



Australian Government

Australian Research Council

Funding Agreement

between the

Commonwealth of Australia

as represented by the

Australian Research Council

and

XXXXXX

regarding funding for
Linkage International Projects
to commence in
2006 Round 11

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Parties & Recitals

THIS AGREEMENT is made on the day of

between the

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

And

XXXX ('the Organisation')

WHEREAS:

- A The Commonwealth through the ARC operates a Program, including the *Linkage International* Scheme.
- B The Commonwealth accepts that the Organisation is an eligible body for the purposes of the Scheme, 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 Scheme 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 the 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 Ferdinand von Mueller Fellowship**' means a Fellowship awarded under the International Research Fellowship Agreement signed between the Alexander von Humboldt-Stiftung (AvH) and the ARC;

'**ARC International Fellow**' means the person named in the Project application other than Australia-Israel Fellows, including Australian Fellows working in overseas institutions and overseas Fellows working in Australian organisations or Fellows offered under bilateral agreement with France, Germany and the Republic of Korea (South Korea);

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

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

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

‘Australia-Israel Fellow’ means the person named in the Project application as an Australia-Israel Fellow;

‘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;

‘Commonwealth’ means the Commonwealth of Australia;

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

‘Fellow’ means the person named in the Project Application as ARC International Fellow (AIF) or Australia-Israel Fellow (ARCIF) for a particular project;

‘Final Report’ means the report described in Clause 28.4;

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

‘Funding Rules’ means the *Linkage International* Funding Rules for ARC International Fellowships commencing in 2006 and Awards submitted in 2005 and includes the Instructions to Applicants that form part of the Funding Rules;

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

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

‘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;

‘Organisation’ means the higher education organisation, museum or herbarium approved by the Minister under Section 51 of the Act as the body responsible for administering the Funding;

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

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

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

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

‘Project’ or ‘Projects’ means the Project or Projects (including Fellowships) described 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 Organisation responsible for liaison with the ARC on Funding matters;

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

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

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

‘Specified Personnel’ means the Chief Investigators, Partner Investigators, Overseas Investigators and ARC International Fellows and Australia-Israel Fellows named for each Project detailed in the Approved Proposal and named in Schedule A to perform the Project.

2 Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) Clause headings, words capitalised or in bold 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;
- (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, is a reference to that statute or other legislation as amended;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2.2 This Agreement operates subject to the Act. If there is any conflict between this Agreement and the Act, 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 Funding Rules; and
- (d) the Project Application.

3.3 The Organisation and the Commonwealth may agree to vary this Agreement. Any 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 and the provisions of the act, the Commonwealth shall pay the Funds, in accordance with the Act, to the Organisation as specified in the Schedule A. Chief Investigators, including Fellows, take intellectual responsibility for the Project, its conception, any strategic decisions called for in its pursuit, and communication of results. Funding is awarded on the basis that the researcher identified as the first-named Chief Investigator or Fellow leads and co-ordinates the Project.

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 International* Projects, including Fellowships, 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, including Fellowships, granted financial assistance under such a determination.

5.4 The Commonwealth shall have the right to unilaterally vary the amounts set out in the Approved Proposal.

5.5 The ARC notional salary rates for Fellowships as set out in Schedule B are applicable. In the event that the Minister makes a determination under Section 51 of the Act, the Commonwealth shall have the right to unilaterally vary Schedule B of this Agreement to reflect annual adjustments in the ARC salary levels for Fellowships.

5.6 The Commonwealth shall have the right to unilaterally vary Schedules of this Agreement to reflect annual adjustments in the ARC Salary and Allowances Provisions.

5.7 Where the Commonwealth exercises its right under Clause 5.4 or 5.5 above, it shall inform the Organisation of the variation within thirty (30) days of that variation.

5.8 The Commonwealth will not provide additional funding for any project set out in Schedule A except where allowed for under Clause 5.4, 5.5 and 5.6 above.

6 Accuracy of Information/Malpractice

6.1 The Organisation warrants that the information contained in all Project Applications is 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.

