



Australian Government

Australian Research Council

Funding Agreement

between the

Commonwealth of Australia

as represented by the

Australian Research Council

and

<Admin Org>

regarding funding for
Discovery Indigenous Researchers Development
to commence in
2009

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Parties & 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

<ADMIN ORG> ('the Administering Organisation')

WHEREAS:

- A. The Commonwealth through the ARC operates the *Discovery Indigenous Researchers Development 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 support the Administering Organisation 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 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

1.1 In this Agreement, 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*;

Act means the *Australian Research Council Act 2001* or subsequent relevant legislation as amended;

Administering Organisation means an Eligible Organisation which submits a Proposal for funding under DIRD and which will receive and be responsible for the administration of the funding if the proposed project is approved for funding;

ARC means the Australian Research Council, as established under the Act;

ARC's Web Site is <http://www.arc.gov.au/>;

Asset includes personal, real or incorporeal property, but shall not include intellectual property;

Audited Financial Statement means the statement to be submitted by the Administering Organisation by 30 June each year in accordance with paragraph 58 (1) (b) of the Act;

Chief Executive Officer or CEO means the occupant of the position from time to time of the Chief Executive Officer of the ARC, or the delegate, as established under the Act;

Chief Investigator means a person named in the Proposal as Chief Investigator for a particular Project, or as otherwise approved by the Minister and includes any replacement person or persons approved by the Minister in accordance with clause 14;

Commonwealth means the Commonwealth of Australia;

Confidential Information means any information 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;

Department means the Commonwealth Department of Innovation, Industry, Science and Research;

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 31.2;

Fellow means an individual researcher named in Schedule A who has been awarded a Fellowship;

Fellowship means an individual Fellowship which has been awarded to an eligible researcher named in Schedule A;

Final Report means the report described in clause 31.4;

Funding or Funds means the amount or amounts payable under this Agreement for each Project as specified in Schedule A;

Funding Period means the approved period set out in Schedule A for that Project, or as otherwise approved in writing by the Minister;

Funding Rules means the *Discovery Indigenous Researchers Development Funding Rules for Funding commencing in 2009* and includes the *Instructions to Applicants* that form part of the Funding Rules;

GST has the meaning as 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;

Indigenous Researcher means a person who is of Australian Aboriginal or Torres Strait Islander descent, identifies as an Aboriginal or Torres Strait Islander and is accepted as an Australian Aboriginal or Torres Strait Islander in the community in which he/she lives or has lived;

Indigenous Researcher Fellowship or IRF means an individual Indigenous Researcher Fellowship which has been awarded to an eligible researcher named in Schedule A;

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

Mentor means the person named in the Proposal as the mentor for a particular researcher;

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

NHRMC means the National Health and Medical Research Council;

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

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

Progress Report means the report described in clause 31.3;

Project means any project as described in Schedule A or as otherwise approved by the Minister for funding under this Agreement, in accordance with Clause 16;

Proposal or **Proposal'** means the request or requests to the ARC for the provision of financial assistance for a Project or Projects given the Project ID specified in Schedule A;

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

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

Scheme has the meaning given in Recital A;

Scheme Coordinator means the occupant from time to time of the position of Scheme Coordinator (*Discovery Indigenous Researchers Development*) in the ARC, or any other person to whom the administration of the *Discovery Indigenous Researchers Development* Scheme may be allocated;

Special Conditions means the conditions specified in Schedules A, C and D that govern the use of the Funding;

Specified Personnel means the Chief Investigator(s), Fellow(s), Mentor(s) and Supervisor(s) named in Schedule A to perform the Project or as otherwise approved by the Minister; and

Supervisor means the person or persons named in the Proposal as the supervisor for a particular researcher.

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) clause headings, words capitalised or in bold or italic 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 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;
 - (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.2 This Agreement is subject to the Act. If there is any conflict between this Agreement and the Act, then the Act prevails to the extent of any inconsistency.

3. Entire Agreement and Variation

- 3.1 This Agreement, including Schedules, the Proposal for each Project 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 clause 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 Act. The Administering Organisation must as soon as possible, or as otherwise agreed in writing with the ARC, comply (or procure compliance) with any other Ministerial conditions or requirements notified by the ARC from time to time. In the event of any inconsistency between this Agreement and any such further requirements or conditions, 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 clause.
- 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 clauses of the Agreement;
 - (b) the Schedules;
 - (c) the Funding Rules; and
 - (d) the 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 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’s securing the agreement of all parties involved in Projects 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 ARC and continues to operate until all parties have fulfilled their obligations under this Agreement.
- 4.2 Subject to clauses 4.3 and 5 of this Agreement, the Funding Period for each Project is the approved period set out in Schedule A for that Project, or as otherwise approved in writing by the Minister, unless the Funding is terminated earlier in accordance with this Agreement.
- 4.3 The period of funding ('Funding Period') for any Project including any Fellowship element 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 Act to vary the Funding, this Agreement will continue to apply to any Project, including Fellowships, granted financial assistance under such a determination.

5. Payment of Funding

- 5.1 Subject to the provisions of the Act, the terms of this Agreement and sufficient program funding being available for the Scheme, the Commonwealth shall pay the Funds to the Administering Organisation for each Project in progressive monthly instalments in accordance with Schedule A.
- 5.2 All Funding for a Project is subject to the following conditions:
- (a) that the Project commence in accordance with clause 11, or by any later date approved by the Minister under clause 12;
 - (b) that the Chief Investigator or Indigenous Researcher Fellow identified as the Project Leader (or any replacement person approved by the Minister under clause 15.1) lead and co-ordinate the Project at all times during the Funding Period, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
 - (c) that the Administering Organisation conduct the Project substantially in accordance with the 'Proposal Description' contained in the Proposal, or, in the event of any variation to the Project, in accordance with the description, aims and research plan as otherwise approved by the Minister;
 - (d) that the Administering Organisation spend all funds paid under this Agreement for each Project substantially in accordance with the 'Project Cost' detailed in the Proposal for that Project and any Special Conditions, or the budget as otherwise approved by the ARC and any conditions otherwise imposed by the Minister in accordance with the Act, and in accordance with the requirements of this Agreement and the Funding Rules;
 - (e) that the Administering Organisation not receive for the Project any amount of funding from the ARC in excess of that to which it is properly entitled, or which the Commonwealth is not required to pay, either under this Agreement or the Act;
 - (f) that the Administering Organisation submit on time all reports required under this Agreement, in the form and with content satisfactory to the Commonwealth;
 - (g) that progress of the Project is, in the opinion of the Chief Executive Officer, satisfactory;

