



**Australian Government**

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**Australian Research Council**

## Funding Agreement

between the

**Commonwealth of Australia**

as represented by the

**Australian Research Council**

and

regarding funding for the

*Australian Research Council  
Special Research Initiative in*

*Stem Cell Science*

to commence in

**2011**

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## DRAFT FUNDING AGREEMENT

### Parties and Recitals

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_

between the

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

and

('the Administering Organisation')

### WHEREAS:

- A. The Commonwealth through the ARC operates the *Special Research Initiatives* 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 enable the Administering Organisation to conduct the research activities undertaken by the Initiative, 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.
- 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.

### NOW IT IS HEREBY AGREED as follows:

#### 1. Definitions

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*;

**Administering Organisation** means an Eligible Organisation which submits a Proposal for funding under the *Special Research Initiatives* scheme and which will receive and be responsible for the administration of the funding if a Proposal is approved;

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

**ARC Act** means the *Australian Research Council Act 2001* as amended from time to time.

**ARC Fellow** means a researcher whose salary is funded wholly or partly under an ARC Fellowship;

**ARC Fellowship** means a position held by a researcher where the salary is funded wholly or partly by the ARC and the researcher has been awarded an ARC Fellowship in one of the following ARC

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schemes: Australian Postdoctoral Fellowship (APD), Australian Research Fellowship (ARF), Australian Research Fellowship-Indigenous (ARF-I), Queen Elizabeth II Fellowship (QEII), Australian Professorial Fellowship (APF), Australian Postdoctoral Fellowship (Industry) (APDI), Linkage Industry Fellowship (LIF), ARC Centre Fellowship, ARC International Fellowship (ARCIF), Federation Fellowship, ARC Future Fellowship, Australian Laureate Fellowship, Indigenous Researcher Fellowship (IRF) and Super Science Fellowship (SSF);

**ARC website** is [www.arc.gov.au](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 Administering Organisation by 30 June each year in accordance with section 58(1)(b) of the ARC Act;

**Biological Standards** means all relevant ethics, codes and guidelines adopted by the Commonwealth, or any Australian State or Territory, in Australia and any other place in which research is being conducted by or on behalf of the Initiative being codes and guidelines in force from time to time during the term of the Initiative;

**Budget** means the budget specified in Parts D and E of the Proposal or any revised budget approved by the Commonwealth;

**Call for Proposals** means the *Call for Proposals for the Special Research Initiative in Stem Cell Science* issued by the ARC;

**Chief Executive Officer** or **CEO** means the occupant of the position from time to time of the Chief Executive Officer of the ARC;

**Chief Investigator** means a person named in the Proposal as Chief Investigator for a particular project, or as otherwise approved by the Minister and includes any replacement person or persons approved by the Minister in accordance with clause 13;

**Collaborating Organisation** means an organisation named as a Collaborating Organisation in Schedule A, excluding the Administering Organisation and includes any replacement organisation approved by the Commonwealth;

**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;

**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 26;

**Final Report** means the report described in clause 26;

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

**Funding Agreement** means this document;

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

**Funding Rules** means the *Special Research Initiatives Funding Rules for Funding commencing in 2011*;

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

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**Initiative** means the Initiative described in Schedule A;

**Intellectual Property** means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know how) and circuit layouts, know-how 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 ARC Act or the Minister's delegate;

**NHMRC** means the National Health and Medical Research Council;

**Partner Investigator** means an eligible person named as Partner Investigator in Schedule A and includes any replacement persons approved by the Minister;

**Partner Organisation** means an organisation which is not an Eligible Organisation, but which is identified in the Proposal as a contributor to the Initiative and is named in Schedule A, including any replacement organisation approved by the Minister;

**Personnel** means those persons involved in the conduct of the Initiative;

**Program Leader** means the person named as Program Leader in Schedule A and includes any replacement person approved, including under Section 54 of the Act, by the Commonwealth;

**Project Executive** means the committee appointed by the Commonwealth with responsibility for formal Commonwealth decision making and approval in relation to the Initiative;

**Proposal** means the request to the ARC for the provision of financial assistance for an Initiative which is submitted in accordance with the Funding Rules approved by the Minister;

**Report** means the Annual Report, Audited Financial Statement, End of Year Report and Final Report;

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

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

**Schedule** means a schedule to this Agreement and may include annexures and incorporate other documents by reference;

**Scheme** has the meaning given in Parties and Recitals;

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

**Special Conditions** means the conditions specified in Schedules A, B and C that govern the use of the Funding provided by the ARC;

**Specified Personnel** means the personnel named in Schedule A to perform the Initiative; and

**UA** means Universities Australia.

## 2. Interpretation

2.1. In this Agreement, unless the contrary intention appears:

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- 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. words of inclusion are not words of limitation;
  - e. 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;
  - f. all references to clauses are clauses in this Agreement, references to a schedule refer to a schedule in this Agreement;
  - g. all references to dollars are to Australian dollars and this Agreement uses Australian currency;
  - h. 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
  - i. 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 ARC Act. If there is any conflict between this Agreement and the ARC Act, then the ARC Act prevails to the extent of any inconsistency.

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

- 3.1. This Agreement, including Schedules, the Proposal, the Funding Rules and the Call for Proposals for the Initiative, 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 ARC 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 this Agreement;
  - b. the Schedules;
  - c. the Funding Rules;
  - d. the Call for Proposals; and

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- e. 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 securing the agreement of all parties involved in the Initiative to abide by the terms and conditions of this Agreement.

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

- 4.1. This Agreement takes effect on the date identified as the commencement of the Initiative under clause 11) and continues to operate until all parties have fulfilled their obligations under this Agreement, unless terminated earlier in accordance with this Agreement. Subject to clauses 4.2 and 5 of this Agreement, the period of funding is the Funding Period unless the Funding is terminated earlier in accordance with this Agreement.
- 4.2. The Funding Period for any Initiative is indicative only of the intent of the Minister at the time of making the offer of Funding and is not binding on the Commonwealth. In the event that the Minister subsequently makes a variation under section 54 of the ARC Act, this Agreement will continue to apply to any Initiative granted financial assistance under such a variation.