7 Use of the Funding: activities, facilities and types of work

7.1 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 and/or Fellowship will be conducted in accordance with the Project Description contained in the Project Application, or any revised budget, aims and research plan, submitted by the Organisation and approved by the ARC.

7.2 The Organisation shall ensure that expenditure on each Project described in Schedule A is in accordance with the aims and research plan of the Project and within the broad

structure of the Project budget contained in the Project Application or any revised budget, aims and research plan submitted by the Organisation and approved by the ARC.

7.3 The Organisation shall not use the Funding:

- (a) for purposes specifically excluded in the Funding Rules under which the application was submitted; or
- (b) for purposes specifically excluded in this Agreement; or
- (c) for purposes specifically excluded in the Special Conditions.

7.4 The Organisation must ensure that the researcher(s) has adequate time to do the Project and must provide the basic facilities required for each Project described in Schedule A. Basic facilities include but are not limited to:

- (a) accommodation (eg., laboratory and office, suitably equipped in standard ways);
- (b) access to workshop services (eg., machine tools and qualified technicians available to each member of staff, to enable them to carry out their research;
- (c) access to a basic library collection;
- (d) standard reference materials or funds for abstracting services;
- (e) adequate access to computers (excluding access to high performance computers unless specified in the Project Application);
- (f) adequate access to basic computing, word processing and microfilm reading facilities;
- (g) use of photocopiers, telephones, mail, facsimile, email and internet services.

7.5 As set out in the *Linkage International* Funding Rules for ARC International Fellowships commencing in 2006 and Awards submitted in 2005, funds may not be used for:

- (a) salaries of Chief Investigators and Partner Investigators, academic staff engaged in teaching and research (including the cost of 'buying time' to free staff to do more research);
- (b) salaries of staff supporting staff at the institutional level;
- (c) costs of primary research activity, including field trips, equipment and support staff salaries (except where an Award is funded under an internationally coordinated initiative of the ARC and overseas funding agency or agencies, and primary research activity is specified in the ARC call for proposals);
- (d) infrastructure support costs which are the responsibility of an administering organisation;
- (e) costs of ongoing collaboration with overseas researchers and/or their home institutions incurred after the completion of the *Linkage International* project; or
- (f) conference organisation or attendance where the purpose is the reporting of research findings.

8 Use of the Funding: provision of salaries and entitlements

8.1 The funding must not be used to provide salary support for Chief and Partner Investigators.

8.2 Entitlements for ARC International Fellows are detailed in Schedule D. ARC notional salary rates for Fellowships are detailed in Schedule B.

8.3 In respect of Specified Personnel other than Chief Investigators, unless the Minister otherwise determines:

- (a) in recruiting Specified Personnel, the Organisation shall follow its normal recruitment procedures;
- (b) provision of salaries, recreation leave, sick leave and other conditions of employment for Specified Personnel shall be those of the Organisation.

9 Over-expenditure by the Organisation

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

10 Multi-Institutional Agreements

10.1 A project may not begin, nor grant funds be expended, until the administering Organisation and each collaborating Organisation have entered into a written agreement. Each agreement must cover the role of the Organisations in the project including:

- (a) contributions by the Organisations;
- (b) payment of salaries for ARC International Fellows;
- (c) intellectual property arrangements; and
- (d) an undertaking by the Organisations to abide by the Funding Agreement.

The administering Organisation will retain the agreement(s), and make them available to the ARC if required.

11 Commencement of Projects

11.1 Subject to Clause 12 below, all new Awards Projects must commence in the first year of the Funding. Failure to do so will result in the withdrawal of the Funding and termination of any individual Projects which have not commenced.

11.2 Subject to Clause 12 below, all new ARC International Fellowships Projects must commence before 30 June 2006. Failure to do so will result in the withdrawal of the Funding and termination of any individual Projects which have not commenced.

12 Deferral of Commencement of Project and/or Fellowship

12.1 If the Organisation wishes to defer commencement of a Project, a written request seeking permission to do so, justifying the requested deferral in terms of special circumstances, must be made to the Scheme Coordinator, through the Organisation's Research Office or equivalent within six months of the date of execution of this Funding Agreement.

