



**Australian Government**  
**Australian Research Council**

# Funding Agreement

between the

**Commonwealth of Australia**

as represented by the

**Australian Research Council**

and

**[Eligible Organisation Name]**

regarding funding for

**Linkage Infrastructure, Equipment and Facilities**

to commence in

**2010**

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## Parties and Recitals

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

between the

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

and

[Eligible Organisation Name] ('the Administering Organisation')

WHEREAS:

- A. The Commonwealth through the ARC operates the *Linkage Infrastructure, Equipment and Facilities 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, including the approved Funding elements, being those described in Schedule A;
- C. The Commonwealth is required by law to ensure the accountability of Funding and accordingly, the Administering Organisation is required to be accountable for all Commonwealth Funding it receives under this Agreement; and
- D. The Commonwealth wishes to provide Funding under the Scheme to the Administering Organisation for the purposes, and subject to the terms and conditions, set out in this Agreement.

IT IS HEREBY AGREED as follows:

### 1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

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

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

**Administering Organisation** means an Eligible Organisation which submits a Proposal for Funding under LIEF and which will receive and be responsible for the administration of the Funding if the proposed Project is approved;

**Approved Proposal** means a Proposal that has been approved for Funding by the Minister in accordance with the Act;

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

**ARC website** is <http://www.arc.gov.au/>;

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

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

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

**Chief Investigator** means a person named in the Proposal as Chief Investigator for a particular Project, or as otherwise approved by the ARC and includes any replacement person or persons approved by the Minister in accordance with Clause 15;

**Collaborating Organisation** means any Organisation, which is a contributor to a Project and includes any replacement organisation or organisations approved by the Minister 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;

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

**Construction Code** means the National Code of Practice for the Construction Industry 1997;

**Construction Industry Guidelines** means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, Revised September 2005, Reissued June 2006, published by the Department of Education, Employment and Workplace Relations, as amended, supplemented or replaced from time to time;

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

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

**End of Year Report** means the report described in clause 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 Period** means the approved period set out in Schedule A for that Project, or as otherwise approved in writing by the Minister;

**Funding Rules** means the *Linkage Infrastructure, Equipment and Facilities Funding Rules* for funding commencing in 2010;

**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 breeder's rights, 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;

**LIEF** means Linkage Infrastructure, Equipment and Facilities;

**LIEF Coordinator** means the occupant, from time to time, of the position of Scheme Coordinator LIEF in the ARC, or any other person to whom the administration of the ARC LIEF scheme may be allocated;

**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, or the Minister's delegate;

**Organisational Funding Contribution** means the cash and in-kind contribution for a Project provided by the Adminstrating Organisation and Collaborating Organisations in respect of a Project;

**Partner Investigator** means the 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 by the Minister in accordance with Clause 15;

**Partner Organisation** means any organisation, other than an Eligible Organisation, named in Schedule A as a contributor to a Project or as otherwise approved by the Minister and includes any replacement organisation or organisations approved by the Minister in accordance with Clause 11;

**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 as described in Schedule A, or as otherwise approved by the Minister for Funding under this Agreement, in accordance with Clause 16;

**Project Leader** means the first named Chief Investigator specified in Schedule A for a particular Project, or such person as otherwise approved by the Minister and includes any replacement person or persons 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;

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

**Research Office** means a business unit within an organisation responsible for liaison with the ARC on Proposals and/or Projects;

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

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

**Special Conditions** means the conditions specified in Schedules A and B, if any, that govern the use of the Funding; and

**Specified Personnel** means the Chief Investigator(s) and Partner Investigator(s) named in Schedule A to perform the Project or as otherwise approved by the Minister.

## **2. Interpretation**

2.1 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings, words capitalised or in bold or italic format and notes in square brackets (“[ ]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference;
- (e) all references to clauses are to clauses in this Agreement and all references to a Schedule refer to a Schedule to this Agreement;
- (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented; 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 to the extent of any inconsistency.

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

3.1 This Agreement, including Schedules, the Proposal for each Project and the Funding Rules, constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

3.2 Notwithstanding clause 3.1, the Minister may at any time impose other requirements or conditions in connection with any Funding covered by this Agreement as provided for under the Act. The Administering Organisation must as soon as possible, or as otherwise agreed in writing with the ARC, comply (or procure compliance) with any other Ministerial conditions or requirements notified by the ARC from time to time. In the event of any inconsistency between this Agreement and any such further requirements or conditions, the Administering Organisation will not be taken to have breached this Agreement where it has acted consistently with any further requirements or conditions notified under this clause.