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

- 5.1. Subject to the provisions of the ARC 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 the Initiative in accordance with Schedule A.
- 5.2. Unless otherwise indicated or required by law, all consideration of any supply made under this Agreement is exclusive of 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 of 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.
- 5.3. The Commonwealth will pay the Administering Organisation Funding for a project if all information contained in the Proposal, and in all reports required by this Agreement, is complete, accurate and not misleading. The Commonwealth considers inaccurate and misleading information as including, but not limited to:
  - a. claiming fictitious track records;
  - b. inflating funds obtained from other sources; or
  - c. false claims in the publication record.
- 5.4. If the Administering Organisation does not meet the terms of this Agreement, or the Commonwealth considers that inaccurate or misleading information has been provided, the Commonwealth may do any or all of the following:
  - a. not pay the Administering Organisation any further Funds for a project;

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- b. recover all or some of the Funds paid under this Agreement for a project including all unspent Funds and any Funds not spent in accordance with this Agreement; or
  - c. vary the amount of Funding approved for the Initiative.
- 5.5. The Commonwealth has the right to unilaterally vary the amount of Funding for the Initiative.
- 5.6. Where the Commonwealth exercises its rights under clause 5.4 or 5.5, it will inform the Administering Organisation of the variation within 30 days of that variation being made.
- 5.7. Where the Commonwealth notifies the Administering organisation of a variation under clause 5.4(b), the Administering Organisation must, within 30 days of the date on the notice, pay the amount specified in that notice to the Commonwealth.

### **6. Use of the Funding**

- 6.1. The Administering Organisation must not use the Funding for purposes specifically excluded in:
- a. this Agreement;
  - b. the Call for Proposals;
  - c. the Funding Rules.
- 6.2. The Administering Organisation will ensure that the Initiative is conducted in a diligent and competent manner in accordance with this Agreement. In addition, the Initiative will be conducted in accordance with the 'Description of Special Research Initiative Program of Research' contained in the Proposal, or in any revised research aims or project submitted by the Administering Organisation and approved by the Commonwealth.
- 6.3. The Administering Organisation will ensure that the Initiative's expenditure is in accordance with the 'Description of Special Research Initiative Program of Research', 'Budget' and 'Budget Justification' contained in the Proposal, or in any revised budget submitted by the Administering Organisation and approved by the Commonwealth.
- 6.4. The Administering Organisation must provide the basic facilities required for a research proposal, as set out in the Funding Rules and Call for Proposals.
- 6.5. The Administering Organisation must provide the resources, as specified in the Proposal, to allow a project to operate, unless otherwise approved by the Commonwealth.
- 6.6. The Administering Organisation will ensure that Specified Personnel have adequate time to participate in the Initiative.
- 6.7. Funds may be used by the Administering Organisation to employ Personnel, other than the Program Leader, Chief Investigators or Partner Investigators, where provision for such was contained in the Proposal or Schedule B and subject to the conditions set out in Schedule B they may be employed full-time or part-time as required.
- 6.8. When recruiting and employing Personnel, other than the Program Leader, Chief Investigators or Partner Investigators, the Administering Organisation will:
- a. follow its normal procedures;
  - b. be responsible for salaries, recreation leave, sick leave or other conditions of employment; and
  - c. be responsible for any on-costs provisions beyond the Commonwealth contribution of 28% (e.g. extended periods of leave, severance pay, etc). On-costs provisions beyond the Commonwealth contribution must not be paid from the Funding.

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- 6.9. The Administering Organisation must ensure that any Personnel who are employed full-time in the Initiative, and whose salary is provided from the Funding, will not accept any remuneration whatsoever from any source other than the Administering Organisation in respect of work performed in the Initiative, unless prior agreement is gained from the Commonwealth.
- 6.10. The Funding must not be used to fund any research and/or activity which is, or will be, funded from other Commonwealth sources, unless otherwise approved by the Commonwealth.
- 6.11. If other Commonwealth funding is approved for any research and/or activity which predominantly duplicates research and/or activity being undertaken by the Initiative, the Commonwealth must be notified immediately. The Commonwealth may consider whether or not to terminate, or recover Funding to the extent that it is duplicated by another Commonwealth source.
- 6.12. The Administering Organisation must not allow the Initiative to commence, or Funding to be expended, until it has entered into a written agreement with each Collaborating and Partner Organisation in accordance with clause 9 before the final date for commencement of the Initiative as set out in clause 11.

### **7. Over-Expenditure by the Administering Organisation**

- 7.1. Any Initiative expenditure incurred by the Administering Organisation, additional to the approved amount for that Initiative as set out 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.

### **8. Recovery of Unspent funds or Overpayments of Funds**

- 8.1. Any unspent Funds may be recovered by the Commonwealth under paragraph 58(1)(c) of the ARC Act. Any amount of funding paid to the Administering Organisation which exceeds the amount that is properly payable to it may be recovered under paragraph 58(1)(d) of the ARC Act.
- 8.2. The Commonwealth may offset the unspent or overpaid Funds against the total of any further Funds payable to the Administering Organisation.
- 8.3. This clause survives the expiration or earlier termination of this Agreement.

### **9. Collaborating Organisation and Partner Organisation Agreements**

- 9.1. The Administering Organisation will provide all Collaborating and Partner Organisations with a copy of this Agreement within a reasonable time after the commencement of Funding.
- 9.2. A written agreement, or agreements, must be negotiated and entered into between the Administering Organisation and all Collaborating and Partner Organisations. The agreement, or agreements, must satisfy the requirements of clause 9 at all times during the Funding Period for the Initiative.
- 9.3. An agreement, or agreements, entered into with Collaborating and Partner Organisations must include provisions which:
  - a. state the role and contribution to the Initiative of each Collaborating and Partner Organisation;
  - b. state the financial commitment from each Collaborating and Partner Organisation;