- (h) that each Chief Investigator (or any replacement person or persons approved by the Minister under clause 15.1), at all times during her/his participation in a Project as a Chief Investigator, meet the criteria specified in subsection 8.1.5 and section 8.2 of the Funding Rules, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
 - (i) that each Indigenous Researcher Fellow, at all times during her/his participation in a Project as an Indigenous Researcher Fellow, meet the criteria specified in subsection 8.15 and section 8.3 of the Funding Rules for the fellowship role which they are to perform, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
 - (j) that the ARC is advised in a timely manner of any and all Conflicts of Interest of parties involved in the Project which have the potential to influence or appear to influence the research and/or activities related to the Project;
 - (k) that the ARC is advised in a timely manner of any and all other Commonwealth funding which has been, is being, or is intended to be provided for the research and/or activities funded under this Agreement;
 - (l) that there is no duplication of Commonwealth funding for the research and/or activities funded for the Project under this Agreement; and
 - (m) that the Administering Organisation comply with any other requirements or conditions imposed by the Minister in connection with any Funding covered by this Agreement.
- 5.3 If the Administering Organisation does not meet any one or more of the conditions listed in clause 5.2 in respect of a Project, the Commonwealth may do any or all of the following:
- (a) not pay the Administering Organisation any further Funds for that Project;
 - (b) recover all or some of the Funds paid under this Agreement for that Project, including all unspent Funds and any funds not spent in accordance with this Agreement; or
 - (c) vary the amount of Funding approved for that Project.
- 5.4 The Administering Organisation must pay to the Commonwealth the amount specified in any notice received under clause 5.3(b) within 30 days of the date of that notice.
- 5.5 The Commonwealth will pay to the Administering Organisation, by way of financial assistance in accordance with the Act, the approved amounts set out in Schedule A, which is net of any GST which may be imposed on the supply.
- 5.6 Unless otherwise indicated or required by Law, all consideration for any supply made under this Agreement is exclusive of any 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.
- 5.7 The Commonwealth shall have the right to unilaterally vary the amounts for any or all Projects.

- 5.8 The ARC notional salary rates as set out in Schedule B are applicable as at 1 January 2009. In the event that the Minister makes a determination under section 54 of the Act, the Commonwealth shall have the right to unilaterally vary the salary rates set out in Schedule B of this Agreement to reflect annual adjustments in the ARC salary and stipend levels for Indigenous Researcher Fellowships.
- 5.9 Where the Commonwealth exercises its right under clause 5.3, 5.7 or 5.8 above, it shall inform the Administering Organisation of the variation within 30 days of that variation having been made.

6. Accuracy of Information/Malpractice

- 6.1 The provision of any Funding for a Project is conditional on all information contained in the Proposal for that Project and all reports required by this Agreement from the Administering Organisation being complete, accurate and not misleading. The Commonwealth regards 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 “in press” or accepted when it has only been submitted.
- 6.2 If the Commonwealth considers that a Proposal for a project, or any report provided under this Agreement contains incomplete, inaccurate or misleading information, the Commonwealth may do any or all of the following:
- (a) not pay the Administering Organisation any further Funds for that Project;
 - (b) recover all or some of the Funds paid under this Agreement for that Project, including all unspent Funds and any funds not spent in accordance with this Agreement; or
 - (c) vary the amount of Funding approved for that Project.

7. Use of the Funding: Activities, Facilities and Types of Work

- 7.1 The Administering Organisation will ensure that each Project described is carried out in accordance with this Agreement, in a diligent and competent manner. In addition, each Project (including each of the Fellowships for that Project) will be conducted in accordance with the ‘Proposal Description’ contained in the Proposal, or any revised description, aims and research plan which have been submitted by the Administering Organisation and approved by the ARC.
- 7.2 The Administering Organisation shall ensure that expenditure on each Project described in Schedule A is in accordance with the ‘Proposal Description’ contained in the Proposal and within the broad structure of the proposed ‘Project Cost’ detailed in the Proposal or any revised budget, aims and research plan submitted by the Administering Organisation which has been approved by the ARC.
- 7.3 The Administering Organisation shall not use the funding:
- (a) for purposes specifically excluded in the Funding Rules; or
 - (b) for purposes specifically excluded in this Agreement, for example clause 7.5, 8.1 and 8.6.
- 7.4 The Administering Organisation must ensure that investigators listed in Schedule A (or any replacement person(s) approved by the Minister under clause 15.1) have adequate time to carry out each Project and must provide the basic facilities required for each Project described in Schedule A. Basic facilities include but are not limited to:

- (a) accommodation (e.g. laboratory and office, suitably equipped and furnished in standard ways);
- (b) access to workshop services (eg. machine tools and qualified technicians available to each member of staff), according to need, for research;
- (c) access to film or music editing facilities where required for research;
- (d) access to a basic library collection;
- (e) standard reference materials or funds for abstracting services;
- (f) provision of computers, including laptops (excluding access to high performance computers or other specialised applications) and basic computing facilities such as printers, word processing and other standard software; and
- (g) use of photocopiers, telephones, mail, fax, email and internet services.

7.5 As set out in the Funding Rules, Funds may not be used for:

- (a) costs of capital works and general infrastructure;
- (b) salaries of Chief Investigators, Mentors and Supervisors;
- (c) teaching and teaching relief, unless specifically approved as a Special Condition;
- (d) Special Studies (Study Leave) Programs;
- (e) research support for investigators not resident in Australia;
- (f) international students' fees and Higher Education Contribution (HECS) liability and Higher Education Loan Programme (HELP);
- (g) computer facilities for molecular analysis, unless specifically approved by the ARC;
- (h) basic facilities (including, but not limited to, those items specified in clause 7.4);
- (i) publication costs; and/or
- (j) costs not directly related to a Project.

7.6 Unless otherwise approved by the ARC, the Funding must not be used to fund any research and/or activities for which other financial assistance from the Commonwealth has been, is being, or is intended to be provided.

7.7 If any other Commonwealth funding is approved for any research and/or activity which is similar to research or activities being conducted for any Project, the ARC must be notified immediately and the ARC may consider whether or not to terminate or recover funding to the extent that it is duplicated by another Commonwealth source.

8. Use of the Funding: Provision of Salaries and Relief for Teaching and for Other Duties

8.1 The Funding must not be used to provide salary support for Chief Investigators, Mentors or Supervisors.

8.2 Salary support entitlements for Indigenous Researcher Fellows are detailed in Schedule D. ARC notional salary and stipend rates are detailed in Schedule B. Funding provided for an IRF must not be used except in accordance with Schedule D.

8.3 Funds may be used by the Administering Organisation to employ Personnel other than the Specified Personnel where provision for such was included in the Proposal. They may be employed full-time or part-time, as required.

- 8.4 The Administering Organisation 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.
- 8.5 In respect of Personnel other than Chief Investigators, unless the Minister otherwise determines:
- (a) in recruiting Personnel, the Administering Organisation shall follow its normal recruitment procedures;
 - (b) the provision of salaries, recreation leave, sick leave and other conditions of employment for Personnel shall be those of the Administering Organisation;
 - (c) the on-costs provisions beyond the ARC contribution of 28% remain the responsibility of the Administering Organisation, eg. extended periods of leave, severance pay etc. shall not be provided from ARC funds.
- 8.6 Funding may also 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 in Schedule A. Such funding may not be used for any other purpose without the approval of the ARC.
- 8.7 The Administering Organisation must ensure that any Personnel who are employed full-time on a Project and whose salary is provided from the Funding shall not, without the prior agreement of the ARC, accept any remuneration whatsoever from any source other than the Administering Organisation in respect of work performed on the Project.