12.2 The Organisation must not defer commencement of a Project unless the Organisation has received written permission from the ARC, based on a decision made by the Minister.

13 Specified Personnel

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

13.2 The Organisation shall provide each Chief Investigator and Fellow with a copy of this Funding Agreement within a reasonable time after the beginning of the Funding.

14 Change of Specified Personnel

14.1 If a Chief Investigator, Overseas 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 another Chief Investigator, Overseas Investigator or Partner Investigator provided that:

- (a) he/she meets the eligibility criteria, as specified in the *Linkage International Funding Rules for ARC International Fellowships commencing in 2006 and Awards submitted in 2005*;
- (b) approval is sought from the Scheme Coordinator for the change in Specified Personnel:
 - i. in writing (including the proposed Personnel's Curriculum Vitae); and
 - ii. within 3 months of the date that the Specified Personnel ceased working on the Project; and
- (c) the change is approved, in writing, by the Minister.

14.2 Failure to fulfill the requirements set out in Clause 14.1 will result in immediate termination of the Project. If a Fellow is no longer able to continue the Project, the Fellowship component will be terminated, as it cannot be transferred to another person.

14.3 If the ARC does not consider the Project viable without the Fellow's contribution to the Project, the Project as a whole will be terminated.

14.4 If the Fellow is the only Specified Personnel on the Project, and is no longer able to continue the Project, the Project will be terminated.

15 Transfer of Project or Fellowship

15.1 Under Section 54 of the Act, Ministerial approval for transfers of Projects and Fellowships is required.

15.2 The Organisation must notify the ARC of any Specified Personnel on the Project who change Organisations.

15.3 If the Specified Personnel who change Organisations are a first-named Chief Investigator or Fellow the Organisation must provide, for the Minister's approval, a written proposal outlining arrangements for the continuation of the Project and the continued administration of the Funding.

15.4 Where the proposed arrangements include a transfer of the Funding from one Organisation ('the relinquishing Organisation') to another Organisation ('the recipient 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 written request must include evidence that the following parties agree to the transfer:

- (a) the relinquishing Organisation;
- (b) all Specified Personnel on the Project; and
- (c) the recipient Organisation.

15.5 When the ARC receives a proposal requesting the transfer of Funding it will:

- (a) seek the Minister's approval for the transfer of unspent Funds and indicative Funding for the Project and any identified Assets as outlined in Clause 20 to the recipient Organisation; and
- (b) vary the Funding Agreement for the relevant Organisations once Ministerial approval is granted.

15.6 Once approval has been granted to transfer the Funding:

- (a) the relinquishing Organisation must:
 - i. Provide to the ARC, in writing, the amount of unspent Funds for the Project and pay the ARC such unspent Funds. The ARC will then provide the unspent Funds to the recipient Organisation; and
 - ii. report expenditure of Funding for the Project prior to the transfer in its End of Year Report and identify the transfer in the 'Comments' columns; and
- (b) the recipient Organisation must:
 - i. report expenditure of Funding for the Project subsequent to the transfer in its End of Year Report and identify the transfer in the 'Comments' columns.

15.7 If the Chief Investigator or Fellow 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.

15.8 Relocation expenses will not be paid on the transfer of any Specified Personnel from the relinquishing Organisation to the recipient Organisation. Relocation costs will not be paid on the transfer of a Fellow from the relinquishing Organisation to the recipient Organisation after the final date for commencement in Clause 11, or after the deferred commencement date approved in accordance with Clause 12.

15.9 The Project or any equipment purchased with the Funding must not be transferred to the recipient Organisation unless Ministerial approval for the transfer of the Funding is granted.

16 Negation of Employment by the Commonwealth

16.1 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.

16.2 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.

17 Conduct of Research

17.1 Projects and/or Fellowships shall be conducted in accordance with any special conditions specified in this Agreement.

17.2 The Organisation shall ensure that a Project and/or Fellowship 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 A or prescribed by the Organisation's research rules. Responsibility for ensuring such clearances have been obtained remains with the Organisation.

