



**Australian Government**

**Australian Research Council**

# Funding Agreement

between the

**Commonwealth of Australia**

as represented by the

**Australian Research Council**

and

«**Organisation**»

regarding funding for

**Linkage Infrastructure Equipment and  
Facilities**

to commence in

**2006**

## Table of Contents

Parties and recitals	3
1 Definitions	3
2 Interpretation	6
3 Entire Agreement and Variation	6
4 Funding Period	7
5 Payment of Funding	7
6 Institutional Funding Contributions	7
7 Accuracy of Information/Malpractice	7
8 Use of the Funding: activities, facilities and types of work	8
9 Over-expenditure by the Institution	8
10 Multi-Institutional Agreements	8
11 Negation of Employment by the Commonwealth	8
12 Conduct of Research	9
13 Assets	9
14 Intellectual Property	9
15 Protection of Personal Information	10
16 Compliance with Commonwealth Policies	11
17 Acknowledgements, Publications and Publicity	11
18 Administration of the Funding	11
19 Audit and Monitoring	11
20 Access to Premises and Records	12
21 Reporting Requirements	13
22 Copyright in Reports	14
23 Recovery of Unspent Funds or Overpayments of Funds	14
24 Indemnity	15
25 Insurance	15
26 Termination	15
27 Compliance with Law	16
28 Liaison	16
29 Applicable Law	17
SCHEDULE A	
SCHEDULE B	

Parties and recitals

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

BETWEEN the

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

AND

«Institution» ('the **Organisation**')

#### **WHEREAS:**

- A The Commonwealth through the ARC operates a Program, being the *Linkage Infrastructure Equipment and Facilities* ('the **Program**').
- B The Commonwealth accepts that the Organisation is an eligible body for the purposes of the Program, and the Commonwealth may provide financial assistance to enable the 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 Organisation is required to be accountable for all Commonwealth Funding it receives under this Agreement.
- D The Commonwealth wishes to provide Funding under the Program to the Organisation for the purposes, and subject to the terms and conditions, set out in this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

### **1 Definitions**

1.1 In this Agreement, unless the contrary intention appears:

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

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

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

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

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

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

**‘Audited Financial Statement’** means the statement to be submitted by the Organisation by 30 June each year in accordance with subsection 58(1)(b) of the Act for funded projects;

**‘Chief Executive Officer’ or ‘CEO’** means the occupant of the position from time to time of the Chief Executive Officer of the Australian Research Council;

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

**‘Collaborating Organisation’** means an Eligible Organisation identified in an Approved Proposal as a contributor to the project but which does not take responsibility for administering the funding.

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

**‘End of Year Report’** means the report described in clause 21.2;

**‘Facility’** means the research infrastructure, equipment, or facility described in the Approved Proposal;

**‘Final Report’** means the report described in clause 21.3;

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

**‘Funding Rules’** means the Funding Rules for *‘Linkage Infrastructure Equipment and Facilities for funding commencing in 2006’* 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*;

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

**‘Organisational Funding Contributions’** mean the project funding contributed by the Organisation and all organisations collaborating in the **Project**, as described in clause 6;

**‘Intellectual Property’** includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

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

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

**‘Partner Organisation’** means the organisation not eligible to be a collaborating organisation such as a government research organisation or a business, and which is identified in an Approved Proposal as a contributor to the project.

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

**‘Program Coordinator’** means the occupant from time to time of the position of Program Coordinator (*Linkage Infrastructure Equipment and Facilities*) in the Australian Research Council, or any other person to whom the administration of the (*Linkage Infrastructure Equipment and Facilities*) Program may be allocated;

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

**‘Project Application’** or **‘Project Applications’** means the application or applications for a Project or Projects lodged with the ARC and given the application number or numbers specified in Schedule A;

**‘Project Budget’** means the budget specified in Schedule A;

**‘Research Office’** means that part of the administering Organisation responsible for liaison on Funding matters;

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

**‘Special Conditions’** means the conditions specified in Schedule A that govern the use of the Project Budget; and

**‘Specified Personnel’** for each project means the Chief Investigators and Partner Investigators named in Schedule A.

## 2 Interpretation

- 2.1 In this Agreement, unless the contrary intention appears:
- (a) words in the singular number include the plural and words in the plural number include the singular;
  - (b) words importing a gender include any other gender;
  - (c) words importing persons include a partnership and a body whether corporate or otherwise;
  - (d) clause headings, words capitalised or in bold format and notes in square brackets ('[ ]') are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference;
  - (e) all references to clauses are clauses in this Agreement;
  - (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
  - (g) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
  - (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.2 This Agreement is subject to the Act. If there is any conflict between this Agreement and the Act, then the Act prevails.

