carry over in the End of Year Report.

27 Access to Premises & Records

- 27.1 The Institution shall give, at all reasonable times, to the Chief Executive Officer of the ARC or any person authorised in writing by the CEO:
- (a) unhindered access to:
 - (i) the Institution's employees;
 - (ii) premises occupied by the Institution; and
 - (iii) material; and/or
 - (b) reasonable assistance to
 - (i) inspect the performance of the Project;
 - (ii) to locate and inspect Material;
 - (iii) make copies of Material relevant to the Project and remove those copies.
- 27.2 Upon receipt of reasonable written notice from the CEO of the ARC, the Institution shall provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 27.3 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 27.4(a) will not apply.
- 27.4 The access rights in clause 27.1 are subject to:
- (a) the provision of reasonable prior notice by the ARC; and
 - (b) the Institution's reasonable security procedures.
- 27.5 Nothing in clauses 27.1 to 27.4 inclusive affects the obligation of each party to continue to perform its obligations under this Contract unless otherwise agreed between them.
- 27.6 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 Institution, may:
- (a) require the Institution to provide records and information which are directly related to this Contract;
 - (b) have access to the premises of the Institution for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Institution which are directly related to this Contract; and
 - (c) where relevant, inspect any Commonwealth assets and Commonwealth Material held on the premises of the Institution.

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

28 Reporting Requirements

The Institution must submit the following reports and statement, in accordance with this Contract and the Act, in the format required by the ARC, if specified.

28.1 Exceptions Report

- (a) The Institution must submit an Exceptions Report for each Discovery – Indigenous Researchers Development project by 1 October in each year of the Funding period. The ARC will provide the Institution with a pro-forma for this report.
- (b) All financial data in the Exceptions Report is to cover the period from the payment to the Institution of the Funds until 30 September in each year of the Funding period.

28.2 End of Year Report

- (a) The Institution shall submit an End of Year Report by 31 March in the year following each calendar year for which the Funding was awarded. The ARC will provide the Institution with a proforma for this report.
- (b) The End of Year Report will contain information on all expenditure under the Approved Proposal, on a Project by Project basis, including:
 - (i) any unspent funds to be recovered by the ARC;
 - (ii) any unspent funds that the 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 subsection 58(e) of the Act, Funds provided by the Commonwealth to the Institution which are not spent during the year of the Funding period to which those funds were allocated may be carried over where approved by the Minister. The Institution must request this approval in the End of Year Report.
- (d) Where a carry over of 75% or more of the Funding provided is requested, separate written justification must be provided.
- (e) Funds will be carried over for more than twelve months only in exceptional circumstances. Separate written justification must be provided in this instance.

28.3 Progress Report

- (a) The Institution shall ensure that all Chief Investigators provide an annual Progress Report in respect of each ongoing Project by 31 January of each year on a pro-forma available on the ARC's website. The ARC will review the outcomes against the objectives of the Project as stated in the Project Application, or any approved revised budget, aims and research plan. Any Chief Investigator whose Progress Report is deemed inadequate or unsatisfactory will be contacted for further information.

- (b) If the ARC is not satisfied with the progress of the Project, the next payment of funds will not be made until satisfactory progress has been made on the Project. If satisfactory progress is still not achieved, the Funding will be terminated and all outstanding monies will be recovered by the ARC.
- (c) Unsatisfactory progress on the Project will be noted against any further Project Applications under any ARC scheme submitted by, or on behalf of the Chief Investigator and may be taken into account in the assessment of that application.

28.4 Final Report

- (a) The Institution shall ensure that Final Reports are provided for each Project within six months of the completion of the Project. The pro-forma for this report will be available on the ARC's website. The ARC will review the outcomes against the objective(s) of the Project as stated in the Project Application or any approved revised budget, aims and research plan.
- (b) If a Final Report is deemed inadequate, the Chief Investigator will be contacted for further information. If the ARC is not satisfied with the outcomes of the Project, this will be noted against any further Project Applications under any ARC scheme submitted by, or on behalf of, the Chief Investigator and may be taken into account in assessing funding that application.
- (c) If the Final Report is not submitted on time this will be noted against any further Project Applications under any ARC programme submitted by, or on behalf of the Chief Investigator and may be taken into account in assessing funding that application.
- (d) Applications under any ARC programme submitted by, or on behalf of a first-named or solo Chief Investigator on a Project for which the Final Report is outstanding will be deemed ineligible.

29 Copyright in Reports

- 29.1 Copyright in all reports required by this Contract will vest in the Institution at the time of creation but the 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 29.2 below.
- 29.2 The Commonwealth warrants that, for a period of three years from the date of submission of the Final Report for the Project, it will seek the agreement of the Institution before any information which is contained in any reports related to the Project, and which the Institution indicates is confidential and should not be disclosed, is disclosed to any person other than an officer or a member of the ARC or the Minister.

30 Recovery of Unspent Funds or Overpayments of Funds

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

31 Indemnity

- 31.1 Subject to this Contract, the 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, 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 a willful, unlawful or negligent act or omission of the Institution, its employees, agents or subcontractors in connection with this Contract .
- 31.2 The Institution’s liability to indemnify the Commonwealth under clause 31.1 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.
- 31.3 The indemnity referred to above shall survive the expiration or termination of this Contract.