18 Material produced under this Agreement

18.1 The Organisation shall establish and comply with its own procedures and arrangements for the ownership of all material produced as a result of any Project under this Agreement.

18.2 For any Material produced under this Agreement, the Organisation shall ensure that all Specified Personnel:

- (a) take reasonable care of, and safely store any data or specimens or samples collected during, or resulting from the conduct of the Project;
- (b) make arrangements acceptable to the ARC for lodgement with an appropriate museum or archive in Australia of data or specimens or samples collected during, or resulting from their Project; and
- (c) include details of the lodgement or reasons for non-lodgement in the Final Report for the Project.

19 ARC Assessments

19.1 The Organisation must ensure that, for the duration of the Funding under *Linkage International*, if requested by the ARC, Chief Investigators and/or Fellows agree to assess up to 20 new applications for ARC funding.

19.2 If the ARC determines that a Chief Investigator and/or Fellow has failed to meet the obligation to assess applications assigned by the ARC for assessment, the ARC will notify the Organisation in writing of that failure.

19.3 If a Chief Investigator and/or Fellow does not undertake assessment of the assigned applications within a period specified by the ARC, in the notice referred to in Clause 19.2 above, the Organisation will be considered to be in breach of this Funding Agreement and the relevant Project, including Fellowships may be terminated, in which case any unspent funds will be recovered by the ARC.

20 Assets

20.1 Assets purchased with Funding must be purchased for the exclusive purposes of the Project for the duration of the funding period.

20.2 The 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.

20.3 The Organisation shall ensure that any Personnel shall have first priority in the use and operation of equipment purchased for the Project and the Organisation shall, so far as is practicable, permit persons authorised by the Minister's delegate to have priority access to that equipment in preference to other persons.

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

- (a) otherwise specified in the Project Application;
- (b) the Project is terminated, in which case the Minister may, by notice in writing, require the transfer of any such item of equipment to the Commonwealth; or

- (c) the Project is transferred to another Organisation, in which case, subject to the agreement of both Organisations, the equipment purchased with Funds may be transferred in accordance with Clause 15.

21 Intellectual Property

21.1 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. 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.

21.2 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

21.3 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.

21.4 The indemnity referred to in Clause 21.3 shall survive the expiration or termination of this Agreement.

22 Protection of Personal Information

22.1 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 concerns 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 any person who has an access level which would enable that person to obtain access to any personal information (as defined in the *Privacy Act 1988*) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph (a) above;
- (e) to comply with any policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of personal information;
- (f) to comply with any reasonable direction of the CEO to observe any recommendation of the Federal Privacy Commissioner relating to any 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 any 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 record (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 this 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.

22.2 The Organisation shall immediately notify the ARC if the Organisation becomes aware of a breach of its obligations under Clause 22.1.

22.3 This Clause survives the expiration or termination of this Agreement.

23 Compliance with Commonwealth Policies

23.1 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.

23.2 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*.

23.3 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.

24 Acknowledgments, Publications and Publicity

24.1 Subject to commercial sensitivities or Intellectual Property considerations, the outputs and outcomes of Projects are expected to be communicated to the research community and, where appropriate and possible, to the community at large.

24.2 The ARC requires that research funded by the ARC will be appropriately acknowledged. When, at any time during or after completion of the project, the organisation or researcher publishes or produces materials such as, books, articles, television and radio programs, newsletters or other literary or artistic works which relate to the project and/or Fellowship, the organisation or researcher shall acknowledge, at a prominent place in the publication, the support of the ARC in a form acceptable to the ARC. Similar efforts should be made to acknowledge ARC support when participating in television and radio programs, and when interviewed by the print media. Advice on acceptable forms of acknowledgement and use of the logo is provided on the ARC website at www.arc.gov.au.

25 Administration of the Funding

25.1 The Organisation must maintain reasonable records relating to the Funding in general and the Projects conducted with the Funding, in particular to ensure its compliance with this Agreement.

26 Audit and Monitoring

26.1 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.

26.2 The ARC may conduct ad hoc on-site reviews in relation to financial and other reports to ensure that the terms of this 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 Funds in general.