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- c. describe the processes for the entry and exit of all Collaborating and Partner Organisations;
  - d. confirm compliance with the requirements related to Collaborating and Partner Organisations as stated in the Funding Rules;
  - e. are consistent with the details in the Proposal, except as set out in clause 9.4;
  - f. confirm the participation of Specified Personnel;
  - g. outline the payment of salaries for Personnel;
  - h. grant fair access to resources for Personnel;
  - i. state the Intellectual Property arrangements that apply to the outcomes or results generated by the Initiative. Such arrangements must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research*, unless otherwise approved by the Commonwealth;
  - j. do not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement;
  - k. grant to the Commonwealth the same rights of access to premises and records at the Collaborating and Partner Organisations, as are conferred by clauses 24 and 25 of this Agreement in respect of the Administering Organisation; and
  - l. confirm an undertaking by all Collaborating and Partner Organisations to abide by the terms of this Agreement.
- 9.4. The Administering Organisation must ensure that each Collaborating and Partner Organisation provides funding and other contributions as set out in the Proposal. Where Funding for the Initiative is less than the amount requested in the Proposal, funding from the Collaborating and Partner Organisations may be reduced by the same proportion.
- 9.5. If an agreement, or agreements, between the Administering Organisation and a Collaborating or Partner Organisation is revised in accordance with this Agreement to vary the funding provided by a Collaborating or Partner Organisation, the Administering Organisation must:
- a. notify the Commonwealth in writing to seek approval of the variation, as set out in clause 10.3; and
  - b. retain the agreement, or agreements, and make it available to the Commonwealth on request.

## 10. Default of Collaborating Organisation or Partner Organisation

- 10.1. If the Administering Organisation is notified that a Collaborating or Partner Organisation wishes to reduce or withdraw its support for the Initiative, within 90 days of receiving that notification the Administering Organisation must notify the Commonwealth in writing. The Administering Organisation may attempt to find a replacement Collaborating or Partner Organisation for the Initiative, or modify remaining Collaborating or Partner Organisation arrangements.
- 10.2. If the Administering Organisation reasonably believes that a Collaborating or Partner Organisation is in default of any of its obligations under an agreement entered into as set out in clause 9, within 90 days of becoming aware of the default the Administering Organisation must notify the Commonwealth in writing. The Administering Organisation may attempt to find a replacement Collaborating or Partner Organisation for the Initiative, or modify remaining Collaborating or Partner Organisation arrangements.

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- 10.3. The notification to the Commonwealth, as set out in clause 10.1 and 10.2, must include:
  - a. the Collaborating or Partner Organisation reducing its support, withdrawing or in default;
  - b. the proposed new or replacement Collaborating or Partner Organisation, if any;
  - c. justification as to the suitability of the new or replacement Collaborating or Partner Organisation to contribute to the Initiative;
  - d. a written undertaking from the new or replacement Collaborating or Partner Organisation to provide funding and/or other contributions to the Initiative;
  - e. the removal, replacement or addition of Specified Personnel as a result of the withdrawal and/or replacement of a Collaborating or Partner Organisation;
  - f. justification as to the suitability, including curriculum vitae of new or replacement Specified Personnel to contribute to the Initiative, and their participation in the Initiative; and
  - g. a request to the Commonwealth to approve a variation to this Agreement.
- 10.4. Any new or replacement Collaborating or Partner Organisation must meet the eligibility criteria for organisations as set out in section 7 of the Funding Rules.
- 10.5. Any new or replacement Specified Personnel must meet the eligibility criteria for researchers as set out in section 8 of the Funding Rules.
- 10.6. If the Commonwealth approves a variation to this Agreement, the Administering Organisation must revise an existing agreement or enter into an agreement with the new or replacement Collaborating or Partner Organisation, as set out in clause 9.
- 10.7. If the Commonwealth does not approve a variation to this Agreement, the Commonwealth may terminate this Agreement in accordance with clause 31.

### **11. Commencement of Initiative**

- 11.1. Subject to clause 12, the Initiative will commence on 1 July 2011 or on execution of this Agreement whichever is later.

### **12. Deferral of Commencement of the Initiative**

- 12.1. If the Administering Organisation wishes to defer commencement of the Initiative a written request justifying the proposed deferral in terms of special circumstances must be made to the Scheme Coordinator through the Administering Organisation's Research Office. Any request for deferral must be made before commencement of the Initiative.
- 12.2. The Administering Organisation must not defer commencement of the Initiative unless the Administering Organisation has received written approval from the Commonwealth.
- 12.3. The Commonwealth will not approve the Initiative commencement beyond 30 April 2012 except in exceptional circumstances. The Commonwealth may terminate or recover Funding for any Initiative which has not commenced by 30 April 2012.

### **13. Specified Personnel**

- 13.1. The Administering Organisation will ensure that all Specified Personnel will participate in the Initiative in a diligent and competent manner and will comply with this Agreement.
- 13.2. The Administering Organisation will provide all Specified Personnel with a copy of this Agreement within a reasonable time after the commencement of Funding.

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- 13.3. The Administering Organisation warrants that it has made proper enquiries of all Specified Personnel in relation to their eligibility as set out in section 8 of the Funding Rules and their ability to participate in the Initiative.
- 13.4. The Administering Organisation warrants that, through an agreement as set out in clause 9.3, all Specified Personnel have confirmed their participation in the Initiative and have the approval of their employing organisation to do so.

### **14. Change of Specified Personnel**

- 14.1. The Administering Organisation must notify the Commonwealth in writing as soon as possible of any variation to Specified Personnel at any time during the Funding Period.
- 14.2. Such variations to Specified Personnel include, but are not limited to:
  - a. departure of Specified Personnel;
  - b. replacement of departing Specified Personnel;
  - c. transfer of Specified Personnel from one organisation to another;
  - d. a change in the eligibility of a Specified Personnel; or
  - e. appointment of new Specified Personnel.
- 14.3. If, at any time during the Funding Period, the Program Leader is unable to continue in this role through death, incapacity, resignation, withdrawal or by being granted a leave of absence greater than two months, the Initiative may be continued under another Program Leader provided that:
  - a. he/she meets the eligibility requirements for a Chief Investigator as set out in section 8 of the Funding Rules;
  - b. within 5 days of the Administering Organisation becoming aware of the circumstances a request is made by the Administering Organisation to the Commonwealth in writing to approve a variation to this Agreement; and
  - c. the request is approved by the Commonwealth.
- 14.4. The request to the Commonwealth, as set out in clause 14.3, must include:
  - a. the reason for the departure of the current Program Leader;
  - b. a curriculum vitae of the proposed Program Leader;
  - c. agreement from the proposed Program Leader to undertake the role;
  - d. letters of support from all Collaborating or Partner Organisations agreeing to the appointment of the proposed Program Leader; and
  - e. a brief explanation of the Initiative's continued operation under the proposed Program Leader, including, but not limited to, arrangements for the management of the research project and administration of the Funding.
- 14.5. When the Commonwealth receives notice that the Program Leader is unable to continue in this role, the Commonwealth will undertake a review of the Initiative and its activities to examine the research planning and management arrangements of the Initiative. The Administering Organisation must provide any reasonable assistance requested by the Commonwealth to undertake the review.
- 14.6. If, at any time during the Funding Period, a Chief Investigator or Partner Investigator is unable to continue in this role, he/she may be replaced by a new Chief Investigator or Partner Investigator provided that:

