



Australian Government

Australian Research Council

Funding Agreement

between the

Commonwealth of Australia

as represented by the

Australian Research Council

and

«Administering Organisation»

regarding funding for

Linkage Learned Academies

Special Projects

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

«Organisation» ('the Administering Organisation').

WHEREAS:

- A. The Commonwealth through the ARC operates the *Linkage Learned Academies Special Projects 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;

Approved Proposal means a Proposal that has been approved for Funding by the Minister;

ARC means the Australian Research Council, as established under the *Australian Research Council Act 2001*;

ARC Web Site is 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 (CEO) means the occupant of the position from time to time of the Chief Executive Officer of the ARC;

Collaborating Organisation means an Eligible Organisation which is not the Administering Organisation but which is named in Schedule A as a contributor to the Project, and includes any replacement organisations approved by the ARC in accordance with clause 11;

Commonwealth means the Commonwealth of Australia;

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

Earnings means the amount paid as remuneration for work a person undertakes or services he or she performs. It includes amounts paid under employment and consultancy arrangements;

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

End of Year Report means the report described in clause 30.2;

Final Report means the report described in clause 30.4;

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

Funding Rules means the *Linkage Learned Academies Special Projects Funding Rules for funding commencing in 2009*;

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;

LASP Chief Investigator (LCI) means a person named in the Proposal as a LASP Chief Investigator for a particular Project, or as otherwise approved by the Minister and includes any replacement person approved in accordance with clause 15;

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

Minister means the Minister from time to time responsible for the administration of the Act;

Partner Investigator (PI) means a person named in the Proposal as a Partner Investigator for a particular Project, or as otherwise approved by the Minister, and includes any replacement person approved in accordance with clause 15;

Partner Organisation means an organisation, which is not an Eligible Organisation, named in Schedule A as a contributor to a Project and includes any replacement organisations approved by the ARC in accordance with clause 11;

Participant means the Administering Organisation, Collaborating Organisations, Partner Organisations and Specified Personnel and includes any replacement persons or organisations approved in accordance with clauses 11 or 15;

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 30.3;

Project means any Project described in Schedule A or as otherwise approved by the ARC for Funding under this Agreement in accordance with clause 16;

Project Budget means the budget for a Project specified in Schedule A;

Project Leader means the first-named person nominated on a Proposal who is an LCI, or such other person otherwise approved by the Minister, and includes any replacement person approved by the Minister in accordance with clause 15;

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

Research Office means that part of the Administering Organisation responsible for liaison with the ARC;

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

Scheme has the meaning given in Recital A;

Scheme Coordinator means the occupant from time to time of the position of Scheme Coordinator (*Linkage Learned Academies Special Projects*) in the ARC, or any other person to which the administration of the Scheme may be allocated;

Special Conditions means the conditions specified in Schedules A and B that govern the use of the Project Budget; and

Specified Personnel means the LASP Chief Investigator(s) and Partner Investigator(s) named in Schedule A to perform each Project.

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 clauses in this Agreement and all references to a schedule is a reference 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 Approved 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 Approved 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 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 Commonwealth and continues to operate until all parties have fulfilled their obligations under this Agreement, unless terminated earlier in accordance with this Agreement.
- 4.2 Subject to clauses 4.3 and 5 of this Agreement, the period of Funding ('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 Funding Period for any Project 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 variation under section 54 of the Act, this Agreement will continue to apply to any Project granted financial assistance under such a variation.