3.3 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:

- (a) the terms and conditions contained in the clauses of the Agreement;
- (b) the Schedules;

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

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

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

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

- 5.1 Subject to the provisions of the Act, the terms of this Agreement and sufficient program Funding being available for the Scheme, the Commonwealth shall pay the Funds to the Administering Organisation for each Project in accordance with Schedule A.
- 5.2 All Funding for a Project is subject to the following conditions:
- (a) that the Project commence in accordance with Clause 12, or by any later date approved by the Minister under Clause 13;
  - (b) that the Chief Investigator identified as the Project Leader (or any replacement person approved by the Minister under clause 15.1) lead and co-ordinate the Project at all times during the Funding Period, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
  - (c) that the Administering Organisation conduct the Project substantially in accordance with the 'Proposal Description' contained in the Proposal or, in the event of any variation to the Project, in accordance with the description, aims and research plan as otherwise approved by the Minister;
  - (d) that the Administering Organisation spend all funds paid under this Agreement for each Project substantially in accordance with the 'Project Cost' and 'Budget Justification' detailed in the Proposal for that Project and any Special Conditions, or the budget as otherwise approved by the ARC and any conditions otherwise imposed by the Minister in accordance with the Act, and in accordance with the requirements of this Agreement and the Funding Rules;

- (e) that the Administering Organisation enter into (and maintain) an agreement with each Collaborating Organisation that meets the requirements of Clause 10;
- (f) that the total Organisational Funding Contribution for the Project satisfies the minimum requirements set out in this Agreement and the Funding Rules, unless otherwise approved by the Minister;
- (g) that the cash contributions from Collaborating Organisations are paid to the Administering Organisation by 30 October 2010, unless otherwise approved by the ARC;
- (h) that the Administering Organisation not receive any amount of Funding from the ARC for the Project in excess of that to which it is properly entitled, or which the Commonwealth is not required to pay, either under the Act or this Agreement;
- (i) that the Administering Organisation submit on time all reports required under this Agreement, in the form and with content satisfactory to the Commonwealth;
- (j) that progress of the Project is, in the opinion of the Chief Executive Officer, satisfactory;
- (k) that each Chief Investigator (or any replacement person or persons approved by the Minister under clause 15.1), at all times during her/his participation in a Project as a Chief Investigator, meet the criteria specified in clause 8.1 and 8.2 of the Funding Rules, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
- (l) that each Partner Investigator (or any replacement persons approved by the Minister under clause 15.1), at all times during her/his participation in a Project as a Partner Investigator, meet the criteria specified in clause 8.1 and 8.3 of the Funding Rules, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
- (m) that the ARC is advised in a timely manner of any and all conflicts of interest of parties involved in the Project which have the potential to influence or appear to influence the research and/or activities related to the Project;
- (n) 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 infrastructure, equipment and facilities and/or activities funded for Projects under this Agreement;
- (o) that there is no duplication of Commonwealth Funding for the infrastructure, equipment and facilities and/or activities funded for the Project(s) under this Agreement; and
- (p) that the Administering Organisation comply with any other requirements or conditions imposed by the Minister in connection with any Funding covered by this Agreement.

5.3 If the Administering Organisation does not meet any one or more of the conditions listed in clause 5.2 in respect of a Project, the Commonwealth may do any or all of the following:

- (a) not pay the Administering Organisation any further Funds for that Project;
- (b) by notice in writing to the Administering Organisation, recover all or some of the Funds paid under this Agreement for that Project, including all unspent Funds and any Funds not spent in accordance with this Agreement; or

- (c) vary the amount of Funding approved for that Project.
- 5.4 The Administering Organisation must pay to the Commonwealth the amount specified in any notice received under clause 5.3(b) within 30 days of the date of that notice.
- 5.5 The Commonwealth will pay to the Administering Organisation, by way of financial assistance in accordance with the Act, the approved amounts set out in Schedule A, which is net of any GST which may be imposed on the supply.
- 5.6 Unless otherwise indicated or required by Law, all consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply. If the Administering Organisation makes a taxable supply to the Commonwealth under this Agreement, the Commonwealth, on receipt of a tax invoice from the Administering Organisation or the issuing of a Recipient Created Tax Invoice by the Commonwealth, will pay without setoff an additional amount to the Administering Organisation equal to the GST imposed on the supply in question. No party may claim or retain from the other any amount under this Agreement for which the first party can obtain an input tax credit.
- 5.7 The Commonwealth shall have the right to unilaterally vary the Funding for any or all Projects.
- 5.8 Where the Commonwealth exercises its right under clause 5.3 or 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**

- 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.
- 6.2 If the Commonwealth considers that a Proposal for a Project, or any report provided under this Agreement contains incomplete, inaccurate or misleading information, the Commonwealth may do any or all of the following:
  - (a) not pay the Administering Organisation any further Funds for that Project;
  - (b) by notice in writing to the Administering Organisation, 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 will ensure that each Project described in Schedule A and in the Proposal, 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 Proposal, or any revised description, aims and research plan, which have been submitted by the Administering Organisation and approved by the Minister.
- 7.2 The Administering Organisation shall ensure that expenditure on each Project described in Schedule A is in accordance with the ‘Proposal Description’ contained in the

corresponding Proposal and within the broad structure of the proposed 'Project Cost' detailed in the Proposal or any revised budget, aims and research plan submitted by the Administering Organisation which has been approved by the Minister.