## 3 Entire Agreement and Variation

- 3.1 This Agreement, including Schedules, the Project Application 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 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:
- (a) the terms and conditions contained in the clauses of this Agreement;
  - (b) the Schedules;
  - (c) the *Linkage Infrastructure Equipment and Facilities Funding Rules for funding commencing in 2006*; and
  - (d) the Project Application.
- 3.3 The Organisation and the Commonwealth may agree to vary this Agreement. A variation to this Agreement must be in writing and signed by both parties.

## **4 Funding Period**

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

## **5 Payment of Funding**

- 5.1 Subject to parliamentary appropriation, the Commonwealth shall pay the Funds, in accordance with the Act, to the Organisation in the manner specified in Schedule A.
- 5.2 The Commonwealth will pay to the Organisation, by way of financial assistance in accordance with the Act, the amount set out in Schedule A, which is exclusive of GST, where 'GST' has the meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. For government-related entities (such as a government funded university or research institute) there will be no GST payable on the funding transaction between the entity and the ARC. Non-government-related entities, which are liable to pay GST on this transaction with the ARC, will receive a base-funding amount and an additional amount to cover the GST.
- 5.3 The duration of the funding for *Linkage Infrastructure Equipment and Facilities* Projects is indicative only of the intent of the Minister at the time of making the offer of Funding and is not binding on the Commonwealth. In the event that the Minister subsequently makes a determination under section 51 of the Act to continue the Funding, this Agreement will continue to apply to any Project granted financial assistance under such determination.
- 5.4 The Commonwealth shall have the right to unilaterally vary the amounts set out in the Approved Proposals.
- 5.5 Where the Commonwealth exercises its rights under clause 5.4 above, it shall inform the Organisation of the variation within thirty (30) days of that variation.
- 5.6 The Commonwealth will not provide additional funding for any project set out in Schedule A except where allowed for under clause 5.4 and 5.5 above.

## **6 Organisational Funding Contributions**

- 6.1 The Organisation and all organisations named as collaborating organisations in the Approved Proposal shall contribute pro-rata to the Project at the rate designated in the Project Application, including in cases where the amount of Funding provided to the Organisation for the Project varies from the amount requested in the Project Application.

## **7 Accuracy of Information/Malpractice**

- 7.1 The Organisation warrants that the information contained in all Project Applications from the Organisation is 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, eg describing a paper as being published when it has only been submitted.

## **8 Use of the Funding: activities, facilities and types of work**

- 8.1 The Organisation will ensure that each Project described in Schedule A is carried out in accordance with this Agreement, in a diligent and competent manner, subject to the provision of indicative funds. In addition, each Project will be conducted in accordance with the aims contained in the Project Application, or any approved revised budget.
- 8.2 The Organisation shall ensure that expenditure on each Project described in Schedule A is in accordance with the aims of the *Linkage Infrastructure Equipment and Facilities Funding Rules for funding commencing in 2006* and within the broad structure of the Project budget contained in the Project Application or any approved revised budget.
- 8.3 The Organisation shall not use the Funding:
- (a) for purposes specifically excluded in the Funding Rules;
  - (b) for purposes specifically excluded in this Agreement; or
  - (c) for purposes specified excluded in the Special Conditions.

## **9 Over-expenditure by the Organisation**

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

## **10 Multi-Organisational Agreements**

- 10.1 A project may not begin, nor grant funds be expended, until the administering organisation and each collaborating and partner organisation have entered into a written agreement. The agreement must cover the role of the Organisations in the project including:
- (a) contributions by the collaborating and partner organisations;
  - (b) intellectual property arrangements; and
  - (c) an undertaking by the organisations to abide by the Funding Agreement.

The administering organisation will retain the agreement, and make it available to the ARC if required.

- 10.2 Except in the case of subscriptions or other payments to major international facilities, all contributions, including from collaborating and partner organisations, are to be expended in the first 12 months from the commencement of funding of the Project.

## **11 Negation of Employment by the Commonwealth**

- 11.1 Specified Personnel and/or Organisations, shall not represent themselves as being employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

11.2 Specified Personnel and/or Organisations 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.

## **12 Conduct of Research**

12.1 Projects shall be conducted in accordance with any special conditions specified in this Agreement.

12.2 The Organisation shall ensure that a Project under this Agreement will not be permitted to proceed without appropriate ethical clearances having been obtained from the relevant committees and/or authorities referred to in Schedule B or prescribed by the Organisation's research rules. Responsibility for ensuring such clearances have been obtained remains with the Organisation.