27 Access to Premises & Records

27.1 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.

27.2 The access rights in Clause 27.1 are subject to:

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

27.3 If a matter is being investigated which, in the opinion of the CEO, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, Clause 27.2 will not apply.

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

27.5 Nothing in Clause 27.1 to 27.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.

27.6 The Auditor-General, or a delegate of the Auditor-General for the purpose of performing the Auditor-General's statutory functions, at reasonable times and on giving reasonable notice to the 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.

27.7 This Clause shall survive the expiration or termination of this Agreement.

28 Reporting Requirements

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

28.2 End of Year Report

- (a) The Organisation shall submit an End of Year Report by 31 March in the year following each calendar year or part year for which the Funding was awarded. The ARC will provide the Organisation with a proforma and instructions for completion of 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;
 - iii. the reasons why the unspent funds are required to be carried over; and
- (c) Under subsection 58(e) 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, separate written detailed justification must be provided.
- (e) Funds will be carried over for more than 12 months only in exceptional circumstances. Separate written justification must be provided in this instance.

28.3 Progress Report

- (a) The Organisation shall ensure that the first named Chief Investigator and/or Fellow provide an annual Progress Report in respect of each ongoing Project by 31 January of each year, except in the first year of funding, on a proforma available on the ARC's website (www.arc.gov.au).
- (b) The ARC will review the outputs and outcomes against the objectives of the Project as stated in the Project Application, or any approved revised budget, aims and researchg plan. Any Chief Investigator or Fellow 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 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 or Fellow and will be taken into account in the assessment of those applications.

28.4 Final Report

- (a) The Organisation shall ensure that Final Reports are provided for each Project within 6 months of the final payment to the Project (including any approved carry over). The proforma for this report is available on the ARC's website (www.arc.gov.au) via GAMS. The ARC will review the outcomes against the objective(s) of the Project as stated in the Project Application or any approved revised budget, aims and research plan.
- (b) If a Final Report is deemed inadequate, the Chief Investigator or Fellow 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 or Fellow 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 scheme submitted by, or on behalf of the Chief Investigator and will be taken into account in the assessment of those applications.
- (d) Applications under any ARC scheme submitted by, or on behalf of a Chief Investigator or Fellow on a Project for which the Final Report is outstanding may be deemed ineligible.

28.5 Audited Financial Statement

- (a) In accordance with Section 58 of the Act, the Organisation shall submit an Audited Financial Statement by 30 June for each year following the calendar year for which the Funding was awarded.
- (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.

29 Copyright in Reports

29.1 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 these reports and publish them on a non-profit basis. The Commonwealth's licence is subject to the requirements of Clause 29.2 below.

29.2 The Commonwealth warrants that, for a period of 3 years from the date of submission of the Final Report for the Project, it will 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.

30 Recovery of Unspent Funds or Overpayments of Funds

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

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

31 Indemnity

31.1 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 a willful, unlawful or negligent act or omission of the Organisation, its employees, agents or subcontractors in connection with this Agreement.

31.2 The Organisation's liability to indemnify the Commonwealth under Clause 31.1 shall be reduced proportionally to the extent that any act or omission of the Commonwealth or its employees or agents contributed to the loss or liability.

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

32 Insurance

32.1 The Organisation shall effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in *Linkage International* 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.

33 Termination

33.1 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.

33.2 The Organisation must terminate a Project:

- (a) where progress is not, in the opinion of the Responsible Officer, satisfactory; or
- (b) on the death, incapacity, resignation or withdrawal of any Specified 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 all parties have agreed to the termination of the Funding.

33.3 Upon termination of the Funding under Clause 33.2 above:

- (a) the Organisation shall take all action necessary to minimise further expenditure of the Funding; and

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

34 Compliance with Law

34.1 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.

34.2 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;
- (e) it is aware of the provisions of Section 79 of the *Crimes Act 1914* relating to official secrets.

34.3 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.

35 Liaison

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

Scheme Coordinator (*Linkage International Projects*)
Australian Research Council

Phone: 02 6287 6600
Fax: 02 6287 6638

Postal address
PO Box 2702
CANBERRA ACT 2601

Email: ncgp@arc.gov.au

36 Applicable Law

36.1 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.