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 each Project is subject to the following conditions:
- (a) that the Project commence in accordance with clause 12, or by any later date approved by the ARC under clause 13;
 - (b) that the LCI 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 each Project substantially in accordance with the 'Project Description' contained in the Approved Proposal or, in the event of any variation to the Project, in accordance with any variation 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' contained in the Approved Proposal and any Special Conditions or, in accordance with any variation as otherwise approved by the Minister;
 - (e) that the Administering Organisation enter into (and maintain) an agreement with each Collaborating and Partner Organisation that meets the requirements of clause 10;
 - (f) that the total contributions for a Project from each Collaborating and Partner Organisation satisfies the requirements set out in this Agreement and the Funding Rules, unless otherwise approved by the Minister;
 - (g) that the Administering Organisation not receive for the Project any amount of Funding 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;
 - (h) that the Administering Organisation submit on time all reports required under this Agreement, in the form and with content satisfactory to the Commonwealth;
 - (i) that progress of the Project is, in the opinion of the Chief Executive Officer, satisfactory;
 - (j) that each LCI (or any replacement person approved by the Minister under clause 15.1), at all times during her/his participation in a Project as a LCI, meet the criteria specified in Sections 8.1 and 8.2 of the Funding Rules;
 - (k) that each PI (or any replacement person approved by the Minister under clause 15.1), at all times during her/his participation in a Project as a PI, meet the criteria specified in Sections 8.1 and 8.3 of the Funding Rules;
 - (l) that the ARC is advised in a timely manner of any and all conflicts of interest of Participants involved in the Project;
 - (m) 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;

- (n) that there is no duplication of Commonwealth funding for the research and/or activities funded for the Project under this Agreement;
- (o) that the Administering Organisation comply with any other requirements or conditions imposed by the Minister in connection with this Agreement, and
- (p) that the Administering Organisation obtain the agreement of all parties, including the Participants, necessary to allow each Project to proceed. These agreements must be attested to by hand-written signatures and certification and are to be retained by the Administering Organisation which must provide them if requested by the ARC.

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, by notice in writing to the Administering Organisation, 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;
- (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 Where the Commonwealth exercises its right under clause 5.7 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 even if it has only been submitted. The Administering Organisation should note that under the *Criminal Code*

Act 1995 (Cth) section 137.1 giving false or misleading information is a serious offence.

- 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, by notice in writing to the Administering Organisation, 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;
 - (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 must ensure that each Project is carried out in accordance with this Agreement, in a diligent and competent manner. In addition, each Project will be conducted in accordance with the 'Project Description' contained in the Approved Proposal, or any revised budget, aims and research plan, submitted by the Administering Organisation and approved by the Minister.
- 7.2 The Administering Organisation must ensure that expenditure on each Project described in Schedule A is in accordance with the 'Project Description' contained in the Approved Proposal and within the broad structure of the proposed 'Project Cost' contained in the Approved Proposal or any revised budget, aims and research plan submitted by the Administering Organisation which has been approved by the Minister.
- 7.3 The Administering Organisation must not use the Funding:
- (a) for purposes specifically excluded in the Funding Rules; or
 - (b) for purposes specifically excluded in this Agreement.
- 7.4 The Administering Organisation must ensure that the persons listed in Schedule A (or any replacement person(s) approved under clause 15.1) have adequate time to carry out each Project and must ensure the provision of the basic facilities required for each Project. 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 (e.g., 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) salary support for LCIs or PIs except as provided for by the Funding Rules;

- (b) teaching relief for LCIs except where approved as a Special Condition;
- (c) travel expenses for LCIs except where approved as a Special Condition.

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.

7.8 Unless otherwise approved by the ARC, the Administering Organisation must ensure the provision of the resources to undertake each Project as specified in the Approved Proposal.

8 Use of the Funding: Provision of Salaries and Relief from Teaching

8.1 The Funding must not be used to provide salary support for LCIs or PIs where those LCIs or PIs are receiving significant Earnings from any other source.

8.2 If expenditure is incurred for salary support for LCIs or PIs as allowed for in clause 6.4.2 (a) of the Funding Rules, the Administering Organisation shall ensure that expenditure is in accordance with the broad structure of the 'Project Description' and 'Project Cost' contained in the Approved Proposal, or any revised Project budget, aims and research plan which are approved by the Minister.

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 Approved 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 LCIs or PIs, unless the ARC otherwise determines:

- (a) in recruiting Personnel, the Administering Organisation shall follow its normal recruitment procedures;
- (b) the on-costs provisions beyond the Commonwealth contribution of 28% remains the responsibility of the Administering Organisation, e.g., extended periods of leave, severance pay etc. shall not be provided from Commonwealth funds.