## **13 Assets**

13.1 The Organisation shall establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring an item of equipment purchased with the Funds.

13.2 The Organisation shall ensure that any Specified Personnel shall have first priority in the use and operation of the equipment purchased with the Funding.

13.3 The ownership of any Asset purchased wholly or partly with the Funding shall be vested in the Organisation, located on its campus and listed in its assets register unless:

- (a) otherwise specified in the Project Application; or
- (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.

## **14 Intellectual Property**

14.1 Intellectual Property vests in the Organisation administering the Funding. The Organisation must adhere to an Intellectual Property policy, approved by the Organisation's governing body, which has as one of its aims the maximisation of benefits arising from research.

14.2 The Organisation must comply with the National Principles of Intellectual Property Management for Publicly Funded Research as amended from time to time and currently located at the following URL:  
[http://www.arc.gov.au/grant\\_programs/national\\_ip.htm](http://www.arc.gov.au/grant_programs/national_ip.htm).

14.3 The organisation shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property rights by the 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 organisation.

14.4 The indemnity referred to in clause 14.3 shall survive the expiration or termination of this Agreement.

## 15 Protection of Personal Information

15.1 The 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 apply to the types of activities the 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 Federal Privacy Commissioner or the CEO in relation to the management of personal information by the Organisation or breaches or alleged breaches of privacy;
- (d) to ensure that a 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 policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of personal information;
- (f) to comply with any reasonable directions of the Project Coordinator to observe any recommendations of the Federal Privacy Commissioner relating to acts or practices of the Organisation that the Federal Privacy Commissioner considers to be a breach of the obligations in paragraph (a) above;
- (g) to comply with any reasonable direction of the CEO to provide the Federal Privacy Commissioner access for the purpose of monitoring the 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 Organisation under this clause or any misuse of personal information by the Organisation or disclosure by the Organisation in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise;
- (i) to ensure that any records (as defined in the *Privacy Act 1988*) containing personal information provided to the Organisation by the Commonwealth or any other person pursuant to this Agreement is, at the expiration or earlier termination of the Agreement, either returned to the ARC or deleted or destroyed in the presence of a person duly authorised by the ARC to oversee such deletion or destruction; and
- (j) to the naming or other identification of the Organisation in reports by the Federal Privacy Commissioner.

15.2 The Organisation shall immediately notify the ARC if the Organisation becomes aware of a breach of its obligations under clause 15.1 by itself or a subcontractor.

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

## **16 Compliance with Commonwealth Policies**

16.1 The 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 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.

16.2 The 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 sub Agreement 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*.

16.3 The 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.

## **17 Acknowledgements, Publications and Publicity**

17.1 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.

17.2 When, at any time during or after completion of a Project, the Organisation publishes promotional material, books, articles, television or radio programs, newsletters or other literary or artistic works which relate to the Project, the Organisation shall acknowledge, at a prominent place in the publication, the support of the ARC in a form acceptable to the ARC.

17.3 Advice on acceptable forms of acknowledgement and use of the logo is provided on the ARC website at [http://www.arc.gov.au/publications/arc\\_logo.htm](http://www.arc.gov.au/publications/arc_logo.htm).

## **18 Administration of the Funding**

18.1 The Organisation must maintain reasonable records relating to the Funding in general and the Project(s) conducted with the Funding, in particular to ensure its compliance with this Agreement.

## **19 Audit and Monitoring**

19.1 The Organisation is responsible for monitoring the expenditure of Funding and certifying to the ARC that the Funding has been expended 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 Organisation shall take all action

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

19.2 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 Organisation. Persons nominated by the ARC to conduct these reviews are to be given full access by the Organisation, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funding in general.

## **20 Access to Premises and Records**

20.1 The 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 Organisation's employees,
  - (ii) premises occupied by the Organisation, and
  - (iii) material;
- (b) reasonable assistance to:
  - (i) inspect the performance of the Project,
  - (ii) to locate and inspect Material, and
  - (iii) make copies of Material and remove those copies relevant to the Project.

20.2 The access rights in clause 20.1 are subject to:

- (a) the provision of reasonable prior notice by the ARC; and
- (b) the Organisation's reasonable security procedures.