- 7.3 The Administering Organisation shall not use the Funding:
- (a) for purposes specifically excluded in the Funding Rules; or
  - (b) for purposes specifically excluded in this Agreement, for example clause 7.6.
- 7.4 The Administering Organisation must ensure that investigators listed in Schedule A (or any replacement person(s) approved by the Minister under clause 15.1) have adequate time to carry out each Project and must provide the basic facilities required for each Project described in Schedule A. Basic facilities include but are not limited to:
- (a) accommodation, e.g. laboratory and office, suitably equipped and furnished in standard ways;
  - (b) access to workshop services, 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, Projects involving non-capital work aspects for library or research information infrastructure may include salaries and minor pieces of equipment to build an integrated facility if provision was made for those costs in the Proposal and if the entire Project is a cohesive attempt to provide infrastructure support for research.
- 7.6 As set out in the Funding Rules, Funds may not be used for:
- (a) construction or refurbishment of general purpose buildings;
  - (b) rental of accommodation;
  - (c) operational costs, including salaries of staff engaged in teaching and research, outreach, community relations, and in research only (including the cost of 'buying time' to free such staff to do more research) except, at the ARC's discretion, where subscriptions for major international facilities may cover such costs; or where membership of a major international facility incurs an obligation that cannot be funded by other means;
  - (d) salaries of staff supporting research at the organisational level (for example, Deputy or Pro Vice-Chancellor Research, Research Grants Officer);
  - (e) stipends of postgraduate research students;
  - (f) travel costs directly associated with individual Projects with the exception of travel costs to allow participation in a major international facility and/or consortia; and
  - (g) minor equipment that should be normally funded by Eligible Organisations (such as personal computers), unless otherwise approved by the ARC.

- 7.7 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.
- 7.8 If any other Commonwealth Funding is approved for any infrastructure, equipment, or facilities, or 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.
- 7.9 The Administering Organisation must provide the resources to undertake each Project as specified in the Proposal, unless otherwise approved by the ARC.

## **8. Use of the Funding: Provision of Salaries**

- 8.1 Subject to Clause 7, the Funding may be used to provide salary support for Specified Personnel, where provision for such was included in the Proposal in accordance with the Funding Rules and approved by the Minister.
- 8.2 Subject to Clause 7, funds may be used by the Administering Organisation to employ Personnel other than the Specified Personnel where provision for such was included in the Proposal and approved by the Minister. They may be employed full-time or part-time, as required.
- 8.3 In respect of Personnel other than Specified Personnel, unless the Minister otherwise determines:
- (a) in recruiting Personnel for a Project, the Administering Organisation shall follow its normal recruitment procedures;
  - (b) the provision of salaries, recreation leave, sick leave and other conditions of employment for Personnel undertaking a Project shall be those of the Administering Organisation; and
  - (c) the on-costs provisions beyond the ARC contribution of 28% remain the responsibility of the Administering Organisation, e.g. extended periods of leave, severance pay etc shall not be provided from Funding.
- 8.4 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 Minister, accept any remuneration whatsoever from any source other than the Administering Organisation in respect of work performed on the Project.

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

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

## 10. Multi-Institutional Agreements

- 10.1 The Administering Organisation must not allow a Project to commence, nor Funding to be expended, until it has entered into a written agreement in respect of a Project with each Collaborating Organisation for that Project in accordance with this Clause 10 and the Funding Rules. The Administering Organisation must reach agreement with each Collaborating Organisation and enter into a written 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 The Administering Organisation must, prior to expending Funding for a Project, execute a written agreement with the Collaborating Organisations which accords with the arrangements outlined in the Proposal and includes provisions that:
- (a) outline the role and contribution of the Administering Organisation and the Collaborating Organisation(s);
  - (b) outline the location of the infrastructure, equipment or facilities;
  - (c) outline the terms and conditions of access for both Specified Personnel and users of the infrastructure, equipment and facilities named in the Proposal;
  - (d) outline the details of the arrangements and costs of managing the infrastructure, equipment or facilities (including any recurrent expenditure) and how any costs will be distributed across the users of the infrastructure, equipment or facilities;
  - (e) describe the Intellectual Property arrangements that apply to the outcome or results generated by the Project. Such arrangements must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research*; and
  - (f) do not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement.
- 10.3 A written 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 Minister, the Administering Organisation must ensure that it and each Collaborating Organisation provides the Organisational Funding Contributions as set out in the Proposal for each Project. However, if the Funding for a Project is less than the amount requested in the Proposal for that Project, the Organisational Funding Contributions may be reduced by the same proportion. In all cases, the Organisational Funding Contributions must satisfy the requirements of this Agreement and the Funding Rules.
- 10.5 Except in the case of subscriptions or other payments to major international facilities, or as otherwise approved by the ARC, all contributions, including from Collaborating Organisations are to be expended within 12 months of the commencement of Funding for the Project.
- 10.6 The Administering Organisation will retain the written agreements, entered into under this Clause 10, and make them available to the ARC if required.