8.6 Funding may only be used for relief of LCIs from teaching for a maximum of six months per annum per LCI 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. However, a Partner Organisation's cash contribution to the Administering Organisation may be used to raise the levels of the salaries paid to Personnel, providing the amount paid does not exceed

the amount specified as the Partner Organisation's cash contribution for Personnel in the 'Project Cost' contained in the Approved Proposal.

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 Collaborating and Partner Organisation 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 and Partner Organisation in accordance with this clause 10. The Administering Organisation must reach agreement with each Collaborating and Partner 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 12 and 13.
- 10.2 A written partner agreement entered into with a Collaborating or Partner Organisation must include provisions that:
- (a) outline the role and contribution of the Collaborating or Partner Organisation to the Project;
 - (b) outline the contributions and research undertaken by other organisations involved in the Project;
 - (c) describe the Intellectual Property arrangements that apply to the outcome or results generated by the Project. Such arrangements must, unless otherwise approved by the ARC, comply with the *National Principles of Intellectual Property Management for Publicly Funded Research*;
 - (d) an assurance from the Collaborating or Partner Organisation that the Collaborating or Partner Organisation's relationship with the Administering Organisation and the Specified Personnel for the Project complies with the requirements specified in the Funding Rules, including:
 - i. that the organisation's involvement does not represent an actual or potential conflict of interest; and
 - ii. that the contribution provided by the organisation to the Project accords with the contribution requirements specified in the Funding Rules;
 - (e) an indemnity from the Collaborating or Partner Organisation in favour of the Administering Organisation that covers any loss, liability or expense incurred or suffered by the Administering Organisation as a result of any breach of this Agreement caused by the Administering Organisation's reliance on the assurance given by the Collaborating or Partner Organisation in accordance with paragraph (d);
 - (f) are consistent with any details contained in the Approved Proposal, except as provided for in clause 10.4; and
 - (g) do not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement.
- 10.3 A written partner agreement entered into under this clause 10 must continue to satisfy the

requirements of this clause 10 at all times during the Funding Period for the Project.

- 10.4 Unless otherwise approved by the ARC, the Administering Organisation must ensure that each Collaborating or Partner Organisation provides contributions as set out in the Approved Proposal. However, if the Funding for a Project is less than the amount requested in the Proposal for that Project, the Collaborating or Partner Organisation contribution may be reduced by the same proportion.
- 10.5 The Administering Organisation must ensure the Commonwealth and each Collaborating or Partner Organisation is provided with timely notice of progress made on the Project.
- 10.6 If a written partner agreement between a Collaborating or Partner Organisation and the Administering Organisation is revised in accordance with this Agreement to change the level of the organisation's contribution, the Administering Organisation must advise the ARC of the revised level of contribution in the next report it submits to the ARC.
- 10.7 The Administering Organisation will retain all written partner agreements and make them available to the ARC if required.

