



Australian Government

Australian Research Council

Funding Agreement
between the
Commonwealth of Australia
as represented by the
Australian Research Council
and
«Organisation»

regarding funding for
Special Research Initiatives
to commence in
2006:
Thinking Systems

Australian Research Council
Special Research Initiatives: Thinking Systems
Funding Agreement for funding commencing in 2006

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Parties & Recitals

THIS AGREEMENT is made on _____ day of _____ 2006, between the COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), as represented by and acting through the Australian Research Council ('the ARC') [ABN 35 201 451 156]

and

«Organisation» ('the Administering Organisation')

WHEREAS:

- A. The Commonwealth through the ARC operates a Scheme, being the *Special Research Initiative* scheme ('the Scheme').
- B. Under the scheme the ARC, in association with the NHMRC, operates an Initiative, being the *Thinking Systems Initiative* ('the Initiative').
- C. The Commonwealth accepts that the Administering Organisation is an eligible body for the purposes of the Initiative, and the Commonwealth may provide financial assistance to enable the Administering Organisation to conduct the Project(s), being those described in Schedule A.
- D. 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.
- E. 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

1.1 In this Agreement, unless the contrary intention appears:

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

'**Act**' means the *Australian Research Council Act 2001*;

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

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

'**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;

'**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 the person or persons named in the Proposal as Chief Investigator for a particular Project;

'**Commonwealth**' means the Commonwealth of Australia;

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

‘Department’ means the Department of Education, Science and Training, or any other Department charged with the administration of the *Higher Education Funding Act 1998*;

‘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 27.3;

‘Final Report’ means the report described in Clause 27.5;

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

‘Funding Rules’ means the *ARC Special Research Initiatives: Funding Rules for Funding commencing in 2006* and includes the *Thinking Systems Call for Proposals* and the *Thinking Systems 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;

‘Invitation’ means the *ARC Thinking Systems Call for Proposals under ARC Special Research Initiatives for Funding commencing in 2006*;

‘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;

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

‘Partner Organisation’ means any company, government agency, incorporated body or other industrial collaborator named in Schedule A as a contributor to a Project ;

‘Partner Organisation Contribution’ means the cash and in-kind contribution for a Project provided by the Partner Organisation to the Administering Organisation in respect of a Project;

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

‘Progress Report’ means the report described in Clause 27.4;

‘Project’ means any project described in Schedule A;

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

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

‘Research Office’ means that part of the Administering Organisation responsible for liaison with the ARC on Funding matters;

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

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

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

‘Specified Personnel’ means the Chief Investigator(s) and Partner Investigator(s) 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 clauses in this Agreement and all references to a schedule is a reference to a schedule to this Agreement;
- (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2.2 This Agreement is subject to the Act. If there is any conflict between this Agreement and the Act, then the Act prevails to the extent of any inconsistency.

3. Entire Agreement and Variation

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

- 3.2 Notwithstanding clause 3.1, the Minister may at any time impose other requirements or conditions in connection with any Funding covered by this Agreement. The Administering Organisation must immediately comply (or procure compliance) with any other Ministerial conditions or requirements notified by the ARC from time to time. In the event of any inconsistency between this Agreement and any such further requirements or conditions, the Administering Organisation will not be taken to have breached this Agreement where it has acted consistently with any further requirements or conditions notified under this clause.
- 3.3 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:
- (a) the terms and conditions contained in the clauses of the Agreement;
 - (b) the Schedules;
 - (c) the Funding Rules; and
 - (d) the Proposal.
- 3.4 The Administering Organisation and the Commonwealth may agree to vary this Agreement. Other than as expressly provided for in this Agreement, any variation to this Agreement must be in writing and signed by both parties.
- 3.5 The Administering Organisation is required to do all things incidental or reasonably necessary to give effect to this Agreement, including procuring any researchers or third parties to do such incidental or reasonably necessary things. This includes, but is not limited to, the Administering Organisation securing the agreement of all parties involved in Projects to abide by the terms and conditions of this Agreement.

4. Term of Agreement and Funding Period

- 4.1 This Agreement takes effect on the date it has been executed by the Administering Organisation and the ARC and continues to operate until all parties have fulfilled their obligations under this Agreement.
- 4.2 Subject to clauses 4.3 and 5 of this Agreement, the Funding Period for each Project is the approved period(s) set out in Schedule A for that Project, or as otherwise approved in writing by the Minister, unless the Funding is terminated earlier in accordance with this Agreement.
- 4.3 The Funding Period for any Project is indicative only of the intent of the Minister at the time of making the offer of Funding and is not binding on the Commonwealth. In the event that the Minister subsequently makes a determination under Section 51 of the Act to continue the Funding, this Agreement will continue to apply to any Project granted financial assistance under such a determination.

5. Payment of Funding

- 5.1 Subject to sufficient program funding being available for the Initiative, the provisions of the Act and the terms of this Agreement, the Commonwealth shall pay the Funds to the Administering Organisation for each Project in progressive monthly instalments in accordance with Schedule A.