32 Insurance

The Institution shall effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in *Discovery—Indigenous Researchers Development* and, if requested, provide the Commonwealth with a copy of the relevant policies or when appropriate Certificate of Currency. The Institution shall be responsible for effecting all insurances required under Worker’s Compensation legislation and for taking all other action required as an employer.

33 Termination

- 33.1 If the Institution fails to comply with any of these conditions then the Commonwealth may, in accordance with Section 58 of the Act, require the Institution to return all or some of the Funds to the Commonwealth.
- 33.2 The Institution must terminate a Project:
- (a) where progress is not, in the opinion of the Responsible Officer, satisfactory; or
 - (b) on the death, incapacity, resignation or withdrawal of the Personnel unless suitable alternative arrangements, satisfactory to the participating researchers and the Minister, can be made by the Institution for the continuance of the Funding; or
 - (c) where the parties have agreed to the termination of the Funding.
- 33.3 Upon termination of the Funding under clause 33.2 above:
- (a) the Institution shall take all action necessary to minimise further expenditure under the Funding; and
 - (b) the Minister will, under Section 58 of the Act, recover monies that have not been expended under the Funding.

34 Compliance with Law

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

The Institution acknowledges that

- (a) the misappropriation of property of the Commonwealth, falsification of books or records, seeking or agreeing to receive a bribe in relation to the exercise of functions under this Contract or providing false returns or certificates are offences under Part VI of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment;
- (b) 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 Contract (other than a person to whom the Recipient 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;
- (c) in respect of data, including personal information, held in connection with this Contract, 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 Contract is an offence under Part VIA of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment;
- (d) it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets.

34.3 The Institution 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 sub-contractor will first be required by the Institution to provide the Institution with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

Note: Institutions should note also that they may be subject to the provisions and applications of the *Trade Practices Act 1974* and the *Archives Act 1983*.

35 Year 2000 Compliance

The Institution warrants that the date (and century) and clock fields within any electronic version of a report, or any other document, required by this Contract, which is provided to the ARC:

- (a) generate and otherwise perform Calculations using Valid Dates, for all intervals of time including those that refer to the calendar year 2000 and beyond; and
- (b) is Compatible with Related Products that reference years to the end of 1999 by two digits of four digits.

For the purposes of this condition:

‘Calculations’ includes without limitation arithmetic, calculations, comparison, sequencing sorting operations and any combination required, which accommodates same century and multi century formulas and date values and date data interface values, including leap year calculations and date data century recognition.

‘Compatible’ means all Related Products’ ability to interface and continue to operate, to accept and produce a two digit year with an implied prefix of 19.

‘Related Product’ means an item of hardware, software or firmware with which any electronic version of the report or document shares information relating to Calculations or with which that version needs to complete a function involving the recording of an interval of time.

‘Valid Date’ means the date of an actual day which is represented with four digit year, two digit month within year and two digit day within a month, or any other equivalent representation.

36 Liaison

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

Director
Programme Coordination Section
Australian Research Council

Postal Address
PO Box 2702
CANBERRA ACT 2601

Address
cnr Jerrabomberra Ave and Hindmarsh Dr
Symonston ACT 2609

Phone: 02.6284.6600
Fax: 02 6284 6601
Email: ncgp@arc.gov.au

SCHEDULE A

Details of Projects to receive funding by the Commonwealth

SCHEDULE B

Research special conditions

- C1. *Importation of Experimental Organisms:* The Institution must ensure that, before experimental organisms are imported into Australia for the purposes of a Project, they or the Chief Investigator of the Project must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- C2. *Research Involving Humans or Animals:* If any Project conducted by the Institution involves research on or involving humans or animals, the Institution shall ensure that the codes adopted for these purposes by the National Health and Medical Research Council are complied with and that the Project may not commence without clearance from the Institution's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority outside of the Institution.
- C3. *Deposition of Biological Materials:* Any biological material accumulated during the course of a Project 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 Institution shall dispose of the material in accordance with the Institution's established safeguards.
- C4. *Genetic Manipulation:* If a Project 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 Institution's Biosafety Committee (or equivalent) or the Genetic Manipulation Advisory Committee (GMAC) must be obtained.
- C5. *Recombinant DNA techniques:* If a Project involves, or is concerned with the use of recombinant DNA techniques, the 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.
- C6. *Recombinant DNA techniques on animals or humans:* If a Project involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the Institution shall ensure that the research has been approved by the relevant Ethics or Biosafety Committee (or equivalent) of the Institution. The Institution shall retain all Certificates relating to the above and will provide such evidence to the Director if required to do so.
- C7. *Ionising Radiation:* If a Project involves the use of ionising radiation, the 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 Institution shall retain all such licences and shall provide them to the Director if required to do so.
- C8. *Social Science Data Sets:* Any machine-readable data arising from a Project 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 Project research. If a Chief Investigator is not intending to do so within the two-year period, s/he should include the reasons in the Project's Final Report.

SCHEDULE C

Special Conditions

IN WITNESS WHEREOF the parties have agreed to this Contract 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)
.....)
«Institution».....)

by)
insert name of signatory above)
the)
insert signatory's title above)
of the said Institution who, by signing,)

.....
signatory to sign above

certifies that they have the authority so to sign)

In the Presence of:)
.....)
insert name of witness above)

.....
witness to sign above