11 Default of Collaborating or Partner Organisation

- 11.1 If the Administering Organisation receives notice that a Collaborating or Partner Organisation wishes to withdraw its support for the Project, or reasonably believes that a Collaborating or Partner Organisation is in default of any of its obligations under a written partner agreement entered into between that Collaborating or Partner Organisation and the Administering Organisation under clause 10, the Administering Organisation must immediately notify the ARC and may attempt to find a replacement Collaborating or Partner Organisation for the Project, or modify remaining Collaborating or Partner Organisation arrangements, in accordance with the procedure outlined in clause 11.2.
- 11.2 Should the Administering Organisation wish to proceed with a replacement Collaborating or Partner Organisation or modified Collaborating or Partner Organisation arrangements as allowed under clause 11.1 it must complete the procedure listed below within three months from the date of notification from the Collaborating or Partner Organisation or from the date on which the Administering Organisation became aware that the Collaborating or Partner Organisation is not meeting its obligations, whichever is the earlier. By the end of the three-month period referred to in this clause:
 - (a) the Administering Organisation must request, in writing, the ARC's approval of a replacement Collaborating or Partner Organisation or modified remaining Collaborating or Partner Organisation arrangements which comply with the requirements for Collaborating and Partner Organisations and organisational contributions specified in this Agreement and the Funding Rules;
 - (b) the replacement or remaining Collaborating and Partner Organisations must provide a written undertaking to provide (in total) a replacement contribution equivalent to that which would have been provided by the Collaborating or Partner Organisation in default and which satisfies the requirements of this Agreement and the Funding Rules;
 - (c) the Administering Organisation and the replacement Collaborating or Partner Organisation or remaining Collaborating and Partner Organisations must enter into a written partner agreement, or amend any existing agreement (as appropriate) consistent with clause 10 to reflect the revised Collaborating or Partner Organisation contribution arrangements.

- 11.3 The ARC may approve a replacement Collaborating or Partner Organisation if the replacement Collaborating or Partner Organisation and the proposed contribution arrangements meet the requirements of the Funding Rules and this Agreement.
- 11.4 To avoid doubt, the funding condition set out in clause 5.2(f) will not have been satisfied if:
- (a) the ARC does not approve any replacement Collaborating or Partner Organisation or the modified Collaborating or Partner Organisation arrangements proposed under clause 11.2; or
 - (b) the Administering Organisation does not attempt to find any replacement organisation or modify existing contribution arrangements in accordance with clause 11.2.

12 Commencement of Project

- 12.1 Subject to clause 13, the Projects must commence by no later than 30 June 2009, unless the commencement has been deferred to a later date approved by the ARC.

13 Deferral of Commencement of Project

- 13.1 If the Administering Organisation wishes to defer commencement of a Project beyond the applicable commencement date specified in clause 12.1, a written request justifying the requested deferral in terms of special circumstances must be submitted to the ARC, prior to the applicable commencement date specified in clause 12.1 for that Project.
- 13.2 The Administering Organisation must not defer commencement of the Project beyond the applicable commencement date specified in clause 12.1 unless the Administering Organisation has received written approval from the ARC.
- 13.3 Other than in exceptional circumstances, the ARC will not approve the commencement of a Project beyond the applicable commencement date specified in clause 12.1. The Commonwealth may recover funding for any Project which has not commenced by the applicable commencement date specified in clause 12.1.

14 Specified Personnel

- 14.1 The Administering Organisation must ensure that the Specified Personnel conduct the Project in a diligent and competent manner in accordance with this Agreement and the Funding Rules.
- 14.2 The Administering Organisation must provide each LCI and PI with a copy of this 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 must ensure that, unless otherwise approved by the Minister, all LCIs performing any Project meet the criteria specified in Sections 8.1 and 8.2 of the Funding Rules for the full term of their participation in the Project as LCIs.
- 14.5 The Administering Organisation must ensure that, unless otherwise approved by the Minister, all PIs performing any Project meet the criteria specified in Sections 8.1 and 8.3 of the Funding Rules for the full term of their participation in the Project as PIs.

- 14.6 The Administering Organisation must ensure that each LCI and PI who is to perform any Project has the approval of her/his employing organisation to participate in the Project.

15 Change of Specified Personnel

- 15.1 If a LCI or PI is at any time during the term of a Project no longer able to continue the Project, the Project may be continued under another LCI or PI provided that:
- (a) there is at least one LCI performing the Project at all times;
 - (b) all replacement or additional LCIs or PIs meet the eligibility criteria, as specified in the Funding Rules for the particular role they are to perform, for the period for which they are to perform that role;
 - (c) approval is sought from the ARC for the change in Specified Personnel:
 - i. in writing (including with the request a copy of the proposed replacement Specified Personnel's curriculum vitae); and
 - ii. within three months of the date that the Specified Personnel cease working on the Project;
 - (d) if additional or replacement LCIs or PIs ("New Specified Personnel") are proposed for any Project, the Administering Organisation must obtain certifications from the New Specified Personnel and their employers which have the same effect to those required to be obtained for the other Specified Personnel on the Project; and
 - (e) the change is approved, in writing, by the Minister.