9. Over-expenditure by the Administering Organisation

- 9.1 Any Project expenditure incurred by the Administering Organisation for a Project additional to the approved amount for that Project specified in Schedule A, or as otherwise varied by the Minister, is the responsibility of the Administering Organisation. The Commonwealth will not reimburse the Administering Organisation for such costs under any circumstances.

10. Multi-Institutional Agreements

- 10.1 The Administering Organisation must not allow a Project to commence, nor Funding to be expended, until it has entered into a written partner agreement with each Collaborating Organisation in accordance with this clause 10. The Administering Organisation must reach agreement with each Collaborating Organisation and enter into a written partner agreement with each such organisation before the final date for commencement of the Project as determined in accordance with clauses 11 and 12.
- 10.2 An agreement entered into with a Collaborating Organisation must include provisions that:
- (a) outline the role and contribution, if any, of the Collaborating Organisation;
 - (b) outline contributions and research undertaken by the organisations;
 - (c) outline payment of salaries for ARC Fellows;
 - (d) describe the Intellectual Property arrangements that apply to the outcome or results generated by the Project. Such arrangements must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research*;
 - (e) do not impede or prevent the Administering Organisation from complying with any of its obligations under the Agreement.

10.3 The Administering Organisation will retain the agreement, and make it available to the ARC if required.

11. Commencement of Project

11.1 Subject to clause 12, the Project (including any IRF element of a Project) must commence by no later than 31 July 2009, unless the commencement has been deferred to a later date approved by the ARC.

12. Deferral of Commencement of Project and/or Indigenous Researcher Fellowship

12.1 If the Administering Organisation wishes to defer commencement of a Project (including an IRF element of a Project) beyond 31 July 2009, a written request justifying the requested deferral in terms of special circumstances must be made to the Scheme Coordinator, through the Administering Organisation's Research Office, prior to the commencement date specified in clause 11.1.

12.2 The Administering Organisation must not defer commencement of a Project (including an IRF element of the Project) beyond 31 July 2009 unless the Administering Organisation has received written approval from the ARC.

12.3 Other than in exceptional circumstances, the ARC will not approve the commencement of a Project (including an IRF element of a Project) beyond 31 October 2009. The ARC may recover funding for any Project which has not commenced by 31 October 2009.

12.4 If an Indigenous Researcher Fellow is one of several Specified Personnel on a Project and the Administering Organisation wishes to commence the Project before the Fellow can commence on the Project, and the delayed commencement of the Fellow has not been specified in the Proposal for the Project, approval must be obtained from the ARC for:

- (a) the Project to commence before the Fellow commences work on the Project;
- (b) the date of commencement of the Fellow.

12.5 If the ARC does not consider a Project viable without the Indigenous Researcher Fellow's contribution to the Project and the Fellow cannot commence the Project by the applicable commencement date for the Project, or by such later date approved by the ARC under clause 12.4(b) above, the Project will be terminated.

12.6 If the ARC considers that a Project is viable without the Indigenous Researcher Fellow's contribution and the Fellow is unable to commence her/his Fellowship by the applicable commencement date for the Project, or by such later date approved by the ARC under clause 12.4(b) above, the Fellowship component of the Project will not be funded. Funding for a Fellowship may be used to fund only the person to whom the Fellowship is awarded. Fellowships are not transferable to other persons and the Funds may not be used under any circumstances other than to fund research personnel or research activities.

13. Suspension of Project

- 13.1 If any of the Specified Personnel on a Project is not able to perform the Project for a period or periods of time the Project may be suspended for a period or periods totalling up to 12 months. The duration of a Project may be extended for a period equal to the duration of the approved suspension(s). The Funds for the Project which would otherwise have been payable during the suspension period(s) will continue to be paid to the Administering Organisation during the suspension period(s) and the ARC will not supplement the Funds to cover any additional costs incurred as a result of the suspension or delay in finalisation of the Project.
- 13.2 If a proposed suspension is to commence after the first 12 months of the Project and is for 6 months or less, the Administering Organisation may, at its discretion, approve the suspension. The Administering Organisation must notify the ARC of the suspension in its next Progress or Final Report for the Project.
- 13.3 If the proposed suspension is to commence within the first 12 months of the Project or is for more than six months, the Responsible Officer must apply to the Scheme Coordinator to seek the ARC's approval of the suspension prior to the commencement of the suspension. The ARC will approve such suspensions only if detailed written justification for the request is provided. The Administering Organisation must detail the suspension in its next Progress or Final Report for the Project.
- 13.4 Subject to clause 13.2 above, a suspension for any other purpose or under any other circumstance without the prior written approval of the ARC may result in the termination and/or recovery of Funding for the Project. *(See Schedule D, item D6 for information regarding suspensions of Fellowships).*

14. Specified Personnel

- 14.1 The Administering Organisation shall ensure that the Specified Personnel conduct the Project in a diligent and competent manner and comply with this Agreement.
- 14.2 The Administering Organisation shall provide each Chief Investigator or Indigenous Researcher Fellow with a copy of this Funding Agreement within a reasonable time after the commencement of the Funding.
- 14.3 The Administering Organisation warrants that it has made proper inquiries of the Specified Personnel in relation to their eligibility to perform the Project.
- 14.4 The Administering Organisation shall ensure that, unless otherwise approved by the Commonwealth, all Chief Investigators named in Schedule A or subsequently approved to perform any Project meet the criteria specified in subsection 8.1.5 and section 8.2 of the Funding Rules for the full term of their participation in the Project as a Chief Investigator.