20.3 If a matter is being investigated which, in the opinion of the CEO of the ARC, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, clause 20.2 will not apply.

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

20.5 Nothing in clause 20.1 to 20.4 inclusive affects the obligation of each party to continue to perform its obligation under this Agreement unless otherwise agreed between them.

20.6 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 Organisation, may:

- (a) require the Organisation to provide records and information which are directly related to this Agreement;
- (b) have access to the premises of the Organisation for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the 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 Organisation.

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

## **21 Reporting Requirements**

21.1 The 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.

21.2 End of Year Report:

- (a) The Organisation shall submit an End of Year Report by 31 March in the year following the calendar year for which the Funding was awarded. The ARC will provide the Organisation with a proforma for this report;
- (b) The End of Year Report will contain information on all expenditure under the Approved Proposal, on a Project by Project basis, including:
  - (i) any unspent Funds to be recovered by the Commonwealth,
  - (ii) any unspent Funds that the 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 subsection 58(1) of the Act, Funds provided by the Commonwealth to the Organisation which are not spent during the year of the Funding period to which those funds were allocated may be carried over where approved by the Minister. The Organisation must request this approval in the End of Year Report.
- (d) Where a carry over of 75% or more of the Funding provided is requested, the Organisation must provide an End of Year Report. Separate written justification must be provided; and
- (e) Funds will be carried over for more than twelve months only in exceptional circumstances. Separate written justification must be provided in this instance.

21.3 Progress Report:

- (a) In the case of subscriptions or other payments to major international facilities, for those Projects funded for more than one year the Organisation shall ensure that all Chief Investigators provide Progress Reports in respect of each ongoing Project every twelve months, with the first report due twelve months after the commencement of funding, on a proforma which will be made available on the ARC's website.
- (b) The ARC will review the outcomes reported against the objectives of the Project as stated in the Project Application, or any approved revised budget, aims and research plan. Any Chief Investigator whose Progress Report is deemed inadequate or unsatisfactory will be contacted for further information.
- (c) If the ARC is not satisfied with the progress of the 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, the Funding will be terminated and all outstanding monies will be recovered by the ARC.
- (d) Unsatisfactory progress on the Project will be noted against any further

applications under any ARC scheme submitted by, or on behalf of the Chief Investigator(s) and will be taken into account in the assessment of those applications.

#### 21.4 Final Report:

- (a) The Organisation is required to submit a Final Report by 1 November of the year following the calendar year in which all ARC Funding and Collaborating and Partner Organisations' contributions have been expended.
- (b) If a Final Report is deemed inadequate, the Chief Investigator will be contacted for further information. If the ARC is not satisfied with the outcomes of the Project, this will be noted against any further Project Applications under any ARC scheme submitted by, or on behalf of, the Chief Investigator and will be taken into account in the assessment of those applications;
- (c) If the Final Report is not submitted on time this will be noted against any further Project Applications under any ARC program submitted by, or on behalf of the Chief Investigator and will be taken into account in the assessment of those applications; and
- (d) Applications under any ARC program submitted by, or on behalf of a Chief Investigator on a Project for which the Final Report is outstanding will be deemed ineligible.

#### 21.5 Audited Financial Statement:

- (a) In accordance with subsection 58(1)(b) of the Act, the Organisation shall submit an Audited Financial Statement by 30 June of the year following the calendar year for which the Funding was awarded; and
- (b) In completing the Audited Financial Statement, the Organisation must ensure that the amount shown in that statement as 'approved carry forward funds' is the same as the amount (if any) that the Organisation sought and approval was given to carry over in the End of Year Report.

## 22 Copyright in Reports

22.1 Copyright in all reports required by this Agreement will vest in the Organisation at the time of creation but the Organisation grants to the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence to use and reproduce and publish these reports on a non-profit basis anywhere in the world. The Commonwealth's licence is subject to the requirements of clause 22.2 below.

22.2 The Commonwealth warrants that, for a period of three years from the date of submission of the Final Report for the Project, seek the agreement of the Organisation before any information which is contained in any reports related to the Project, and which the Organisation indicates is confidential and should not be disclosed, is disclosed to any person other than an officer or a member of the ARC or the Minister.

## 23 Recovery of Unspent Funds or Overpayments of Funds

23.1 Any unspent Funds may be recovered by the Commonwealth under subsection 58(1)(c) of the Act. Any overpayment of Funding monies made to an Organisation may be recovered under subsection 58(1)(d) of the Act. The Commonwealth may

offset the unspent or overpaid Funds against the total of any further Funds paid to the Organisation.