## 11. Default of Collaborating Organisation

- 11.1 If the Administering Organisation receives notice that a Collaborating Organisation wishes to withdraw its support for a Project, or reasonably believes that a Collaborating Organisation is in default of any of its obligations under a written agreement entered into

between that organisation and the Administering Organisation under Clause 10, the Administering Organisation must immediately notify the ARC and may attempt to find a replacement Collaborating Organisation for the Project, or modify the remaining Collaborating 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 Organisation or modify organisational 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 Organisation or from the date on which the Administering Organisation became aware that the Collaborating 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 Minister's approval of a replacement Collaborating Organisation or modified arrangements for the remaining Collaborating Organisations which comply with the requirements for the Organisational Funding Contribution specified in this Agreement and the Funding Rules;
  - (b) the replacement or remaining Collaborating Organisations must provide a written undertaking to provide (in total) a replacement contribution equivalent to that which would have been provided by the Collaborating Organisation in default and which satisfies the requirements of this Agreement and the Funding Rules;
  - (c) the Administering Organisation and the replacement Collaborating Organisation or remaining organisations must enter into a written agreement, or amend any existing agreement (as appropriate) consistent with Clause 10 to reflect the revised Organisational Funding Contribution arrangements.
- 11.3 The Minister may approve a replacement Collaborating Organisation if the replacement organisation meets the eligibility criteria as specified in the Funding Rules.
- 11.4 If the Minister approves a replacement Collaborating Organisation or modified Organisational Funding Contribution arrangements proposed under clause 11.2, the Administering Organisation must provide confirmation to the ARC within three months of the date of approval by the Minister that the new or revised agreements have been effected.
- 11.5 To avoid doubt, the Funding condition set out in clause 5.2(f) will not have been satisfied if:
- (a) the Minister does not approve any proposed replacement Collaborating Organisation or the proposed modified Collaborating Organisation arrangements proposed under clause 11.2; or
  - (b) the Administering Organisation does not attempt to find any replacement Collaborating Organisation or modify existing Collaborating contribution arrangements in accordance with clause 11.2.

## **12. Commencement of Project**

Subject to Clause 13, the Project must commence by no later than 1 May 2010, unless the commencement has been deferred to a later date approved by the Minister.

### **13. Deferment of Commencement of Project**

- 13.1 If the Administering Organisation wishes to defer commencement of a Project, a written request justifying the requested deferral in terms of special circumstances, must be made to the LIEF Coordinator, through the Administering Organisation's Research Office, prior to the applicable commencement date specified in Clause 12.
- 13.2 The Administering Organisation must not defer commencement of a Project beyond 1 May 2010, unless the Administering Organisation has received written approval from the Minister.
- 13.3 Other than in exceptional circumstances, the Minister will not approve the commencement of a Project beyond 30 October 2010. The ARC may recover Funding for any Project which has not commenced by 30 October 2010.

### **14. Specified Personnel**

- 14.1 The Administering Organisation shall ensure that the Specified Personnel conduct the Project in a diligent and competent manner and comply with this Agreement.
- 14.2 The Administering Organisation shall provide each Chief Investigator and Partner Investigator with a copy of this Funding Agreement within a reasonable time after the commencement of the Funding.
- 14.3 The Administering Organisation warrants that it has made proper inquiries of the Specified Personnel in relation to their eligibility to perform the Project.
- 14.4 The Administering Organisation shall ensure that, unless otherwise approved by the Commonwealth, all Chief Investigators named in Schedule A or subsequently approved to perform any Project meet the criteria specified in clause 8.1 and 8.2 of the Funding Rules for the full term of their participation in the Project as a Chief Investigator.
- 14.5 The Administering Organisation shall ensure that, unless otherwise approved by the Minister, all Partner Investigators named in Schedule A or subsequently approved to perform any Project meet the criteria specified in clause 8.1 and 8.3 of the Funding Rules for the full term of their participation in the Project as a Partner Investigator.
- 14.6 The Administering Organisation shall ensure that each Chief Investigator and Partner Investigator, 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 Chief Investigator or Partner Investigator is at any time during the term of a Project no longer able to continue the Project, the Project may be continued under one or more other Chief Investigators or Partner Investigators provided that:
- (a) there is at least one Chief Investigator undertaking the Project;
  - (b) all replacement or additional Chief Investigators or Partner Investigators ('Replacement Personnel') meet the eligibility criteria, as specified in the Funding Rules for the particular role they are to perform, for the periods for which they are to perform that role;
  - (c) approval is sought from the LIEF Coordinator for the change in Specified Personnel and 'Replacement Personnel':
    - i. by completing and forwarding a "Variation of Funding Agreement" form