16 Transfer of Project or Specified Personnel

- 16.1 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 request outlining arrangements for the continuation of the Project and the continued administration of the Funding.
- 16.2 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:
- (a) the following parties agree to the transfer:
 - i. the Administering Organisation;
 - ii. the Collaborating and Partner Organisation(s); and
 - iii. the recipient Eligible Organisation;
 - (b) the recipient Eligible Organisation and the Project's Collaborating and Partner Organisation(s) will enter into a written partner agreement of the type set out in clause 10.
- 16.3 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 21 to the recipient Eligible Organisation.
- 16.4 If Ministerial approval is granted 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 Commonwealth 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 Commonwealth such unspent Funds. The Commonwealth will 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 that report; and
- iv. comply with any other directions reasonably given by the ARC to give effect to the transfer.

(b) the recipient Eligible Organisation must:

- i. enter into a new, or vary an existing, funding agreement it has with the Commonwealth to give effect to the changed funding arrangements;
- ii. report expenditure of Funding for the Project subsequent to the transfer in its End of Year Report and identify the transfer in that Report; and
- iii. enter into a written partner agreement with the Project's Collaborating or Partner Organisation(s) of the type set out in clause 10.

16.5 If one of the Specified Personnel changes 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 Commonwealth.

16.6 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.

16.7 The Project or any equipment purchased with either the Funding or the Project's Collaborating or Partner Organisation contribution (including any equipment which comprises the Collaborating or Partner Organisation contribution) must not be transferred to the recipient Eligible Organisation until Ministerial approval for transfer of the Funding is granted.

17 Negation of Employment by the Commonwealth

17.1 Specified Personnel and the Administering Organisation must 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 be, or be deemed to be, employees, partners, or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

18 Conduct of Research

18.1 Projects must 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 must ensure that a Project under this Agreement will not proceed without appropriate ethical clearances having been obtained from the relevant committees and/or authorities referred to in Schedule B or prescribed by the Administering Organisation's research rules. Responsibility for ensuring 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, and the other Participants involved in the Proposal/Project, 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.
- 18.4 If the Administering Organisation or any Specified Personnel become aware of any actual or potential conflict of interest relating to any party involved in a Project, the Administering Organisation must:
- (a) notify the ARC immediately of the nature and details of the conflict of interest; and
 - (b) have established processes in place for managing the (actual or potential) conflict of interest for the duration of the Project. Such processes must comply with the NHMRC/ARC/UA *Australian Code for the Responsible Conduct of Research Practice* (2007).
- 18.5 If the Administering Organisation or any Specified Personnel has failed to disclose a conflict of interest, the Commonwealth may do any or all of the things provided for in clause 5.3(a), (b) and (c).
- 18.6 Each Project must, unless otherwise approved by the ARC in writing, conform to the principles outlined in the following, and their successor, documents:
- (a) the NHMRC/ARC/UA *Australian Code for the Responsible Conduct of Research* (2007);
 - (b) as applicable, the the NHMRC/ARC/AVCC *National Statement on Ethical Conduct in Human Research* (2007); and
 - (c) as applicable, the NHMRC's other codes on animal research.

19 Material produced under this Agreement and Dissemination of Research Outputs

- 19.1 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.
- 19.2 For any Material produced under this Agreement and subject to any agreement to the contrary with a Collaborating or Partner Organisation which can be justified to the satisfaction of the ARC on the grounds of commercial sensitivity (including Intellectual Property considerations), the Administering Organisation must ensure that Specified Personnel for each Project:
- (a) take reasonable care of, and safely store, any data or specimens or samples collected during, or resulting from, the conduct of the 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 the Project; and

- (c) include details of the lodgement or reasons for non-lodgement in the Progress Report and the Final Report for the Project.