15. Change of Specified Personnel

- 15.1 If a Chief Investigator is at any time during the term of a Project no longer able to continue the Project, the Project may be continued under one or more Chief Investigators provided that:
- (a) there is at least one Chief Investigator or Indigenous Researcher Fellow undertaking the Project;
 - (b) all replacement or additional Chief Investigators meet the eligibility criteria, as specified in the Funding Rules for the particular role they are to perform, for the periods for which they are to perform that role;

- (c) approval is sought from the Scheme Coordinator for the change in Specified Personnel:
 - i. in writing (including the proposed Personnel’s curriculum vitae); and
 - ii. within 3 months of the date that the Specified Personnel cease working on the Project;
 - iii. if additional or replacement Chief Investigators, Mentors or Supervisors (“New Personnel”) are proposed for a Project, the Administering Organisation must obtain certifications from the New Personnel and their employers which have similar effect to those required to be obtained for the other Specified Personnel on the Project; and
 - (d) the change is approved, in writing, by the Minister.
- 15.2 If an Indigenous Researcher Fellow is no longer able to continue performing a Project, the IRF component for that person will be terminated. A Fellowship component cannot be transferred to another person. In such cases, other than where the Fellow is the only Specified Personnel on a project, if approved by the Minister, any unspent Funding for the Fellowship may be used for the Project for other purposes providing it is in accordance with the ‘Proposal Description’ included in the Proposal. If the Fellow is the only Specified Personnel on a Project, the funding condition set out in clause 5.2(b) will not have been satisfied.
- 15.3 If the ARC considers that a Project is not viable without an Indigenous Researcher Fellow’s contribution to the Project, and/or the Funding for a Project decreases to below \$20,000, funding for the Project may be terminated.
- 15.4 If an Indigenous Researcher Fellow is the only Specified Personnel on a Project, and her/his involvement with the Project is to cease or be reduced significantly, Funding for the Project will be terminated.
- 16. Transfer of Project or Indigenous Researcher Fellowship or Specified Personnel**
- 16.1 The Administering Organisation must promptly notify the ARC of any Specified Personnel on the Project who moves to an Eligible Organisation other than the Administering Organisation at any time during the funding period for that Project.
- 16.2 If the transferring Specified Personnel is the Project Leader, then the Administering Organisation may seek the Minister’s approval for the transfer of the Project to a new Eligible Organisation by submitting a “Variation of Funding Agreement” request outlining arrangements for the continuation of the Project and the continued administration of the funding.
- 16.3 If the proposed arrangements include a transfer of the Funding from the Administering Organisation to another Eligible Organisation (‘the recipient Eligible Organisation’), the Minister shall have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as the Minister considers appropriate. The request must provide evidence that the following parties agree to the transfer:
- (a) the Administering Organisation;
 - (b) the recipient Eligible Organisation.
- 16.4 When the ARC receives a proposal requesting the transfer of Funding it may seek the Minister’s approval for the transfer of unspent Funds and indicative Funding for the Project and any Assets as outlined in clause 22 to the recipient Eligible Organisation.

- 16.5 If Ministerial approval is granted in such circumstances to transfer the Funding (and any Assets):
- (a) the Administering Organisation must:
 - i. agree to any variation or termination (as applicable) of this Agreement proposed by the ARC to give effect to the changed Funding arrangements;
 - ii. provide to the ARC, in writing, the amount of all unspent Funds for the Project and pay the ARC such unspent Funds. The ARC may then provide the unspent Funds to the recipient Eligible Organisation;
 - iii. report expenditure of Funding for the Project prior to the transfer in its End of Year Report and identify the transfer in the relevant columns; and
 - iv. comply with any other directions reasonably given by the ARC to give effect to the transfer;
 - (b) the recipient Eligible Organisation will be required to:
 - i. enter into a new, or vary an existing, Funding Agreement it has with the ARC to give effect to the changed funding arrangements; 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 relevant columns.
- 16.6 If a Chief Investigator or Indigenous Researcher Fellow changes Administering Organisation 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 and any unspent funds recovered by the ARC.
- 16.7 If funding for a Project which was previously administered by another Eligible Organisation is to be transferred to the Administering Organisation, the Administering Organisation must ensure that the Project which is being transferred and the Specified Personnel performing the Project satisfy the eligibility and accountability requirements of the Funding Rules and terms and conditions of this Agreement.
- 16.8 Relocation expenses will not be paid on the transfer of any Specified Personnel from the Administering Organisation to the recipient Eligible Organisation. [Relocation costs will not be paid on the transfer of an Indigenous Researcher Fellow from the Administering Organisation to the recipient Eligible Organisation after the final date for commencement in clause 11, or after the deferred commencement date approved in accordance with clause 12].
- 16.9 The Project and any equipment purchased with the Funding must not be transferred to the recipient Eligible Organisation until Ministerial approval for the transfer of the Funding is granted.

17. Negation of Employment by the Commonwealth

- 17.1 Specified Personnel and the Administering Organisation shall not represent themselves as being employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 17.2 Specified Personnel and the Administering Organisation shall not by virtue of this Agreement or for any purpose be deemed to be employees, partners, or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

18. Conduct of Research

- 18.1 Projects (including IRFs) shall be conducted in accordance with any Special Conditions specified in this Agreement and with any other requirements or conditions imposed by the Minister in connection with any Funding covered by this Agreement.
- 18.2 The Administering Organisation shall ensure that a Project 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 All parties involved in or associated with a Proposal and/or a Project are required to disclose to the ARC affiliations with, or financial involvement in, any organisation which has, or is likely to have, a direct interest in the subject matter or outputs of the Project. Such parties are required to disclose to the ARC at the time of submission of the Proposal, and in reporting on a Project, any Conflict of Interest which has the potential to influence, or appear to influence, the research and activities, publications and media reports, or requests for funding related to the Proposal/Project.
- 18.4 If the Administering Organisation or any Specified Personnel become aware of any such Conflict of Interest relating to any party involved in a Project, the Administering Organisation must notify the ARC immediately of the nature and details of the conflict on interest.
- 18.5 If the Administering Organisation or any Specified Personnel has failed to disclose a Conflict of Interest, the Commonwealth may do any of the things provided for in clause 5.3 (a), (b) or (c).

19. Conduct of Elements of Projects: Identification of Indigenous Rresearcher Fellowship

- 19.1 If a Project has an IRF element, the name of the person awarded the IRF and the salary plus on-costs appears in Schedule A. The Administering Organisation must conduct Projects involving IRFs in accordance with the Special Conditions for IRFs specified in Schedule D. The Special Conditions for IRFs form part of this Agreement.

20. Material Produced under this Agreement and Dissemination of Research Outputs

- 20.1 The Administering Organisation shall establish and comply with its own procedures and arrangements for the ownership of all Material produced as a result of any Project funded under this Agreement.
- 20.2 For any Material produced under this Agreement, the Administering Organisation shall ensure that all Specified Personnel (Chief Investigators, Indigenous Researcher Fellows, Supervisors and Mentors):
- (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 Progress Reports and the Final Report for the Project.

- 20.3 The Administering Organisation shall consider the benefits of depositing the data and any publications arising from each Project 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 Project in a repository either before, or within six months after, the completion of the Project the reasons for not doing so must be detailed in the Project's Final Report. Any research outputs that have been or will be deposited in appropriate repositories should be identified in the Final Report.
- 20.4 This clause survives the expiration or earlier termination of this Agreement.