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- a. he/she meets the eligibility requirements for a Chief Investigator or Partner Investigator as set out in section 8 of the Funding Rules;
  - b. within 30 days of the Administering Organisation becoming aware of the circumstances a request is made by the Administering Organisation to the Commonwealth in writing to approve a variation to this Agreement; and
  - c. the request is approved by the Commonwealth.
- 14.7. The request to the Commonwealth, as set out in clause 14.6 must include:
- a. a curriculum vitae of the proposed Chief Investigator or Partner Investigator;
  - b. agreement from the proposed Chief Investigator or Partner Investigator to undertake the role;
  - c. a letter of support from the Collaborating or Partner Organisation agreeing to the appointment of, and any contribution to, the proposed Chief Investigator or Partner Investigator; and
  - d. a brief explanation of the role Chief Investigator or Partner Investigator will play within the Initiative and her/his participation in the Initiative.
- 14.8. If the request to vary the Specified Personnel is approved by the Commonwealth, a variation to Schedule A of this Agreement will be signed by both parties.
- 14.9. If the Administering Organisation does not comply with the requirements set out in clauses 14.3, 14.4 and 14.5, or the Commonwealth does not approve the appointment of a replacement Program Leader, the Initiative may be terminated in accordance with clause 31 and any unspent Funds recovered by the Commonwealth.

## 15. Negation of Employment by the Commonwealth

- 15.1. Initiative Personnel, the Administering Organisation, Collaborating Organisation or Partner Organisations shall not by virtue of this Agreement be, or be deemed to be, employees, partners or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

## 16. Conduct of Research

- 16.1. The Initiative must be conducted in accordance with any Special Conditions specified in this Agreement, including Schedules and with any other requirements or conditions imposed by the Commonwealth in connection with any Funding covered by this Agreement.
- 16.2. The Administering Organisation must ensure that all research undertaken by or on behalf of, or involving, the Initiative strictly complies with all relevant Biological Standards and conditions prescribed by the Administering Organisation's research rules.
- 16.3. The Administering Organisation must ensure that all research undertaken by or on behalf of, or involving, the Initiative has the necessary clearances and/or approvals of, all relevant government or regulatory organisations, agencies, authorities and ethics committees. Responsibility for ensuring such clearances have been obtained remains with the Administering Organisation.

## 17. Assets

- 17.1. Unless otherwise approved by the Commonwealth, Assets purchased with Funding must be purchased for the exclusive purposes of the Initiative for the duration of the Funding Period.

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- 17.2. The Administering Organisation and the Collaborating or Partner Organisations will ensure that any Personnel will have first priority in the use and operation of any equipment purchased for the Initiative. The Administering Organisation will establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring all items of equipment purchased with the Funds.
- 17.3. Unless otherwise approved by the Commonwealth, the ownerships of any equipment purchased wholly or partly with the Funding shall be vested in the Administering Organisation or one of the Collaborating or Partner Organisations, located on its campus and listed in its assets register unless:
  - a. otherwise specified in the Proposal; or
  - b. otherwise approved by the Commonwealth; or
  - c. the Initiative is terminated, in which case the Commonwealth may, by notice in writing, require the transfer of any equipment to the Commonwealth.

### 18. Intellectual Property

- 18.1. 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 Initiative's research for which funding is provided.
- 18.2. Unless otherwise approved by the Commonwealth, the Administering Organisation's Intellectual Property policy must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* amended from time to time.
- 18.3. 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 Initiative or the use by the Commonwealth of reports provided by the Administering Organisation under this Agreement.
- 18.4. The indemnity referred to above survives the expiration or termination of this Agreement.

### 19. Protection of Personal Information

- 19.1. The Administering Organisation agrees with respect to all activities related to or in connection with the performance of the Initiative or in connection with this Agreement:
  - a. to comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use and disclosure of personal information to the extent that the content of those principles apply to the types of activities the 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 Federal Privacy Commissioner or the Commonwealth in relation to the management of personal

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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 clause 19.2(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 Privacy Commissioner relating to any acts or practices of the Administering Organisation that the Privacy Commissioner considers to be a breach of the obligations in clause 19.2(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 held, 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 Commonwealth or deleted or destroyed in the presence of a person duly authorised by the Commonwealth to oversee such deletion or destruction; and
- j. to the naming or other identification of the Administering Organisation in reports by the Privacy Commissioner.

19.2. The Administering Organisation must immediately notify the Commonwealth if the Administering Organisation becomes aware of a breach of its obligations under clause 19.1.

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

## 20. Confidentiality

20.1. Subject to clause 20.2 below, the Commonwealth agrees not to disclose any Confidential Information of the Administering Organisation, without the Administering Organisation's consent.

20.2. The Commonwealth will not be taken to have breached its obligations under clause 20.1 to the extent that the Commonwealth 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;

## DRAFT FUNDING AGREEMENT

- 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 Commonwealth where this serves the Commonwealth's legitimate interests;
  - f. as required or permitted by any other law, or an express provision of this Agreement, to be disclosed;
  - g. that is in the public domain other than due to a breach of this clause 20; or
  - h. for any other legitimate requirement of the Commonwealth.
- 20.3. 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.