SCHEDULE A

Details of Projects to receive funding by the Commonwealth

SCHEDULE B**Notional ARC Fellowship Salaries for Funding Commencing in 2006 (2006\$)**

Salaries are indexed annually.

| Linkage International Fellowship Equivalents | Salary | 26% on-costs | TOTAL |
|---|---------------|---------------------|--------------|
| Australian Postdoctoral Fellowship (APD) | \$59,000 | \$15,340 | \$74,340 |
| Australian Research Fellowship (ARF) | \$74,000 | \$19,240 | \$93,240 |
| Queen Elizabeth II Fellowship (QEII) | \$88,000 | \$22,880 | \$110,880 |
| Australian Professorial Fellowship (APF) - Step 1 | \$102,000 | \$26,520 | \$128,520 |
| Australian Professorial Fellowship (APF) - Step 2 | \$118,000 | \$30,680 | \$148,680 |
| Federation Fellowship | \$241,224 | \$62,718 | \$303,942 |

SCHEDULE C

Research Special Conditions

- C1 *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.
- C2 *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.
- C3 *Deposition of Biological Materials:* Any biological material accumulated during the course of a Project shall be transferred to an Australian body with statutory responsibility for control of such material. If no such body is available to take control of the biological material then the Organisation shall dispose of the material in accordance with the Organisation's established safeguards.
- C4 *Genetic Manipulation:* If a Project involves the preparation and/or use of recombinant nucleic acids constructed *in vitro* from sources that do not ordinarily recombine genetic information, approval in writing by the Organisation's Biosafety Committee (or equivalent) or the Office of the Gene Technology Regulator (OGTR) must be obtained.
- C5 *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.
- C6 *Recombinant DNA techniques on animals or humans:* If a Project involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the 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 Scheme Coordinator if required to do so.
- C7 *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 Scheme Coordinator if required to do so.
- C8 *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 2 years of the conclusion of any fieldwork relating to the Project research. If a Chief Investigator is not intending to do so within the 2-year period, s/he should include the reasons in the Project's Final Report.

SCHEDULE D

Special Conditions Applicable for Linkage International Fellowships

D1 Commencement and Duration of Fellowship

- D1.1 Fellowships must commence before **30 June 2006** except in special circumstances approved by the Minister.
- D1.2 Where the Fellowship is commenced after 30 June 2006, the duration of the Fellowship may be reduced by the amount of time which elapses between 30 June 2006 and the commencement date.
- D1.3 The Organisation must inform the ARC of any proposed changes to the dates of the Fellowship.
- D1.4 The duration of a Fellowship must be for a minimum period of 4 months and a maximum period of 12 months. The Fellowship may be for either a continuous period or for more than one period within these time limits.
- D1.5 *Linkage International* Fellowships must be completed by **30 June 2007**.

D2 Leave, Insurance and Visas

- D2.1 The *Linkage International* Fellow shall be entitled to recreation leave, sick leave and other conditions of employment on the same terms and conditions applying to similar appointees at the Organisation or, failing that, the same terms and conditions as generally apply to similar appointees in the Australian university sector.
- D2.2 The Organisation shall be responsible for all arrangements, including costs, necessary for the *Linkage International* Fellow to take up the Fellowship, for example, obtaining entry visas to Australia.
- D2.3 Australia-Israel *Linkage International* Fellows are responsible for their own medical and dental treatment. In all other cases, the Organisation shall ensure that the *Linkage International* Fellow is provided with appropriate medical insurance cover for the term of the Fellowship.

D3 Salary

- D3.1 The salary for a *Linkage International* Fellow is specified in the Approved Proposal.
- D3.2 The Organisation will not change the level of the ARC Research Fellowships Salary Scale designated in the Approved Proposal as payable to the *Linkage International* Fellow without the approval of the Minister. However, host organisations may increase the salary from their own resources to match local salaries under enterprise agreements.
- D3.3 ARC International Fellow salaries include a 26% loading to cover salary-related on-costs, including payroll tax, workers' compensation, leave loading, long-service leave, non-contributory and contributory superannuation, however, excludes items such as extended leave and severance pay. On-costs that exceed 26% should be provided by the Organisation.