21. ARC Assessments

- 21.1 The Administering Organisation must ensure that, for the term of this Agreement, if requested by the ARC, Chief Investigators and Indigenous Researcher Fellows agree to assess up to twenty new proposals for ARC funding per annum for each year of Funding.
- 21.2 If the ARC determines that a Chief Investigator and/or Indigenous Researcher Fellow has failed to meet the obligation to assess proposals assigned by the ARC for assessment, the ARC may notify the Administering Organisation in writing of that failure.
- 21.3 If a Chief Investigator and/or Indigenous Researcher Fellow does not undertake assessment of the assigned proposals within a period specified by the ARC of the notice referred to in clause 21.2 above, the Administering Organisation will be considered to be in breach of this Agreement and Funding for the relevant Projects, including IRFs, on which the Chief Investigator and/or Fellow is listed as Specified Personnel under this Agreement may be terminated.

22. Assets

- 22.1 Unless otherwise approved by the ARC, assets purchased with Funding must be purchased for the exclusive purposes of the Project for the duration of the Funding Period.
- 22.2 The Administering Organisation shall establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring all items of equipment purchased with the Funds.
- 22.3 The Administering Organisation shall ensure that any Personnel shall have first priority in the use and operation of equipment purchased for the Project and the Administering Organisation shall, so far as is practicable, permit persons authorised by the Minister to have priority access to that equipment in preference to other persons.
- 22.4 Unless otherwise approved by the ARC, the ownership of any Asset purchased wholly or partly with the Funding shall be vested in the Administering Organisation, located on its campus and listed in its assets register unless:
- (a) otherwise specified in the Proposal;
 - (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 organisation in accordance with clause 15, in which case, subject to the agreement of both the Administering Organisation and the recipient Eligible Organisation under that clause, the equipment purchased with Funds provided under this Agreement for the relevant Project may be transferred in accordance with clause 16.9.

23. Intellectual Property

- 23.1 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 the Projects for which Funding is provided.
- 23.2 Unless otherwise approved by the ARC, the Administering Organisation's Intellectual Property policy referred to in clause 23.1 must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* as amended from time to time.
- 23.3 The Administering Organisation shall at all times indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability 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 (or alleged infringement) of Intellectual Property rights by the Administering Organisation, its employees, agents or subcontractors in the course of, or incidental to, performing the Project or the use by the Commonwealth of reports provided by the Administering Organisation under this Agreement.
- 23.4 The indemnity referred to in clause 23.3 shall survive the expiration or termination of this Agreement.

24. Protection of Personal Information

- 24.1 The Administering Organisation agrees with respect to all activities related to or in connection with the performance of the Project or in connection with this Agreement:
- (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 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 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 the 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 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 Administering Organisation under this clause or any misuse of personal information by the Administering Organisation, 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 ARC or deleted or destroyed in the presence of a person authorised by the ARC to oversee such deletion or destruction; and
 - (j) to the naming or other identification of the Administering Organisation in reports by the Privacy Commissioner.
- 24.2 The Administering Organisation shall immediately notify the ARC if the Administering Organisation becomes aware of a breach of its obligations under clause 24.1.
- 24.3 This clause survives the expiration or earlier termination of this Agreement.

25. Confidentiality

- 25.1 Subject to clause 25.2, the ARC agrees not to disclose any Confidential Information of the Administering Organisation, without the Administering Organisation's consent.
- 25.2 The ARC will not be taken to have breached its obligations under clause 25.1 to the extent that the ARC 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 any 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 ARC, the Department or another government agency or authority, where this serves the ARC's, the Department's or 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 clause 25.

- 25.3 The Commonwealth warrants that, for a period of three years from the date of submission of the Final Report for the Project, it will consult with the Administering Organisation before any information which is contained in any reports related to the Project, 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.

26. Compliance with Commonwealth Policies

- 26.1 The Administering Organisation shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and ARC 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.
- 26.2 The Administering Organisation 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 the *Equal Opportunity for Women in the Workplace Act 1999*.
- 26.3 The Administering Organisation 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.

27. Acknowledgments, Publications Publicity

- 27.1 Subject to commercial sensitivities and/or Intellectual Property considerations, the outcomes of Projects are expected to be communicated to the research community and, where appropriate and possible, to the community at large.
- 27.2 When, at any time during or after completion of a Project, the Administering Organisation publishes promotional material, books, articles, television or radio programs, newsletters or other literary or artistic works which relate to the Project and/or Fellowship, the Administering Organisation shall acknowledge, at a prominent place in the publication, the support of the ARC in a form acceptable to the ARC. Advice of acceptable forms of acknowledgement and use of the logo is provided on the ARC's Web Site.
- 27.3 This clause survives the expiration or earlier termination of this Agreement.

28. Administration of the Funding

- 28.1 The Administering Organisation must maintain reasonable, up-to-date and accurate records relating to the Funding in general and the Project(s) conducted with the Funding, in particular to verify its compliance with this Agreement.

29. Audit and Monitoring

- 29.1 The Administering Organisation is responsible for monitoring the expenditure of the Funding and certifying to the ARC 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 of the Administering Organisation, the Funding is not being expended in accordance with this Agreement, the Administering Organisation shall

take all action necessary to minimise further expenditure in relation to the Project and inform the ARC immediately.

- 29.2 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 ARC are an accurate statement of compliance by the Administering Organisation and are not misleading. 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.

30. Access to Premises and Records

- 30.1 The Administering Organisation shall, at all reasonable times, give to the CEO 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 Projects;
 - ii. locate and inspect Material relevant to any Project 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.
- 30.2 The access rights in clause 30.1 above are subject to:
- (a) the provision of reasonable prior notice by the ARC; and
 - (b) the Administering Organisation's reasonable security procedures.
- 30.3 If a matter is being investigated which, in the opinion of the CEO or the ARC, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, clause 30.2 will not apply.
- 30.4 Upon receipt of reasonable written notice from the CEO or the ARC, the Administering Organisation shall provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 30.5 Nothing in clauses 30.1 to 30.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.
- 30.6 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.

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

31. Reporting Requirements

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

31.2 End of Year Report

- (a) The Administering Organisation 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 Administering Organisation with a form for this report.
- (b) The End of Year Report will contain information on all expenditure for that year under the Approved Proposal, on a Project by Project 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;
 - iii. the reasons why the unspent Funds are required to be carried over; and
 - iv. additional claims for relocation as provided for in Schedule D.
- (c) Under paragraph 58(1)(e) of the 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 Minister. If the Administering Organisation wishes any Funds to be carried over from 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 carry over is requested for 75% or more of the Funds allocated 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 Minister. Separate written justification must be provided in this instance.

31.3 Progress Report

- (a) Unless otherwise approved by the ARC, the Administering Organisation shall ensure that Project Leaders provide Progress Reports in respect of each ongoing Project by 31 January of each year, except in the first year of funding, on a form which will be made available on the ARC's Web Site.
- (b) The ARC may review the outcomes reported against the objectives of the Project as stated in the Proposal, or any approved revised budget, aims and research plan. Any Chief Investigator or Indigenous Researcher Fellow who was involved in a Project for which a Progress Report was deemed inadequate or unsatisfactory may be contacted for further information.