## 21. Compliance with laws and policies

- 21.1. The Administering Organisation must, in carrying out its obligations under this Agreement, comply with the provisions of all Laws, including the Laws specified elsewhere in this Agreement and including but not limited to:
- a. the *Crimes Act 1914*, *Criminal Code Act 1995*, *Research Involving Human Embryos 2002 Act*, *Prohibition of Human Cloning for Reproduction Act 2002*, *Gene Technology Act 2000*, *Gene Technology (Licence Charges) Act 2000*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, *Racial Discrimination Act 1975*, *Age Discrimination Act 2004*, *Age Discrimination (Consequential Provisions) Act 2004*, *Ombudsman Act 1976*, *Archives Act 1983*, *Privacy Act 1988*, *Fair Work Act 2009*, and *Auditor-General Act 1997 and Equal Opportunity for Women in the Workplace Act 1999*;
- 21.2. The Administering Organisation should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.
- 21.3. The Administering Organisation must, in carrying out its obligations under this Agreement, comply with any Commonwealth policies as notified, referred or made available by the Commonwealth to the Administering Organisation (including by reference to an internet site).

## 22. Acknowledgments, Publications and Publicity

- 22.1. Subject to commercial sensitivities and Intellectual Property considerations, the outcomes of the Initiative are expected to be communicated to the research community and, where appropriate and possible, to the community at large.
- 22.2. Any ARC contribution to the research conducted as part of the Initiative must be appropriately and prominently acknowledged (wherever possible) by the Administering Organisation and/or Personnel associated with the Initiative in any research output, or communication in any media. Advice on acceptable forms of acknowledgement and use of the logo is provided on the ARC website.

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

### **23. Administration of the Funding**

- 23.1. The Administering Organisation must maintain reasonable up-to-date and accurate records relating to the Funding in general and the Initiative conducted with the Funding, in particular to verify its compliance with this Agreement.
- 23.2. Records maintained under clause 23.1 must be retained by the Administering Organisation for the Initiative for a period of no less than seven years after whichever is the later of:
  - a. the final payment of Funds by the Commonwealth; or
  - b. the final approved carryover of Funds for the Initiative.

### **24. Audit and Monitoring**

- 24.1. The Administering Organisation is responsible for monitoring the expenditure of Funding and certifying to the Commonwealth that the Funding has been expended in accordance with this Agreement in the Annual Report and the End of Year Report. If at any time, in the opinion of the Responsible Officer, the Funding is not being expended in accordance with this Agreement, the Administering Organisation must take all action necessary to minimise further expenditure in relation to the Initiative and inform the Commonwealth immediately.
- 24.2. The Commonwealth 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 Commonwealth are an accurate statement of compliance by the Administering Organisation. Persons nominated by the Commonwealth 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.
- 24.3. The Administering Organisation must:
  - a. provide information to the Scheme coordinator, or a person nominated by the Scheme Coordinator, as reasonably required by the Scheme Coordinator;
  - b. comply with all reasonable requests, directions, or monitoring requirements received from the Scheme Coordinator; and
  - c. cooperate with and assist the Commonwealth in any review or other evaluation that the Commonwealth undertakes.
- 24.4. During the year listed under the heading “Year of Initiative Review” in Schedule A, or as otherwise approved by the Commonwealth, a review of the Initiative’s performance against the objectives listed in Appendix 2 of the Funding Rules will be conducted as described in Schedule B.

### **25. Access to premises and records**

- 25.1. The Administering Organisation will, at all reasonable times, give to the CEO of the ARC 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

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- (iii). Material.
- b. reasonable assistance to:
  - (iv). inspect the performance of the Initiative;
  - (v). locate and inspect Material relevant to the Initiative or the Administering Organisation's compliance with this Agreement or the Scheme; and
  - (vi). make copies of such Material and remove those copies and use them for any purpose connected with this Agreement or the Scheme.
- 25.2. The access rights in clause 25.1 are subject to:
  - a. the provision of reasonable prior notice by the Commonwealth; and
  - b. the Administering Organisation's reasonable security procedures.
- 25.3. If a matter is being investigated which, in the opinion of the Commonwealth, may involve an actual or apprehended breach of the law, clause 25.2 will not apply.
- 25.4. Upon receipt of reasonable written notice from the Commonwealth, the Administering Organisation must provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 25.5. Nothing in clauses 25.1 to 25.4 affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.
- 25.6. 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.
- 25.7. This clause survives the expiration or earlier termination of this Agreement.

## 26. Reporting Requirements

- 26.1. The Administering Organisation must ensure that the Commonwealth and each Collaborating and Partner Organisation is provided with timely advice on the progress of the Initiative.
- 26.2. The Administering Organisation must submit the following reports and statements, in accordance with the timetable in Schedule D and the ARC Act, in the format required by the ARC, if specified.

### *Annual Report*

- 26.3. The Administering Organisation must submit an Annual Report by 31 March in the year following each calendar year for which Funding was awarded. The Annual report will include details regarding the following matters:
  - a. The extent to which the objectives of the Initiative and the Proposal have been met;
  - b. summary of highlights and any issues, including mitigation strategies;

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- c. measurement and account of performance against performance targets as set out in Schedule E;
- d. a detailed activity plan for the next 12 months;
- e. all expenditure for the calendar year, including any specific Assets or Intellectual Property;
- f. funding and/or other resources provided by the Administering Organisation, Collaborating and Partner Organisations, and any other sources of support; and
- g. any other matters which from time to time may be specified on the ARC website as matters which must be included in an Annual Report;
- h. details of collaboration meetings as stated in Schedule B3.1.

### *Collaboration Report*

- 26.4. The Administering Organisation must submit a summary of the meetings between any Initiatives funded under the *ARC Special Research Initiative in Stem Cell Science* within 30 days of any meeting.
- 26.5. The Collaboration Report should highlight identified areas of potential for collaboration between the Initiatives as stated in Schedule B3.1.