D4 Overseas Travel Costs incurred by the Linkage International Fellow coming to Australia

- D4.1 *Linkage International* Fellows from the Republic of Korea and France are entitled to one economy class return airfare from their residence overseas to the Australian base for their Fellowship.
- D4.2 *Linkage International* Fellows from Germany are entitled to one business class return airfare from their residence overseas to the Australian base for their Fellowship. Where accompanied, economy class return airfares for partners and dependent children will be met and, in such cases, the *Linkage International* Fellow should travel economy class.
- D4.3 Economy class return airfares for partners and dependent children of *Linkage International* Fellows from the Republic of Korea and Germany will also be met provided they reside with the *Linkage International* Fellow in Australia for a minimum of six months during the period of the Fellowship.
- D4.4 Where an amount has been approved for overseas travel costs for any *Linkage International* Fellow, it is specified in the Approved Proposal.

D5 Major Conference Costs

- D5.1 The ARC encourages *Linkage International* Fellows to attend one major conference or similar gathering in Australia during their Fellowship. The amount specified in the Approved Proposal is to be used for the costs of attendance at such a conference (for example, registration, travel, accommodation) provided such costs are incurred in accordance with the rules of the Organisation which apply to Research Staff of similar standing attending major conferences in Australia.

D6 Reimbursement of Certain Relocation Expenses

- D6.1 Subject to this clause D6, the Organisation may make reimbursement claims for the cost of removal of household items and travel expenses of partners and dependants (Reimbursement Items) to a maximum of the amount specified in clause D6.6. The Organisation should make such claims within 12 months of the date of relocation of the Fellow.
- D6.2 In the case of Fellows coming from Israel or France no relocation costs will be provided for the visits of family members. In the case of Fellows coming from Germany or the Republic of Korea reimbursement for a partner and dependant children can be provided if they accompany the Fellow and stay in the host country for at least six months.
- D6.3 The Organisation shall ensure that the total amount of travel expenses claimed does not exceed the cost of the cheapest direct airfare for the partner and/or dependants.
- D6.4 In order to make a claim for reimbursement of relocation costs the Organisation must submit a reimbursement claim as part of the End of Year Report. The claim must:
- (a) contain all relevant receipts including those for travel;
 - (b) contain full particulars, in English, of the expenses being claimed including full particulars of the mode of travel;
 - (c) be made within 12 months from the date of relocation of the Fellow; and
 - (d) be made in Australian dollars.

- D6.5 For the purposes of clarification, items which are not Reimbursement Items include, but are not limited to:
- (a) travel costs for the Fellow. These costs are to be met by the Organisation from the Project Budget.
 - (b) accommodation costs; and
 - (c) rental bonds or other typical household expenses.
- D6.6 The Organisation may claim from the ARC, to the maximum total amounts specified below, Reimbursement Items for a Fellow who relocates and returns to or from:
- (a) North America - \$17,000;
 - (b) Europe/Asia (Northern Hemisphere)/Africa/South America - \$14,000;
 - (c) NZ/Asia (Southern Hemisphere)/Oceania - \$11,000; or
 - (d) within Australia - \$8,000.
- D6.7 For the purposes of claims for Reimbursement Items a dependant is defined as a person who moves residence with the Fellow. For the purposes of clarification:
- (a) a partner who transfers employment to the city of the Organisation can be regarded as a dependant; and
 - (b) a child continuing to study at the former city and not intending to live with the Fellow cannot be regarded as a dependant.

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

SIGNED for and on behalf of
THE COMMONWEALTH OF AUSTRALIA

by.....
insert name of signatory

the.....
insert signatory's title above
of the Australian Research Council

In the Presence of:

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insert name of witness above

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) signatory to sign above

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) witness to sign above

SIGNED for and on behalf of

XXXXXXXX

by
insert name of signatory 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:

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insert name of witness above

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