- available on the ARC Web Site and attaching the documents specified as required including the 'Replacement Personnel's curriculum vitae; and
- ii. within 3 months of the date that the Specified Personnel cease working on the Project;
- (d) If 'Replacement Personnel' are proposed for a Project, the Administering Organisation must obtain certifications from the 'Replacement 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 The Administering Organisation must promptly notify the LIEF Coordinator of any Specified Personnel on the Project who leaves an Organisation specified in the Proposal at any time during the Funding Period for that Project.
- 16.2 If the Specified Personnel who is moving is the Project Leader, then the Administering Organisation may seek the Minister's approval for the transfer of the Project to a new Eligible Organisation by submitting a "Variation of Funding Agreement" request outlining arrangements for the continuation of the Project and the continued administration of the Funding.
- 16.3 If the proposed arrangements include a transfer of the Funding from the Administering Organisation to another Eligible Organisation the ('Recipient Eligible Organisation'), the Minister shall have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as the Minister considers appropriate. The request must provide evidence that the following parties agree to the transfer:
- (a) the Administering Organisation;
  - (b) the Collaborating Organisation(s); and
  - (c) the 'Recipient Eligible Organisation'.
- 16.4 When the ARC receives a Proposal requesting the transfer of Funding it may seek the Minister's approval for the transfer of unspent Funds and indicative Funding for the Project and any Assets as outlined in clause 21.3 to the 'Recipient Eligible Organisation'.
- 16.5 If Ministerial approval is granted in such circumstances to transfer the Funding (and any Assets) to the 'Recipient Eligible Organisation':
- (a) the Administering Organisation must:
    - i. agree to any variation or termination (as applicable) of this Agreement proposed by the ARC at the Minister's direction, to give effect to the changed Funding arrangements;
    - ii. provide to the ARC, in writing, the amount of all unspent Funds for the Project and pay the ARC such unspent Funds. The ARC at the Minister's direction may then provide the unspent Funds to the 'Recipient Eligible Organisation';
    - iii. report expenditure of Funding for the Project prior to the transfer in its End of Year Report and identify the transfer in the relevant column; and
    - iv. comply with any other directions reasonably given by the Minister to give effect to the transfer;

- (b) the 'Recipient Eligible Organisation' will be required to:
- i. enter into a new, or vary an existing, Funding Agreement it has with the ARC to give effect to the changed Funding arrangements for the Project;
  - ii. report expenditure of Funding for the Project subsequent to the transfer in its End of Year Report and identify the transfer in the relevant column; and
  - iii. enter into a written agreement with the Project's Collaborating Organisations of the type set out in clauses 10.1 and 10.2.
- 16.6 If a Chief Investigator 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 ARC.
- 16.7 If Funding for a project which was previously administered by another Eligible Organisation is to be transferred to a new Administering Organisation, party to this agreement, the new Administering Organisation must ensure that the project which is being transferred, including any transferring Specified Personnel performing the project, satisfy the eligibility and accountability requirements of the Funding Rules and terms and conditions of this Agreement.
- 16.8 Relocation expenses will not be paid on the transfer of any Specified Personnel from the Administering Organisation to the 'Recipient Eligible Organisation'.
- 16.9 The Project and any infrastructure, equipment or facilities purchased with either the Funding or the Project's Organisational Funding Contributions must not be transferred to the 'Recipient Eligible Organisation' until Ministerial approval for the transfer of the Funding is granted.

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

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

## **18. Conduct of Research**

- 18.1 Projects shall be conducted in accordance with the approved Proposal subject to any Special Conditions specified in this Agreement and with any other requirements or conditions imposed by the Minister in connection with any Funding covered by this Agreement.
- 18.2 The Administering Organisation shall ensure that any Project under this Agreement will not proceed without appropriate ethical clearances from the relevant committees and/or authorities referred to in Schedule B or prescribed by the Administering Organisation's research rules. Responsibility for ensuring that such clearances have been obtained remains with the Administering Organisation.
- 18.3 All parties involved in or associated with a Proposal and/or a Project are required to disclose to the ARC, affiliations with, or financial involvement in, any organisation which has, or is likely to have, a direct interest in the subject matter or outputs of the

Project. Such parties are required to disclose to the ARC at the time of submission of the Proposal, and in reporting on a Project, any Conflict of Interest which has the potential to influence, or appear to influence, the research and activities, publications and media reports, or requests for Funding related to the Proposal/Project.