### *End of Year Report*

- 26.6. The Administering Organisation must submit an End of Year Report by 31 March in the year following each full calendar year for which the Funding was awarded. The Commonwealth will provide the Administering Organisation with a proforma for this report.
- 26.7. The End of Year Report will contain information on all expenditure under the Initiative, including:
  - a. any unspent Funds to be recovered by the Commonwealth;
  - b. any unspent Funds that the Administering Organisation is seeking to have carried over into the next year; and
  - c. the reasons why the unspent Funds are required to be carried over.
- 26.8. Under paragraph 58(1)(e) of the Act, Funds provided by the Commonwealth to the Administering Organisation which are not spent during the year of the Funding Period to which those Funds were allocated may be carried over if approved by the Commonwealth. If the Administering Organisation wishes any Funds to be carried over from one year to the next year, the Administering Organisation must request this approval in the End of Year Report for the calendar year for which those funds were initially paid.
- 26.9. Where a carryover is requested which is more than 75% or more of the Funds allocated for the Initiative in a calendar year (excluding any Funds carried over from the previous calendar year), separate written justification must be provided.
- 26.10. Funds may be carried over more than twelve months only in exceptional circumstances and subject to approval by the Commonwealth. Separate written justification must be provided in this instance.

### *Final Report*

- 26.11. Unless otherwise approved by the Commonwealth, the Administering Organisation must ensure that a Final Report is provided within six months of the final payment of the Funds for the Initiative or within six months of the final carryover of Funds approved by the Commonwealth, whichever is the later. The form for this report will be made

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available on the ARC website. The Commonwealth may review the outcomes against the objectives of the Scheme and the Initiative, or any revised research aims or Initiative approved by the Commonwealth.

- 26.12. Should the information in the Final Report be found to be inadequate or unsatisfactory the Program Leader responsible for that Final Report may be contacted to provide further information. If the Commonwealth is not satisfied with the outcomes of the Initiative, this may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Program Leader and may be taken into account in the assessment of those applications.
- 26.13. 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 Program Leader and may be taken into account in the assessment of those applications.
- 26.14. Proposals submitted under any ARC scheme by, or on behalf of, the Program Leader of a research project for which the Final Report is outstanding may be deemed ineligible for approval or funding.

### *Audited Financial Statement*

- 26.15. In accordance with section 58 of the ARC Act, the Administering Organisation must submit an Audited Financial Statement by 30 June for each year following each calendar year for which the Funding was awarded.
- 26.16. 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 Commonwealth to carryover in the End of Year Report.

## **27. Copyright in Proposals and Reports**

- 27.1. Copyright in any Proposal and all reports provided under this Agreement will vest in the Administering Organisation at the time of creation but the Administering Organisation grants to the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence to use and reproduce information contained in a Proposal or a report and publish it on a non-profit basis for any purpose related to:
  - a. The evaluation and assessment of proposals;
  - b. Verifying the accuracy, consistency and adequacy of information contained in a Proposal, or otherwise provided to the Commonwealth;
  - 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 within the Commonwealth, where this serves the Commonwealth's legitimate interests;or where the use, reproduction or publication of the material is authorised or required by law.
- 27.2. If a Proposal or report contains information belonging to a third party, the Administering Organisation must ensure that it has in place all necessary consents sufficient to allow the Commonwealth to deal with the information or any report in accordance with this Agreement.
- 27.3. This clause survives the expiration or earlier termination of this Agreement.

## 28. Indemnity

- 28.1. The Administering Organisation will indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and 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, a Collaborating Organisation, a Partner Organisation, and the Personnel (including the Specified Personnel and any of those organisation's employees, agents or subcontractors) in connection with this Agreement.
- 28.2. The Administering Organisation's liability to indemnify the Commonwealth under clause 28.1 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.
- 28.3. The indemnity referred to above shall survive the expiration or termination of this Agreement.

## 29. Insurance

- 29.1. The Administering Organisation must effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in the Initiative and, if requested, provide the Commonwealth with a copy of the relevant policies or when appropriate Certificate of Currency. The Administering Organisation will be responsible for effecting all insurances required under Worker's Compensation legislation and for taking all other action required as an employer.
- 29.2. This clause survives the expiration or earlier termination of this Agreement.

## 30. Dispute Resolution

- 30.1. 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 30 has been followed.
- 30.2. 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

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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.

- 30.3. This clause 30 does not apply to action that the Commonwealth takes, or purports to take, under clauses 5, 31 or 32 or where a Party commences legal proceedings for urgent interlocutory relief.
- 30.4. 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.

### **31. Termination of the Agreement**

#### *Termination of funding for the Initiative*

- 31.1. The Commonwealth may immediately terminate Funding for the Initiative in writing by notifying the Administering Organisation if:
- a. the Commonwealth reasonably believes that one or more of the Funding conditions, as set out in this Agreement, have not been satisfied in relation to that Initiative;
  - b. the Commonwealth reasonably believes that it has received inaccurate, incomplete or misleading information in relation to that project, including in the Proposal or in any report provide under this Agreement;
  - c. the Administering Organisation fails to comply as soon as possible with any additional Commonwealth requirement or condition as notified under clause 3.2; or
  - d. the Commonwealth receives a notification that work on the Initiative will cease, or has ceased.
- 31.2. If the Commonwealth terminates the Funding for the Initiative under the clause above:
- a. the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on the Initiative;
  - b. the Administering Organisation must provide all reports required by this Agreement within the timeframes specified in this Agreement, unless otherwise notified by the Commonwealth; and
  - c. The Commonwealth may recover any or all Funding for the Initiative as set out in clause 5.4.

#### *Termination of the Agreement*

- 31.3. The Commonwealth may immediately terminate this Agreement in writing by notifying the Administering Organisation if:
- a. The Commonwealth reasonably considers there is fraud, misleading or deceptive conduct on the part of the Administering Organisation or any Specified Personnel, Personnel or a Collaborating Organisation or Partner Organisation in connection with the Initiative;
  - b. The Administering Organisation fails to comply as soon as possible with any additional Commonwealth requirement or condition as notified under clause 3.2;
  - c. the Administering Organisation commits any breach of this Agreement that the Commonwealth, acting reasonably, considers is capable of remedy, and has failed to rectify that breach within 30 days of receiving an earlier notice from the Commonwealth requiring the breach to be remedied;

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- d. the Administering Organisation commits any material breach of this Agreement which the Commonwealth, acting reasonably considers is not capable of remedy; or
  - e. the Commonwealth considers it appropriate for any other reason.
- 31.4. If the Commonwealth terminates the Agreement under the clause above:
- a. the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on the Initiative;
  - b. the Administering Organisation must provide the reports required by this Agreement within the timeframes specified in this Agreement unless otherwise specified by the Commonwealth; and
  - c. The Commonwealth will immediately stop payment of all Funding under this Agreement and may recover any unspent Funds as at the date of termination from the Administering Organisation and any Funds not spent as set out this Agreement.
- 31.5. Any amount notified to the Administering Organisation as payable under clauses 31.2(c) or 31.4(c) is a debt due to the Commonwealth (without further proof of the debt being necessary), payable within 30 days of the date of the notice.
- 31.6. Subject to clause 17.3, after the expiration or termination of this Agreement, the Administering Organisation retains ownership of all Assets purchased using the Funding.