19.3 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.

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

20 ARC Assessments

20.1 The Administering Organisation acknowledges that the ARC relies upon the peer review process to assist in the assessment of proposals for its funding schemes. For the term of this Agreement, the Administering Organisation agrees that, where possible, it will encourage the LCIs, if requested by the ARC, to assess new proposals for ARC funding.

20.2 If the ARC determines that a LCI has not met the obligation to assess proposals assigned by the ARC for assessment, the ARC will notify the Administering Organisation in writing.

21 Assets

21.1 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.

21.2 The Administering Organisation shall establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring all Assets purchased with the Funds.

21.3 The Administering Organisation must ensure that any Personnel shall have first priority in the use and operation of Assets purchased for the Project and the Administering Organisation shall, so far as is practicable, permit other persons authorised by the Minister to have priority access to that Asset in preference to other persons.

21.4 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, and listed in its assets register unless:

- (a) otherwise specified in the Approved Proposal;
- (b) the Project is terminated, in which case the Minister may, by notice in writing, require the transfer of any such Asset to the Commonwealth; or
- (c) the Project is transferred to another organisation in accordance with clause 16, in which case, subject to the agreement of both the Administering Organisation and the recipient Eligible Organisation under that clause, the Asset purchased with Funds provided under this Agreement for the relevant Project may be transferred in accordance with clause 16.7.

22 Intellectual Property

22.1 The Administering Organisation must adhere to an Intellectual Property policy, approved by

the Administering Organisation's governing body, which has as one of its aims the maximisation of benefits arising from research. The Commonwealth makes no claim on the ownership of Intellectual Property brought into being as a result of the Projects for which Funding is provided.

- 22.2 Unless otherwise approved by the ARC, the Administering Organisation's Intellectual Property policy referred to in clause 22.1 must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* as amended from time to time.
- 22.3 The Administering Organisation must 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.
- 22.4 The indemnity referred to in clause 22.3 shall survive the expiration or earlier termination of this Agreement.

23 Protection of Personal Information

- 23.1 The Administering Organisation agrees with respect to all activities related to or in connection with the performance of each 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.

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

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

24 Confidentiality

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

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

- (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 24.

24.3 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 Confidential Information which is contained in any reports related to the Project is disclosed other than as provided in clause 24.2. If disclosure is required to other persons, the Commonwealth will discuss the intended terms of disclosure with the Administering Organisation.

25 Compliance with Commonwealth Policies

- 25.1 The Administering Organisation must, in carrying out its obligations under this Agreement, comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority.
- 25.2 The Administering Organisation must, when using the Commonwealth's premises or facilities, comply with all reasonable directions and ARC 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.
- 25.3 The Administering Organisation must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and shall not enter into a subcontract with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.
- 25.4 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.

26 Acknowledgments, Publications and Publicity

- 26.1 Subject to commercial sensitivities 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.
- 26.2 When, at any time during or after completion of a Project, the Administering Organisation or the researchers or any other party publishes, produces or is involved in promotional material, including but not limited to books, articles, television or radio programs, newsletters or other literary or artistic works, which relate to the Project, the Administering Organisation must ensure (wherever possible) that the ARC's contribution and support of the Project is acknowledged in a prominent place and an appropriate form acceptable to the ARC. Advice of acceptable forms of acknowledgement and use of the logo is provided on the ARC Web Site.
- 26.3 This clause survives the expiration or earlier termination of this Agreement.

27 Administration of the Funding

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

28 Audit and Monitoring

- 28.1 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, the Funding is not being expended in accordance with this Agreement, the Administering Organisation must take all action necessary to minimise further expenditure in relation to the Project and inform the ARC immediately.
- 28.2 The ARC may conduct ad hoc on-site reviews in relation to financial and other reports to ensure that the terms of this Agreement are being, or were, met and that reports submitted to the ARC are an accurate statement of compliance by the Administering Organisation. Persons nominated by the ARC to conduct these reviews are to be given full access by the Administering Organisation, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funds in general.
- 28.3 The Administering Organisation must:
- (a) provide information to the Scheme Coordinator, or a person nominated by the Scheme Coordinator, as reasonably required by the Scheme Coordinator;
 - (b) comply with all reasonable requests, directions, or monitoring requirements received from the Scheme Coordinator; and
 - (c) cooperate with and assist the ARC in any review or other evaluation that the ARC undertakes.