- 18.4 If the Administering Organisation becomes aware of any such Conflict of Interest (including the type described in clause 18.3), relating to any party involved in a Project, the Administering Organisation must notify the ARC immediately of the nature and details of the Conflict of Interest. If any Specified Personnel becomes aware of any such Conflict of Interest relating to any party involved in a Project, they must notify the Administering Organisation, which in turn, must notify the ARC immediately.
- 18.5 If the Administering Organisation or any Specified Personnel has failed to disclose a Conflict of Interest, the Commonwealth may do any of the things provided for in clause 5.3 (a), (b) or (c).

## **19. 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, the Administering Organisation shall ensure that all Specified Personnel (Chief Investigators and Partner Investigators):
- (a) take reasonable care of, and safely store, any data or specimens or samples collected during, or resulting from, the conduct of their Project;
  - (b) make arrangements acceptable to the ARC for lodgement with an appropriate museum or archive in Australia of data or specimens or samples collected during, or resulting from, their Project; and
  - (c) include details of the lodgement or reasons for non-lodgement in the Progress Reports (if applicable) 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 must ensure that, for the term of this Agreement, if requested by the ARC, Chief Investigators agree to assess up to twenty new proposals for ARC Funding per annum for each year of Funding.
- 20.2 If the ARC determines that a Chief Investigator has failed to meet the obligation to assess proposals assigned by the ARC for assessment, the ARC may notify the Administering Organisation in writing of that failure.

20.3 If a Chief Investigator does not undertake assessment of the assigned proposals within a period specified by the ARC of the notice referred to in clause 20.2 above, the Administering Organisation will be considered to be in breach of this Agreement and Funding for the relevant Projects on which the Chief Investigator is listed as Specified Personnel under this Agreement may be terminated.

## **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 items of equipment purchased with the Funds.

21.3 Unless otherwise approved by the ARC, the ownership of any Asset purchased wholly or partly with the Funding shall be vested in the Administering Organisation, located on its campus and listed in its assets register unless:

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

## **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 will indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement (or alleged infringement) of Intellectual Property rights by the Administering Organisation, its employees, agents or subcontractors in the course of, or incidental to, 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 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 the Project or in connection with this Agreement:
- (a) to comply with the Information Privacy Principles set out in Section 14 of the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use and disclosure of personal information to the extent that the content of those principles applies to the types of activity the Administering Organisation is undertaking under this Agreement, as if it were a record-keeper as defined in the *Privacy Act 1988*;
  - (b) not to transfer personal information held in connection with this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
  - (c) to co-operate with any reasonable demands or inquiries made by the Privacy Commissioner or the CEO in relation to the management of personal information by the Administering Organisation or breaches or alleged breaches of privacy;
  - (d) to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the *Privacy Act 1988*) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph (a) above;
  - (e) to comply with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of personal information;
  - (f) to comply with any reasonable direction of the CEO to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Administering Organisation that the 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 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 shall 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 ARC agrees not to disclose any Confidential Information of the Administering Organisation, without the Administering Organisation's consent.

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

- (a) to its officers, employees, agents, external professional advisers or contractors solely to comply with obligations, or to exercise rights, under this Agreement;
- (b) to its internal management personnel solely to enable effective management or auditing of this Agreement or the National Competitive Grants Program or the Scheme;
- (c) for a purpose directly related to the enforcement or investigation of a possible breach of any Commonwealth, State, Territory or local law;
- (d) to the Minister, or in response to a demand by a House or a Committee of the Commonwealth Parliament;
- (e) within the ARC, the Department or another government agency or authority, where this serves the ARC's, the Department's or the Commonwealth's legitimate interests;
- (f) as required or permitted by any other law, or an express provision of this Agreement, to be disclosed; or
- (g) that is in the public domain other than due to a breach of this Clause 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 information which is contained in any reports related to the Project, and which the Administering Organisation has indicated is confidential and should not be disclosed, is disclosed to any person other than an officer, employee, agent or member of the ARC or the Minister. If disclosure is required to other persons, the Commonwealth will discuss the intended terms of disclosure with the Administering Organisation.

## **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 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.

25.3 The Administering Organisation shall comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and shall not enter into a subcontract with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

- 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.
- 25.5 If the Funding is to be applied to construction and building activity which is subject to the financial thresholds specified in the Construction Industry Guidelines:
- (a) the Administering Organisation must:
    - i. comply with the Construction Code and the Construction Industry Guidelines;
    - ii. maintain adequate records of the compliance with the Construction Code and the Construction Industry Guidelines by it and its employees, agents, contractors, subcontractors, suppliers and consultants who perform work in relation to the Project; and
    - iii. permit the ARC and those authorised by the ARC full access to its premises, records and infrastructure, equipment and facilities as is necessary to allow validation of progress in complying with the Construction Code and the Industry Guidelines;
  - (b) the ARC and those authorised by it may publish or otherwise disclose information in relation to compliance with the Construction Code and the Industry Guidelines by the Administering Organisation and its employees, agents, contractors, subcontractors, suppliers and consultants who perform work in relation to the Project.