### **32. Recovery of Unspent Funds or Overpayments of Funds**

- 32.1. Any unspent Funds may be recovered by the Commonwealth under paragraph 58(1)(c) of the Act. Any amount of Funding paid to the Administering Organisation which exceeds the amount of Funds that is properly payable to the Administering Organisation 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.

### **33. Conflict of Interest**

- 33.1. All parties involved in or associated with the Initiative are required to disclose to the Commonwealth and the other parties involved in the Initiative, any actual or potential Conflict of Interest. Such a Conflict of Interest will have the potential to influence, or appear to influence, the research and activities or operations of the Initiative, publications and media reports, or requests for funding related to the Initiative.
- 33.2. If during the period of the Agreement, a conflict of interest arises, the Administering Organisation must:
- a. notify the Commonwealth in writing of the conflict of interest and set out the steps the Administering Organisation proposes to take to resolve or otherwise deal with the conflict; and
  - b. take such steps as have been proposed by the Administering Organisation or as advised by the Commonwealth, take such steps as the Commonwealth may reasonable require to resolve or otherwise deal with the conflict of interest.
- 33.3. If the Administering Organisation fails to notify the Commonwealth under clause 33.2(a) or is unable or unwilling to deal with the conflict, the Commonwealth may terminate this Agreement.

### 34. Liaison

- 34.1. All communication from the Administering Organisation to the Commonwealth, relating to the Funding will be made through the Responsible Officer and will be directed to the Scheme Coordinator at the following address:

Scheme Coordinator (*Special Research Initiatives*)

Australian Research Council

Postal address

GPO Box 2702

CANBERRA ACT 2601

Courier address

Level 1, 8 Brindabella Circuit

CANBERRA AIRPORT ACT 2609

Tel: 02 6287 6600

Fax: 02 6287 6601

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

### 35. Applicable Law

- 35.1. This Agreement is governed by and is to be construed in accordance with the law in force in the Australian Capital Territory.
- 35.2. 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.

### 36. ARC Assessments

- 36.1. The Administering Organisation must ensure that, for the term of this Agreement, if requested by the ARC, each Chief Investigator agree to assess up to twenty new proposals for ARC funding per annum for each year of Funding.
- 36.2. If the ARC determines that a Chief Investigator has failed to assess proposals assigned by the ARC for assessment, the ARC will notify the Administering Organisation in writing of that failure.
- 36.3. 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 36.2 above, the Administering Organisation will be considered to be in breach of this Agreement and the Agreement may be terminated.

### 37. Relinquishment of other Commonwealth Funding

- 37.1. The Administering Organisation acknowledges that the Commonwealth does not duplicate funding assistance for research that has been already funded by the Commonwealth.
- 37.2. If the Commonwealth determines, at its absolute discretion, that Commonwealth funding provided under funding schemes or projects outside of this Agreement duplicates, or is likely to duplicate, Commonwealth funding assistance for research which is to be undertaken by the project, the Administering Organisation acknowledges that it may be required to relinquish, or to secure the relinquishment from other Organisations of, all unspent funds and future amounts payable relating to the “duplicated” research funding.
- 37.3. The Administering Organisation must not use the Funds provided by the Commonwealth for the Initiative to meet the salary, in whole or part, for any Personnel who is concurrently in receipt of salary-related funding from another Commonwealth funding

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scheme.

- 37.4. The decision on whether or not any financial assistance from the Commonwealth must be relinquished under this clause 37 will be at the absolute discretion of the Commonwealth and the outcome of the Commonwealth's decision in relation to any such relinquishment will be final.

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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 Organisation who, by signing, )  
certifies that they have the authority so to sign )  
)  
In the Presence of: )  
)  
)  
..... ) .....  
insert name of witness above ) witness to sign above

## SCHEDULE A

### Details of Initiative to receive funding by the Commonwealth

Initials (Admin Org) \_\_\_\_\_ Date \_\_\_\_\_  
Initials (ARC) \_\_\_\_\_ Date \_\_\_\_\_

## SCHEDULE B

### Special Conditions for the Initiative

#### **B1. Initiative Senior Management**

- B1.1 The Administering Organisation must appoint a person to be responsible for the activities of the Initiative. This person will have the title of Program Leader. The Commonwealth must approve the appointment of a Program Leader.
- B1.2 The Program Leader must be a Chief Investigator and is expected to devote a significant proportion of time to the Initiative. Failure to comply with the requirements of the conditions listed in this clause B1 may result in the termination of the Agreement and recovery of Funds in accordance with the Agreement.
- B1.3 The Program Leader appointed under clause B1.1 will be responsible for implementing the strategies of the Initiative and must coordinate the conduct of the activities of the Initiative. The Program Leader must be responsible for the coordination of the allocation of the Funding for the Initiative. The Program Leader must provide academic leadership and academic cohesion within the Initiative and maintain and be responsible for the reporting structures across the Administering Organisation, the Collaborating Organisation and Partner Organisations of the Initiative. The Program Leader must also be responsible for managing the Program's Intellectual Property in accordance with the policies of the Administering Organisation and the Collaborating Organisation and Partner Organisations and with the *National Principles of Intellectual Property Management for Publicly Funded Research*.