- (c) If the ARC is not satisfied with the progress of any Project, further payment of Funds will not be made until satisfactory progress has been made on the Project. If satisfactory progress is still not achieved within a reasonable period of time, the Funding may be terminated and all outstanding monies will be recovered by the ARC.
- (d) Unsatisfactory progress on any Project may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Chief Investigator or Indigenous Researcher Fellow and will be taken into account in the assessment of those proposals.

31.4 Final Report

- (a) Unless otherwise approved by the ARC, the Administering Organisation shall ensure that Final Reports are provided for each Project within six months of the final payment of Funds by the ARC for the Project or within six months of the final carry over of Funds approved by the ARC, whichever is the later. The form for this report will be made available on the ARC's Web Site. The ARC may review the outcomes against the objective(s) of the Project as stated in the Proposal or any approved revised budget, aims and research plan.
- (b) If a Final Report is considered by the ARC to be inadequate, the Chief Investigators and Indigenous Researcher Fellows who were involved in the Project may be contacted for further information. If the ARC is not satisfied with the outcomes of the Project, this may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Chief Investigators and Fellows and may be taken into account in the assessment of those proposals.
- (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 Chief Investigators and Indigenous Researcher Fellows and may be taken into account in the assessment of those proposals.
- (d) Proposals submitted under any ARC Scheme by, or on behalf of, any Chief Investigator or Indigenous Researcher Fellow on a Project for which the Final Report is outstanding may be deemed ineligible for approval or funding.

31.5 Audited Financial Statement

- (a) In accordance with section 58 of the Act, the Administering Organisation shall submit an Audited Financial Statement by 30 June for each year following each calendar year for which 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 ARC to carry over in the End of Year Report.

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

32. Copyright in Proposals and Reports

32.1 Copyright in any 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 ARC;
- (c) the preparation and management of any funding agreement; or
- (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 by the ARC within the ARC's organisation, or with another Commonwealth Department or agency, or Commonwealth Minister or parliamentary committee, where this serves the Commonwealth's legitimate interests;

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

32.2 If a Proposal or a 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 ARC to deal with the information or any report in accordance with this Agreement.

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

33. Recovery of Unspent Funds or Overpayments of Funds

33.1 Any unspent Funds may be recovered by the Commonwealth under paragraph 58(1)(c) of the Act. Any amount of funding paid to the Administering Organisation which exceeds the amount of financial assistance that is properly payable to it may be recovered under paragraph 58 (1)(d) of the Act.

33.2 The Commonwealth may offset the unspent or overpaid Funds against the total of any further Funds payable to the Administering Organisation.

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

34. Indemnity

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

34.2 The Administering Organisation's liability to indemnify the Commonwealth under clause 34.1 above 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.

34.3 The indemnity referred to above shall survive the expiration or termination of this Agreement.

35. Insurance

35.1 The Administering Organisation 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* Projects and, if requested, provide the Commonwealth with a copy of the relevant policies or when appropriate Certificate of Currency. The Administering Organisation shall be responsible for effecting all

insurances required under Worker's Compensation legislation and for taking all other action required as an employer.

36. Termination of the Agreement

36.1 Termination of Funding for a Project

The ARC may immediately terminate Funding for a Project by notice in writing to the Administering Organisation if:

- (a) the ARC reasonably believes that any one or more of the funding conditions specified in clause 5.2 has/have not been satisfied in relation to that Project;
- (b) the ARC reasonably believes that it has received inaccurate, incomplete or misleading information in relation to that Project, including in the Proposal or in any report provided under this Agreement;
- (c) the Administering Organisation fails to comply as soon as possible with any additional Ministerial requirement or condition notified by the ARC under clause 3.2; or
- (d) the ARC receives notice that work on the Project will cease, or has ceased.

36.2 If the ARC terminates Funding for a Project under clause 36.1 above:

- (a) the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on the Project;
- (b) the Administering Organisation must provide the reports required by this Agreement (or as otherwise notified by the ARC), within the timeframes specified in this Agreement (or as otherwise notified by the ARC); and
- (c) the ARC may recover all or any Funding for the Project in accordance with clause 5.3.

36.3 Termination of Agreement

The ARC may immediately terminate this Agreement by notice in writing to the Administering Organisation if:

- (a) the ARC reasonably considers there is fraud, misleading or deceptive conduct on the part of the Administering Organisation or any Specified Personnel in connection with any Project;
- (b) the Administering Organisation fails to comply as soon as possible with any Ministerial requirement or condition notified by the ARC under clause 3.2;
- (c) the Administering Organisation commits any breach of this Agreement that the ARC considers is capable of remedy, and has failed to rectify that breach within 30 days of receiving an earlier notice from the ARC requiring the breach to be remedied; or
- (d) the Administering Organisation commits any material breach of this Agreement which the ARC, acting reasonably, considers is not capable of remedy.

36.4 If the ARC terminates this Agreement under clause 36.3 above:

- (a) the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on all Projects;
- (b) the Administering Organisation must provide all reports required by this Agreement (or as otherwise notified by the ARC), within the timeframes specified in this Agreement (or as otherwise notified by the ARC); and

- (c) the ARC will immediately stop payment of all Funding under this Agreement and may recover from the Administering Organisation (by notice in writing) any unspent Funds as at the date of termination and any Funds not spent in accordance with this Agreement.
- 36.5 Any amount notified to the Administering Organisation as payable under clause 36.4(c) above is a debt due to the ARC (without further proof of the debt being necessary), payable within 30 days of the date of the notice.
- 36.6 Subject to clause 22.4, after the expiration or termination of this Agreement the Administering Organisation retains ownership of all Assets purchased using the Funds.

37. Compliance with Law

- 37.1 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.
- 37.2 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 VIA of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment; and
 - (e) it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets.
- 37.3 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.

(Note: Administering Organisations should note also that they may be subject to the provisions and applications of the Trade Practices Act 1974 and the Archives Act 1983.)

38. Liaison

- 38.1 All communications from the Administering Organisation to the ARC, or the Minister, relating to the Funding shall be made through the Responsible Officer of the Administering Organisation and shall be directed to the Scheme Coordinator at the following address:

Scheme Coordinator

(Discovery Indigenous Researchers Development)

Australian Research Council

Phone: 02 6287 6600

Fax: 02 6287 6638

Postal Address

GPO Box 2702

CANBERRA ACT 2601

Email: ncgp@arc.gov.au

Courier Address

1st Floor, 8 Brindabella Circuit

Brindabella Business Park

CANBERRA AIRPORT ACT 2609

39. Applicable Law

- 39.1 This Agreement is governed by and is to be construed in accordance with the law in force in the Australian Capital Territory.
- 39.2 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.

SCHEDULE A

Details of Projects to receive funding by the Commonwealth

Salaries

B1 ARC notional fellowship salaries 2009

Salaries are indexed annually. These figures are based on the expected level of indexation for 2009 and may be subject to variation. Updated levels will be available on the ARC's Web Site at www.arc.gov.au/applicants/salaries.htm.