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

- 26.1 Subject to commercial sensitivities and 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 publishes promotional material, books, articles, television or radio programs, newsletters or other literary or artistic works which relate to the Project, the Administering Organisation shall acknowledge, at a prominent place in the publication, the support of the ARC in a form acceptable to the ARC. Advice of acceptable forms of acknowledgement and use of the logo is provided on the ARC 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 Project(s) conducted with the Funding, in particular to verify its compliance with this Agreement.
- 27.2 Records maintained under clause 27.1 must be retained by the Administering Organisation for each Project for a period of no less than 7 years after whichever is the later of:
- (a) the final payment of Funds by the ARC for the Project; or
  - (b) the final approved carry over of Funds for the Project.

## **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 of the Administering Organisation, the Funding is not being expended in accordance with this Agreement, the Administering Organisation shall take all action necessary to minimise further expenditure in relation to the Project and inform the ARC immediately.
- 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 and are not misleading. The CEO or persons authorised in writing by the CEO 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 LIEF Coordinator, or a person nominated by the LIEF Coordinator, as reasonably required by the LIEF Coordinator;
  - (b) comply with all reasonable requests, directions, or monitoring requirements received from the LIEF 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 shall, at all reasonable times, give to the CEO or any person authorised in writing by the CEO:
- (a) unhindered access to:
    - i. the Administering Organisation's employees;
    - ii. premises occupied by the Administering Organisation; and
    - iii. Material; and
  - (b) reasonable assistance to:
    - i. inspect the performance of any or all Projects;
    - ii. locate and inspect Material relevant to any Project or the Administering Organisation's compliance with this Agreement or the Scheme; and
    - iii. make copies of any such Material and remove those copies and use them for any purpose connected with this Agreement or the Scheme.
- 29.2 The access rights in clause 29.1 above are subject to:
- (a) the provision of reasonable prior notice by the ARC; and
  - (b) 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 shall 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 shall submit an End of Year Report by 31 March in the year following each calendar year for which the Funding was awarded. The ARC will provide the Administering Organisation with a form for this report.
- (b) The End of Year Report will contain information on all expenditure for that year under the Approved Proposal, on a Project-by-Project basis, including:
  - i. any unspent Funds to be recovered by the Commonwealth;
  - ii. any unspent Funds that the Administering Organisation is seeking to have carried over into the next year; 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 each year of the Funding Period to which those funds were allocated may be carried over where approved by the Minister. The Administering Organisation must request this approval in the End of Year Report. If the Administering Organisation wishes any Funds to be carried over from year to the next year, the Administering Organisation must request this approval in the End of Year Report on the calendar year in which those Funds were initially paid.

- (d) Where a carry over is requested for 75% or more of the Funds allocated for a calendar year (excluding any Funds carried over from the previous calendar year), separate written justification must be provided.
- (e) Funds may be carried over more than twelve months only in exceptional circumstances and subject to approval by the Minister. Separate written justification must be provided in this instance.

### 30.3 ***Progress Report***

- (a) Unless otherwise approved by the ARC, the Administering Organisation shall ensure that Project Leaders provide Progress Reports in respect of each ongoing Project by 31 January of each year, except in the first year of Funding, on a form which will be made available on the ARC Web Site.
- (b) The ARC may review the outcomes reported against the objectives of the Project as stated in the Proposal, or any approved revised budget, aims and research plan. Any Chief Investigator who was involved in a Project for which a Progress Report was deemed inadequate or unsatisfactory may be contacted for further information.
- (c) If the ARC is not satisfied with the progress of any Project, further payment of Funds will not be made until satisfactory progress has been made on the Project. If satisfactory progress is still not achieved within a reasonable period of time, the Funding may be terminated and all outstanding monies will be recovered by the ARC.
- (d) Unsatisfactory progress on any Project may be noted against any further proposals under any ARC Scheme submitted by, or on behalf of, the Chief Investigator 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 is required to submit a Final Report by 1 November of the year following the calendar year in which all ARC Funding and Organisational Funding Contributions have been expended. 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 Proposal or any approved revised budget, aims and research plan.
- (b) If a Final Report is considered by the ARC to be inadequate, the Chief Investigators who were involved in the Project may be contacted for further information. If the ARC is not satisfied with the outcomes of the Project, this may be noted against any further proposals under any ARC Scheme submitted by, or on behalf of, the Chief Investigators and may be taken into account in the assessment of those proposals.
- (c) If the Final Report is not submitted on time this may be noted against any further proposals under any ARC Scheme submitted by, or on behalf of, the Chief Investigators and may be taken into account in the assessment of those proposals.
- (d) Proposals submitted under any ARC scheme by, or on behalf of any Chief Investigator 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 shall submit an Audited Financial Statement by 30 June for each year following each calendar year for which the Funding was awarded.