#### **B2. Personnel - terms and conditions of employment**

- B2.1 The Administering Organisation and Collaborating Organisations will pay the Personnel involved in the Initiative at or above the prevailing salary levels for other academic staff at a similar level, so that Personnel are no worse off financially than their academic peers of similar seniority at that Organisation.
- B2.2 The provision of recreation leave, sick leave and other conditions of employment for Personnel involved with the Initiative shall be those of the organisation at which they are employed.
- B2.3 Researchers employed by Australian research organisations outside the higher education sector that are funded primarily for research from State/Territory or Commonwealth Government sources are eligible to participate as Partner Investigators in the Initiative.
- B2.4 Researchers employed by research organisations outside Australia are eligible to participate as Partner Investigators in the Initiative, but cannot receive any Funds, apart from short term <sup>project</sup> support for investigators visiting from overseas. Researchers from overseas organisations must bring significant contributions to the work of the Initiative.
- B2.5 Chief Investigators and Partner Investigators must have prior written permission from their employer to participate in the Initiative.
- B2.6 Subject to their time commitments to undertake research for the Initiative and the prohibition on duplication of Commonwealth research funding, researchers associated with the Initiative may apply for research funding, for projects not associated with the Initiative, from other sources, including other ARC initiatives and schemes.
- B2.7 The Administering Organisation will use best endeavours to ensure that no Personnel cause the Administering Organisation to breach this Agreement.

### **B3. Collaboration**

- B3.1 Chief Investigators of any Initiatives funded under the ARC *Special Research Initiative in Stem Cell Science* must meet at least twice a year for discussion of issues of mutual interest in development of technology related to stem cell science. It is understood these discussions will need to be conducted whilst also preserving necessary safeguards on sharing of confidential Intellectual Property of importance to potential commercialisation arising from either project. Particular emphasis should be placed on the compatibility between the technical aspects of both approaches and the potential for capacity building.
- B3.2 The Administering Organisation must provide a report of these meetings to the Commonwealth within 30 days of the meeting and provide a summary of the meetings in the Annual Report.

### **B4. Advisory Board**

- B4.1 The Administering Organisation must ensure that an Advisory Board or equivalent be established and maintained.
- B4.2 The purpose of the Advisory Board (or its equivalent) is to assist the Initiative management by contributing to the development of strategies and vision for the future relative to the proposed goals and objectives for the Initiative and by serving as a vehicle for creating better linkages between academia, industry and government. The Board will offer advice to the Program Leader and the Administering Organisation and the other Collaborating Organisations regarding the research focus of the Initiative, the structure and general operating principles of the Initiative, and intellectual property and commercialisation management.
- B4.3 While the final composition of the Advisory Board is a matter for the Administering Organisation, it is expected that it will comprise some of each of the following: senior staff involved in the Initiative, industry government or end-user community groups, academic experts from at least one or other higher education organisation, visiting senior international fellows and senior university staff such as the Pro Vice-Chancellor (Research).
- B4.4 The Advisory Board (or its equivalent) must meet at least twice a year in the first calendar year of the Initiative, and at least once a year thereafter.

### **B5 Teaching Relief**

- B5.1 The funding contribution for teaching relief is limited to a maximum rate of \$34,338 (in 2010 dollars) for up to 6 months in each consecutive year (or pro rata for a lesser period) per Chief Investigator (regardless of the level of appointment of the Chief Investigator).

### **B6. Assets**

- B6.1 No expenditure of Funding shall be made on equipment items estimated to cost in excess of \$150,000 without the prior approval of the Commonwealth.

### **B7. Review**

- B7.1 During the year listed under the heading 'Year for Initiative Review' in Schedule A, the Initiative will undergo a rigorous and comprehensive external performance review undertaken by the Commonwealth.
- B7.2 The review will evaluate the Initiative's performance against the Scheme objectives outlined in the Funding Rules and the specific Initiative objectives set out in the Proposal, and the specific performance targets or milestones identified in the Proposal

and in Schedule E of this Agreement. The operations, management and governance of the Initiative will also be evaluated.

- B7.3 Continuation of Funding for the remaining years of the Funding Period will be dependent on the outcome of the review. The Initiative may be terminated following the review if, in the opinion of the Commonwealth, that Initiative is not performing or operating at the level expected of an ARC *Special Research Initiative*.
- B7.4 Ad hoc review of the Initiative may be held at any time.

## SCHEDULE C

### Research Special Conditions

- C1. *Importation of Experimental Organisms*: The Administering Organisation must ensure that, before experimental organisms are imported into Australia for the purposes of research to be undertaken by the Initiative, the Administering Organisation or the Program Leader must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- C2. *Research Involving Humans or Animals*: If any Initiative conducted by the Administering Organisation involves research on or involving humans or other animals, the Administering Organisation must ensure that the codes adopted for these purposes by the National Health and Medical Research Council are complied with and that the project may not commence without clearance from the Administering Organisation's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority.
- C3. *Deposition of Biological Materials*: Any biological material accumulated during the course of the Initiative 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.
- C4. *Genetically Modified Organisms*: If the Initiative involves the use of gene technology (i.e. any technique for the modification of genes or other genetic material either in vitro or on live organisms) or the use of a genetically modified organism (i.e. an organism that has been modified by gene technology or that has inherited particular traits from an organism that were present because of gene technology) which is registered under the *Gene Technology Act 2000*, then before the proposed research commences, the Administering Organisation must retain all certificates relating to the above and provide evidence to the Scheme Coordinator if required to do so. The Administering Organisation must be accredited with the Office of the Gene Technology Regulator.
- C5. *Ionising Radiation*: If the Initiative involves the use of ionising radiation, the Administering Organisation will ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority. The Administering Organisation must retain all such licences and provide them to the Scheme Coordinator if required to do so.
- C6. *Social Science Data Sets*: Any machine-readable data arising from the Initiative involving research relating to the social sciences should be lodged with the Australian Consortium for Social and Political Research Inc. (ACSPRI) or any other appropriate archive for secondary use by other investigators. This should normally be done within two years of the conclusion of any fieldwork relating to the research. If a Chief Investigator is not intending to do so within the two-year period, s/he must inform the Commonwealth in writing before the expiry of the two-year period.

## SCHEDULE D

### **Payment and Reporting Schedule for the Special Research Initiative in Stem Cell Science**

Initials (Admin Org) \_\_\_\_\_ Date \_\_\_\_\_  
Initials (ARC) \_\_\_\_\_ Date \_\_\_\_\_

## SCHEDULE E

### **Key Performance Indicators for the Special Research Initiative in Stem Cell Science**

Initials (Admin Org) \_\_\_\_\_ Date \_\_\_\_\_  
Initials (ARC) \_\_\_\_\_ Date \_\_\_\_\_