		Salary	28% on-costs	Total
Indigenous Researcher Fellowship	100% option	\$61,399	\$17,192	\$78,591
	50% option	\$30,700	\$8,596	\$39,296

B2 Fellowships: maximum relocation allowances

North America	\$17,000
Europe/Asia (Northern Hemisphere)/Africa/South America	\$14,000
Asia (Southern Hemisphere)/Oceania	\$11,000
Within Australia	\$8,000

Unless otherwise specified in this Agreement, travel associated with relocations will only be funded up to a maximum of one return economy class airfare for each person approved for relocation.

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 a Project, the Administering Organisation 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 other Animals:* If any Project 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 Project 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 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 Administering Organisation must dispose of the material in accordance with the Administering Organisation's established safeguards.
- C4 *Genetic Manipulation:* If a Project involves the use of gene technology (ie. 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 or that has inherited particular traits from an organism that were present because of the use of gene technology), then before the proposed research commences, the Administering Organisation must ensure that the research has been approved in writing by the relevant Biosafety and/or Ethics Committees (or equivalent) of the Administering Organisation. The Administering Organisation must retain all certificates relating to the above and will 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 Project involves the use of ionising radiation, the Administering Organisation shall ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority. The Administering Organisation must retain all such licences and shall provide them to the Scheme Coordinator if required to do so.
- C6 *Social Science Data Sets:* Any digital data arising from a Project 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 Project research. If a Chief Investigator is not intending to do so within the two-year period, he/she should include the reasons in the Project's Final Report.

Special Conditions Applicable for Projects with an Indigenous Researcher Fellowship Element**D1 Commencement of the Indigenous Researcher Fellowship**

- D1.1 The Administering Organisation must ensure that Indigenous Researcher Fellows commence their Indigenous Researcher Fellowship in accordance with clauses 11 and 12 of this Agreement.
- D1.2 The Administering Organisation must ensure that an Indigenous Researcher Fellow does not commence the Indigenous Researcher Fellowship until after he/she has been awarded her/his PhD.
- D1.3 In accordance with clauses 12.4, 12.5 and 12.6 of this Agreement, where the Indigenous Researcher Fellow is one of several Chief Investigators on a Project and it is proposed to begin the Project before the Fellow can commence on the Project, approval will need to be obtained from the ARC for the Project to commence. The ARC will ascertain whether the Project is viable without the Fellow's participation.
- D1.4 If the ARC does not consider the Project viable without the Indigenous Researcher Fellow's contribution to the Project and the Fellow cannot commence on the Project in accordance with clauses 11 and 12 of this Agreement, Funding for the Project as a whole will be terminated.

D2 Indigenous Researcher Fellowship – Salary Funding

- D2.1 The Administering Organisation must provide salary funding to each Indigenous Researcher Fellowship holder named in Schedule A for the duration of her/his Fellowship at least the level of the ARC notional IRF salary as listed in Schedule B (or as otherwise varied by the ARC).
- D2.2 Subject to item D4 below, the duration of an Indigenous Researcher Fellowship is a maximum of 2 years and provision of Funding for the Fellowship is subject to the receipt of satisfactory Progress Reports. Funding for an Indigenous Researcher Fellowship will not be extended beyond 2 years except as provided for in clauses D4.5 and D4.6 below.
- D2.3 The Administering Organisation must make up any shortfall between the ARC notional Indigenous Researcher Fellowship salary and on-costs, and the prevailing salary levels for other academic staff at a similar level, from sources other than the Funds, so that the Indigenous Researcher Fellows are no worse off financially than their peers.

D3 Use of the Funding - Relocation Expenses

- D3.1 Subject to the provisions of this clause D3, the Administering Organisation may make reimbursement payments from the Funding to an Indigenous Researcher Fellow, including dependants, for relocation costs (for travel expenses and the removal of household items only) on provision of full particulars of mode and time of travel and the provision of receipts for all other payments e.g. removal expenses of household items. The Administering Organisation may make a claim for reimbursement of such payments providing a written request to the ARC within 12 months of the date of relocation of the Fellow.

- D3.2 The Administering Organisation must ensure that travel expenses, where payable from the Funding, do not exceed the cost of the cheapest direct airfare for the Indigenous Researcher Fellow and their dependants. If a Fellow elects to travel by car, the ARC will provide reimbursement based on a mileage allowance up to the maximum equivalent of the cheapest direct airfare. On completion of the Indigenous Researcher Fellowship, the Fellow will be entitled to the same return travel provisions provided that the Fellow has not obtained subsequent employment in Australia for a period exceeding 12 months.
- D3.3 Subject to item D3.5, the ARC will pay to the Administering Organisation funding in addition to the Funds specified in Schedule A to cover the reimbursement of relocation costs following receipt of a written claim from the Administering Organisation and provided that the claim and the receipts are submitted to the ARC within 12 months of the date of relocation of the Fellow. All claims are to be made in Australian dollars.
- D3.4 The ARC will not provide reimbursement for items it considers are not appropriate or reasonable including, but not limited to: temporary or longer-term accommodation, cost for locating accommodation, rental bonds, purchase or hire of household furniture, telephone and other utility connections, pet housing, and other items considered typical household expenses.
- D3.5 The Administering Organisation may reimburse Indigenous Researcher Fellows and claim reimbursement from the Commonwealth up to and including the following amounts for travel expenses for relocation and the removal of household items for Fellows and their dependants:
- (a) a maximum of \$17,000 for a Fellow who relocates from the USA;
 - (b) a maximum of \$14,000 for a Fellow who relocates from UK / Europe / Asia (Northern Hemisphere);
 - (c) a maximum of \$11,000 for a Fellow who relocates from Asia (Southern Hemisphere)/Oceania; and
 - (d) a maximum of \$8,000 for a Fellow who relocates within Australia.
- D3.6 For the purposes of relocation entitlements, a dependant is defined as a person who moves residence with the Indigenous Researcher Fellow. A spouse who transfers employment and residence to the city where a Fellow is to be based can be regarded as a dependant. A child continuing to study elsewhere and not intending to live predominantly with the Fellow is not regarded as a dependant.

D4 Conditions of Employment and Recognition of Indigenous Researcher Fellows

- D4.1 Indigenous Researcher Fellows may not hold another position either at the Administering Organisation or at another Eligible Organisation unless otherwise approved in writing by the ARC. Before an Indigenous Researcher Fellowship commences, the Administering Organisation must ensure that the Fellow does not hold a substantive tenured position at an Eligible Organisation (including at the Administering Organisation).
- D4.2 The Administering Organisation must recognise Indigenous Researcher Fellows as academic staff and incorporate them fully into the activities and academic life of the Administering Organisation, but should note that limits do apply (see clause D4.3). Unless the Minister otherwise determines, or as otherwise approved by the ARC, the provision of salaries, recreation leave, sick leave and other conditions of employment for Indigenous Researcher Fellows shall be those of the Administering Organisation.