- (b) In completing the Audited Financial Statement, the Administering Organisation must ensure that the amount shown in that statement as 'approved carry forward funds' is the same as the amount (if any) for which approval was given by the ARC to carry over in the End of Year Report.

30.6 This clause 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 as required under Section 30, and publish it on a non-profit basis where the use, reproduction or publication of the material is authorised or required by law or 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.
- 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 ARC 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 Overpayment 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 will indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person, where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the Administering Organisation, its employees, agents or subcontractors in connection with this Agreement.

- 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 termination of this Agreement.

## **34. Insurance**

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 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 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. Dispute Resolution**

35.1 The Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement until the procedure provided by this Clause 35 has been followed.

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

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

35.3 This Clause 35 does not apply to action that the Commonwealth takes, or purports to take, under Clause 5, 32 or 36 or where a Party commences legal proceedings for urgent interlocutory relief. (Clause 5 relates to payment of funds, Clause 32 relates to recovery of unspent funds or over-allocated funds, Clause 36 relates to termination.)

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

## **36. Termination of the Agreement**

### **36.1 *Termination of Funding for a Project***

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

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

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

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

### **36.3 *Termination of Agreement***

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

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

36.4 If the Minister terminates this Agreement under clause 36.3:

- (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 ARC will immediately stop payment of all Funding under this Agreement and may recover from the Administering Organisation (by notice in writing) any unspent Funds as at the date of termination and any Funds not spent in accordance with this Agreement.
- 36.5 Any amount notified to the Administering Organisation as payable under clause 36.4(c) is a debt due to the ARC (without further proof of the debt being necessary), payable within 30 days of the date of the notice.
- 36.6 Subject to clause 21.3, after the expiration or termination of this Agreement the Administering Organisation retains ownership of all Assets purchased using the Funds.

### **37. Compliance with Law**

- 37.1 The Administering Organisation shall, in carrying out this Agreement, comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority.
- 37.2 The Administering Organisation acknowledges that:
- (a) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
  - (b) it is aware that giving false or misleading information is a serious offence under the *Criminal Code*;
  - (c) the publication or communication of any fact or document by a person which has come to her/his knowledge or into her/his possession or custody by virtue of the performance of this Agreement (other than a person to whom the Administering Organisation is authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
  - (d) in respect of data, including personal information, held in connection with this Agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Agreement is an offence under Part VIA of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment; and
  - (e) it is aware of the provisions of Section 79 of the *Crimes Act 1914* relating to official secrets;
  - (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.
- 37.3 The Administering Organisation undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the

meaning of Section 79 of the *Crimes Act 1914* that prior to having access the officer, employee, agent and subcontractor will first be required by the Administering Organisation to provide the Administering Organisation with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

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

### **38. Liaison**

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

LIEF Coordinator  
Australian Research Council

Phone: 02 6287 6600  
Fax: 02 6287 6638

*Postal address*

GPO Box 2702  
CANBERRA ACT 2601

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

*Courier Address*

1st Floor  
8 Brindabella Circuit  
Brindabella Business Park  
CANBERRA AIRPORT ACT 2609

### **39. Applicable Law**

- 39.1 This Agreement is governed by and is to be construed in accordance with the law in force in the Australian Capital Territory.
- 39.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**Schedule A**

## 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 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 other Animals:* If any Project conducted by the Administering Organisation involves research on or involving humans or other animals, the Administering 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 Administering Organisation's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority outside of the Administering 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 Administering Organisation shall dispose of the material in accordance with the Administering Organisation's established safeguards.
- B4 *Genetic Modified Organism:* If a Project involves the use of gene technology (ie. any technique for the modification of genes or other genetic material either in vitro or on live organisms) or the use of a genetically modified organism (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) which is registered under the Gene Technology Act 2000, then before the proposed research commences, the Administering Organisation must ensure that the proposed work is assessed by an Institutional Biosafety Committee and/or licenced by the Gene Technology Regulator before commencement of the Project. The Administering Organisation must retain all certificates relating to the above and will provide evidence to the LIEF Coordinator if required to do so. The Administering Organisation must be accredited with the Office of the Gene Technology Regulator.
- B5 *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 shall retain all such licences and shall provide them to the LIEF Coordinator if required to do so.
- B6 *Social Science Data Sets:* Any digital data arising from a Project involving research relating to the social sciences should be lodged with the Australian Social Science Data Archive (ASSDA) for secondary use by other investigators. This should normally be done within two years of the conclusion of any fieldwork relating to the Project research. If a Chief Investigator is not intending to do so within the two-year period, he or she 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 )  
«Administering Organisation» )  
 )  
 )  
by ..... ) .....  
insert name of signatory above ) signatory to sign above  
 )  
the ..... )  
insert signatory's title above )  
 )  
of the said Administering Organisation who, by )  
signing, certifies that he/she has the authority to sign )

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