## **24 Indemnity**

- 24.1 Subject to this Agreement, the Organisation shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Organisation, its employees, agents or subcontractors in connection with this Agreement.
- 24.2 The Organisation's liability to indemnify the Commonwealth under clause 24.1 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.
- 24.3 This clause shall survive the expiration or termination of this Agreement.

## **25 Insurance**

- 25.1 The Organisation shall effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in *Linkage Infrastructure Equipment and Facilities* Projects and, if requested, provide the Commonwealth with a copy of the relevant policies or when appropriate Certificate of Currency. The Organisation shall be responsible for effecting all insurances required under Worker's Compensation legislation and for taking all other action required as an employer.

## **26 Termination**

- 26.1 If the Organisation fails to comply with any of the obligations contained in this Agreement then the ARC may, in accordance with section 58 of the Act, terminate any or all of the projects and require the Organisation to return all or some of the Funds to the ARC.
- 26.2 The Organisation must terminate a Project:
- (a) where progress is not, in the opinion of the Responsible Officer, satisfactory;
  - (b) on the death, incapacity, resignation or withdrawal of the Personnel unless suitable alternative arrangements, satisfactory to the participating researchers and approved by the Minister, can be made by the Organisation for the continuance of the Funding; or
  - (c) where the parties have agreed to the termination of the Funding.
- 26.3 Upon termination of the Funding under clause 26.2 above:
- (a) the Organisation shall take all action necessary to minimise further expenditure under the Funding ; and

- (b) the Minister may, under section 58 of the Act, recover monies that have not been expended under the Funding.

## 27 Compliance with Law

27.1 The 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.

27.2 The 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 their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than a person to whom the 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.

27.3 The 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 Organisation to provide the Organisation with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

*Note:* 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*.

## 28 Liaison

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

Program Coordinator (*Linkage Infrastructure Equipment and Facilities*)  
Australian Research Council

*Postal Address*

GPO Box 2702  
CANBERRA ACT 2601

*Courier Address*

1st Floor, 8 Brindabella Circuit

Brindabella Business Park

CANBERRA AIRPORT ACT 2609

Phone: 02 6287 6600

Fax: 02 6287 6601

Email: [ncgp@arc.gov.au](mailto:ncgp@arc.gov.au)

## **29 Applicable Law**

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

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

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

In the Presence of: )  
 )  
 )  
..... ) .....  
inert name of witness above ) witness to sign above  
 )

**SIGNED** for and on behalf of )  
 )  
«Institution» )  
 )  
by ..... ) .....  
insert name of signatory above ) signatory to sign above  
 )  
the ..... )  
insert signatory's title above )  
 )  
of the said 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  
 )

# SCHEDULE A

# SCHEDULE B

## Research Special Conditions

- B1 *Importation of Experimental Organisms:* The Organisation must ensure that, before experimental organisms are imported into Australia for the purposes of a Project, they or the Chief Investigator of the Project must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- B2 *Research Involving Humans or Animals:* If any Project conducted by the Organisation involves research on or involving humans or animals, the Organisation shall ensure that the codes adopted for these purposes by the National Health and Medical Research Council are complied with and that the Project may not commence without clearance from the Organisation's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority outside of the Organisation.
- 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 Organisation shall dispose of the material in accordance with the Organisation's established safeguards.
- B4 *Genetic Manipulation:* If a Project involves the preparation and/or use of recombinant nucleic acids constructed *in vitro* from sources that do not ordinarily recombine genetic information, approval in writing by the Organisation's Biosafety Committee (or equivalent) or the Genetic Manipulation Advisory Committee (GMAC) must be obtained.
- B5 *Recombinant DNA techniques:* If a Project involves, or is concerned with the use of, recombinant DNA techniques, the Organisation shall ensure that the principles and guidelines established and approved from time to time by the Australian Government's Recombinant DNA Monitoring Committee are observed.
- B6 *Recombinant DNA techniques on animals or humans:* If a Project involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the Organisation shall ensure that the research has been approved by the relevant Ethics or Biosafety Committee (or equivalent) of the Organisation. The Organisation shall retain all Certificates relating to the above and will provide such evidence to the Executive Director if required to do so.
- B7 *Ionising Radiation:* If a Project involves the use of ionising radiation, the 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 Organisation shall retain all such licences and shall provide them to the Executive Director 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 Chief Investigator is not intending to do so within the two-year period, s/he should include the reasons in the Project's Final Report.