- D4.3 Indigenous Researcher Fellows may not accept additional appointments or remuneration without the prior written agreement of the Administering Organisation and the ARC. Notwithstanding clause D4.1, an Indigenous Researcher Fellow may undertake teaching, Researcher supervision or academic duties in addition to performing the Project, but only where it enhances, rather than detracts from, the Fellow's performance of the project.
- D4.4 The Administering Organisation must ensure that, during the Indigenous Researcher Fellowship period, a Fellow shall be entitled to leave of absence for recreation at the rate of four weeks per annum, to be taken at any time during the Fellowship period by arrangement between the Fellow and the Administering Organisation. However, the Commonwealth will not provide additional funds to cover accrued leave proposed to be taken after the Fellowship period has expired or been terminated. If a Fellow's salary entitlements for recreation leave accrued during the Fellowship are to be funded from the Funding, the Fellow must take her/his recreation leave during the period of Fellowship.
- D4.5 The Administering Organisation must ensure that eligible Indigenous Researcher Fellows are entitled to up to 14 weeks' paid maternity leave during the duration of their Fellowship. The Commonwealth will provide up to 14 weeks' additional funding for this purpose and the Fellowship period will be extended for a period equivalent to the duration of the paid maternity leave. The additional Funding for this purpose is to be claimed through the End of Year Report submitted to the ARC or by means of submission of a "Variation of Funding Agreement" request.
- D4.6 The Administering Organisation must ensure that eligible Indigenous Researcher Fellows are entitled to take up to two weeks' paid partner/parental leave at the time of birth or adoption to the parent who is not identified as the primary caregiver. The Commonwealth will provide up to 2 weeks' additional funding for this purpose and the Fellowship period will be extended for a period equivalent to the duration of the paid partner/parental leave. The additional Funding for this purpose is to be claimed through the End of Year Report and submitted to the ARC or by means of submission of a "Variation of Funding Agreement" request.
- D4.7 In addition to recreation leave as provided for in item D4.4 and maternity and paid partner/parental leave as provided for in items D4.5 and D4.6 above respectively, a Fellow may take additional leave of up to 12 months in total during the duration of the fellowship using accrued leave or leave without pay, providing it is in accordance with the Administering Organisation's normal practice and written approval has been obtained from the ARC. If approved by the ARC, the Fellowship period will be extended for a period equivalent to the length of (full-time equivalent) additional leave taken. In exceptional circumstances, or where warranted on compassionate grounds, the ARC may approve further additional leave and the Fellowship period may be extended accordingly. The Funds for the Fellowship which would otherwise have been payable during the period(s) when additional leave is taken will continue to be paid to the Administering Organisation during the leave period(s) and are to be held on trust by the Administering Organisation during the leave period(s). Other than in the circumstances provided for in items D4.5 and D4.6 above, the ARC will not supplement the Funds to cover any additional costs incurred as a result of the leave being taken or delay in finalisation of the Project/Fellowship.

- D4.8 Funding for Indigenous Researcher Fellow salaries include a 28 % loading to cover salary-related on-costs, including payroll tax, workers' compensation, leave loading, long-service leave, non-contributory and contributory superannuation, but it excludes items such as extended leave and severance pay. On-costs that exceed 28% and other costs (such as costs associated with or incurred as a result of extended leave and severance pay) must be met by the Administering Organisation.
- D4.9 Indigenous Researcher Fellows may apply in *Discovery Projects* for an Australian Postdoctoral Award, *Linkage Projects* for an APDI, or *Linkage—Australian Postdoctoral Award (CSIRO)* for an Australian Postdoctoral Award (CSIRO) in the last year of their current Indigenous Researcher Fellowship.

D5 Infrastructure

- D5.1 The Administering Organisation must provide Indigenous Researcher Fellows with the same access to infrastructure funds as applies to academic staff at the same level within the Administering Organisation and afford them equal status with similar staff for the provision of accommodation, access to necessary laboratory and workshop facilities, adequate time on the Administering Organisation's computer and other equipment, stationery, photocopying and typing services. The Administering Organisation is also required to provide reasonable time on major equipment necessary for the conduct of the Fellow's project.

D6 Suspension of an Indigenous Researcher Fellowship to enable Fellow to undertake other employment

- D6.1 A Fellow may apply for a suspension of the Fellowship for a period or periods of up to 12 months in total during the Fellowship period to enable the Fellow to undertake other employment. This may occur if, for example, a Fellow is offered a short-term teaching or research position. The suspension may be approved only if the work to be carried out during the suspension period(s) is, in the opinion of the ARC, reasonably closely related to the research being performed under the Fellowship by the Fellow. The Fellowship period may be extended for a period equal to the duration of the approved suspension(s). The Funds for the Fellowship which would otherwise have been payable during the suspension period(s) will continue to be paid to the Administering Organisation during the suspension period(s) and are to be held on trust by the Administering Organisation during the suspension period(s). The ARC will not supplement the Funds to cover any additional costs incurred as a result of the suspension or delay in finalisation of the Project/Fellowship.
- D6.2 Subject to item D6.1, if a proposed suspension is to commence after the first 12 months of the Project and is for six (6) months or less, the Administering Organisation may, at its discretion, approve the suspension. The Administering Organisation must notify the ARC of the suspension in its next Progress or Final Report for the Project.
- D6.3 If a proposed suspension is to commence within the first 12 months of the Project or is more than six months' duration, the Responsible Officer must apply to the Scheme Coordinator to seek the ARC's approval of the suspension.
- D6.4 Subject to item D6.2, a suspension of a Fellowship without the written approval of the ARC will be a breach of this Agreement and may result in the immediate termination of, and/or recovery of funding for, the particular Fellowship.

D7 Relinquishment of an Indigenous Researcher Fellowship

- D7.1 The Administering Organisation must require Fellows to give one month's notice to the Administering Organisation if they intend to cease working on a Project or reduce their involvement on the Project or relinquish the Fellowship.
- D7.2 The Administering Organisation must notify the ARC in writing as soon as possible after it becomes aware that a Fellowship holder named in Schedule A intends on terminating her/his Fellowship, or is not able to continue performing the Project, in the same capacity as provided for in the award of the Fellowship.
- D7.3 The Administering Organisation must advise the ARC Scheme Coordinator of any significant change in circumstances or the relinquishment of a Fellowship by a fellowship holder named in Schedule A by means of a submission of a "Variation of Funding Agreement" request to the ARC.
- D7.4 If the ARC does not consider a Project viable without a Fellow's ongoing contribution to the Project, funding for the Project in its entirety may be terminated with effect from the date of the changed circumstances and the Commonwealth may recover any or all unspent Funds in accordance with this Agreement.
- D7.5 If the ARC does consider the Project to be viable without a Fellow's contribution, the Fellowship component of the Project may be terminated and the Commonwealth may recover any unspent Funds relating to the Fellowship for that Fellow.