29 Access to Premises and Records

- 29.1 The Administering Organisation must, 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.
- 29.2 The access rights in clause 29.1 are subject to:
- (a) any agreement to the contrary with a Collaborating or Partner Organisation which can be justified to the satisfaction of the ARC on the grounds of commercial sensitivity (including Intellectual Property considerations);
 - (b) the provision of reasonable prior notice by the ARC; and
 - (c) the Administering Organisation's reasonable security procedures.
- 29.3 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 29.2 will not apply.

- 29.4 Upon receipt of reasonable written notice from the CEO or the ARC, the Administering Organisation must provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 29.5 Nothing in clauses 29.1 to 29.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.
- 29.6 The Auditor-General, or a delegate of the Auditor-General for the purpose of performing the Auditor-General's statutory functions, at reasonable times and on giving reasonable notice to the Administering Organisation, may:
- (a) require the Administering Organisation to provide records and information which are directly related to this Agreement;
 - (b) have access to the premises of the Administering Organisation for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Administering Organisation which are directly related to this Agreement; and
 - (c) where relevant, inspect any Commonwealth Assets and Commonwealth Material held on the premises of the Administering Organisation.
- 29.7 This clause shall survive the expiration or earlier termination of this Agreement.

30 Reporting Requirements

- 30.1 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.
- 30.2 End of Year Report
- (a) The Administering Organisation must 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, including:
 - i. any unspent Funds to be recovered by the Commonwealth;
 - ii. any unspent Funds that the Administering Organisation is seeking to have carried over into the next year; and
 - iii. the reasons why the unspent Funds are required to be carried over.
 - (c) Under paragraph 58(1)(e) of the 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 one year to the next year, the Administering Organisation must request this approval in the End of Year Report for the calendar year for which those Funds were initially paid.
 - (d) Where a 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),

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. Written justification must be provided in this instance.

30.3 Progress Report

- (a) Unless otherwise approved by the ARC, the Administering Organisation must ensure that Project Leaders provide Progress Reports in respect of each ongoing Project by 31 January each year, except in the first year of funding, on a form which will be made available by the ARC.
- (b) The ARC may review the outcomes reported against the objectives of a Project as stated in the Approved Proposal, or any approved revised budget, aims and research plan. Any LCI who is or was involved in a Project for which a Progress Report is 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 Commonwealth.
- (d) Unsatisfactory progress on any Project may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the LCIs and will be taken into account in the assessment of those proposals.

30.4 Final Report

- (a) Unless otherwise approved by the ARC, the Administering Organisation must 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 by the ARC. The ARC may review the outcomes against the objective(s) of the Project as stated in the Approved Proposal or any approved revised budget, aims and research plan.
- (b) If a Final Report is considered by the ARC to be inadequate, the LCI(s) 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 LCI(s) 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 LCI(s) 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 LCI on a Project for which the Final Report is outstanding may be deemed ineligible for approval or funding.

30.5 Audited Financial Statement

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

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

30.6 This clause 30 survives the expiration or earlier termination of this Agreement.

31 Copyright in Proposals and Reports

31.1 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;
- (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
- (f) the use, reproduction or publication of the material where authorised or required by law.

31.2 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 Commonwealth to deal with the information or any report in accordance with this Agreement.

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

32 Recovery of Unspent Funds or Overpayments of Funds

32.1 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.

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

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

33 Indemnity

33.1 The Administering Organisation must 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.

33.2 The Administering Organisation's liability to indemnify the Commonwealth under clause 33.1 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.

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

34 Insurance

34.1 The Administering Organisation must effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in *Linkage Learned Academies Special Projects* 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.

35 Termination of the Agreement

Termination of Funding for a Project

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

- (a) the Commonwealth 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 Commonwealth 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.

35.2 If the Commonwealth terminates Funding for a Project under clause 35.1:

- (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 Commonwealth may recover all or any Funding for the Project in accordance with clause 5.3.

Termination of Agreement

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

- (a) the Commonwealth reasonably considers there is fraud, misleading or deceptive conduct on the part of the Administering Organisation, any Specified Personnel or a Collaborating or Partner Organisation 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 Commonwealth, acting reasonably, considers is capable of remedy, and has failed to rectify that breach within 30 days of receiving an earlier notice from the ARC requiring the breach to be remedied; or
- (d) the Administering Organisation commits any material breach of this Agreement which the Commonwealth, acting reasonably, considers is not capable of remedy.

35.4 If the ARC terminates this Agreement under clause 35.3:

- (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 Commonwealth 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.

35.5 Any amount notified to the Administering Organisation as payable under clause 35.2(c) or clause 35.4(c) is a debt due to the Commonwealth (without further proof of the debt being necessary), payable within 30 days of the date of the notice.

35.6 Subject to clause 21.4, after the expiration or termination of this Agreement the Administering Organisation retains ownership of all Assets purchased using the Funds.

36 Compliance with Law

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

36.2 The Administering Organisation acknowledges that:

- (a) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (b) it is aware that giving false or misleading information is a serious offence under the *Criminal Code*;
- (c) the publication or communication of any fact or document by a person which has come to her/his knowledge or into her/his possession or custody by virtue of the performance of this Agreement (other than a person to whom the Administering Organisation is authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;

- (d) in respect of data, including personal information, held in connection with this Agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Agreement is an offence under Part 10.7 of the Criminal Code which may attract a substantial penalty, including imprisonment;
- (e) it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (f) it is aware of its obligations under Part 4 of the Charter of United Nations Act 1945 and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002; and
- (g) it may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and it must comply with those obligations.

36.3 The Administering Organisation undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the meaning of section 79 of the *Crimes Act 1914* that prior to having access the officer, employee, agent and subcontractor will first be required by the Administering Organisation to provide the Administering Organisation with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

[Notes: Administering Organisations should note also that they may be subject to the provisions and applications of the Trade Practices Act 1974 and the Archives Act 1983. More information about the Charter of United Nations Act and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations is available at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html].

37 Liaison

37.1 All communications from the Administering Organisation to the ARC, or the Minister, 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
 (Linkage Learned Academies Special Projects)
 Australian Research Council

Phone: 02 6287 6600
 Fax: 02 6287 6638

Postal address
 PO Box 2702
 CANBERRA ACT 2601

Email: ncgp@arc.gov.au

Courier address
 1st Floor, 8 Brindabella Ct,
 Brindabella Business Park
 Canberra Airport ACT 2609

38 Applicable Law

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

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

SCHEDULE A

ARC Learned Academies Special Projects 2009

Administering Organisation:

Project ID	Specified Personnel	Role	Approved Project Title	Organisation(s)	Approved Funds (\$)		Special Conditions
					2009 (calendar)	2010 (calendar)	
LS08							

Total Approved Funding

1. LASP Chief Investigator (LCI)
2. Partner Investigator (PI)

Academy: Full Name: _____ Position: _____ Signature: _____ Date: _____

ARC: Full Name: _____ Position: _____ Signature: _____ Date: _____

SCHEDULE B

Research Special Conditions

- B1 *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 Project Leader of the Project must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- B2 *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.
- B3 *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.
- B4 *Genetic Manipulation:* If a Project involves the use of gene technology (i.e. any technique for the modification of genes or other genetic material either in vitro or on live organisms) or the use of a genetically modified organism (ie 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.
- B7 *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.
- B8 *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 LCI is not intending to do so within the two-year period, she/he should include the reasons in the Project's Final Report.

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

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

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