- 5.2 All Funding for a Project is subject to the following conditions:
- (a) that the Project commence in accordance with clause 10.1, or by any later date approved by the Minister under clause 11;
 - (b) that the Chief Investigators identified as a Project leader (or any replacement persons approved by the Minister under clause 13.1) lead and co-ordinate the Project at all times during the Funding Period, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
 - (c) that the Administering Organisation conduct each Project substantially in accordance with the Proposal Description contained in the Proposal, or as otherwise approved by the Minister;
 - (d) that the Administering Organisation spend all funds paid under this Agreement for each Project substantially in accordance with the Project Budget for that Project and any Special Conditions (or as otherwise approved by the Minister) and in accordance with the requirements of this Agreement and the Funding Rules;
 - (e) that the Administering Organisation not receive for any Project any amount of Funding in excess of that to which it is properly entitled, or which the Commonwealth is not required to pay, either under this Agreement or the Act;
 - (f) that the Administering Organisation submit on time all reports required under this Agreement, in the form and with content satisfactory to the Commonwealth.
 - (g) that all Chief Investigators (or any replacement persons approved by the Minister under clause 13.1), at all times during their participation in a Project as a Chief Investigator, meet the criteria specified in Appendix 4 of the Funding Rules, including by having direct responsibility for the strategic decisions and the communication of results for the Project;
 - (h) that all Partner Investigators (or any replacement persons approved by the Minister under clause 13.1), at all times during their participation in a Project as a Partner Investigator, meet the criteria specified at Appendix 4 of the Funding Rules, including by having direct responsibility for the strategic decisions and the communication of results for the Project; and
 - (i) that the Administering Organisation comply with any other requirements or conditions imposed by the Minister in connection with any Funding covered by this Agreement.
- 5.3 If the Administering Organisation does not meet any one or more of the conditions listed in clause 5.2 in respect of a Project, the Commonwealth may do any or all of the following:
- (a) not pay the Administering Organisation any further Funds for that Project;
 - (b) by notice in writing to the Administering Organisation, recover all or some of the Funds paid under this Agreement for that Project, including all unspent Funds and any funds not spent in accordance with this Agreement; or
 - (c) vary the amount of Funding approved for that Project.
- 5.4 The Administering Organisation must pay to the Commonwealth the amount specified in any notice received under clause 5.3(b) within 30 days of the date of that notice.
- 5.5 The Commonwealth will pay to the Administering Organisation, by way of financial assistance in accordance with the Act, the approved amounts set out in Schedule A, which is net of any GST which may be imposed on the supply.

- 5.6 Unless otherwise indicated or required by Law, all consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply. If the Administering Organisation makes a taxable supply to the Commonwealth under this Agreement, the Commonwealth, on receipt of a tax invoice from the Administering Organisation or the issuing of a Recipient Created Tax Invoice by the Commonwealth, will pay without setoff an additional amount to the Administering Organisation equal to the GST imposed on the supply in question. No party may claim or retain from the other any amount under this Agreement for which the first party can obtain an input tax credit.
- 5.7 The Commonwealth shall have the right to unilaterally vary the amounts for any or all Projects.
- 5.8 Where the Commonwealth exercises its right under clause 5.3 or 5.7 above, it shall inform the Administering Organisation of the variation within thirty (30) days of that variation.

6. Accuracy of Information/Malpractice

- 6.1 The provision of any Funding for a Project is conditional on all information contained in the Proposal for that Project and all reports required by this Agreement from the Administering Organisation being complete, accurate and not misleading. The Commonwealth regards inaccurate and misleading information as including, but not being limited to, claiming fictitious track records, inflating funds obtained from other sources and false claims in the publication record, e.g. describing a paper as being “in press” or accepted even if it has only been submitted.
- 6.2 If the Commonwealth considers that a Proposal or any report provided under this Agreement contains incomplete, inaccurate or misleading information, the Commonwealth may do any of the things provided for in clause 5.3.

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

- 7.1 The Administering Organisation will ensure that each Project is carried out in accordance with this Agreement, in a diligent and competent manner. In addition, each Project will be conducted in accordance with the Proposal Description contained in the Proposal, or any revised budget, aims and research plan, submitted by the Administering Organisation and approved by the ARC.
- 7.2 The Administering Organisation shall ensure that expenditure on each Project described in Schedule A is in accordance with the Proposal Description contained in the Proposal and within the broad structure of the proposed Project Cost contained in the Proposal or any revised budget, aims and research plan approved by the ARC.
- 7.3 The Organisation shall not use the Funding:
- (a) for purposes specifically excluded in the Funding Rules or;
 - (b) for purposes specifically excluded in this Agreement, for example clause 7.5, clause 8.1, clause 8.2, clause 8.5 and clause 8.7 of the Agreement.

- 7.4 The Administering Organisation must ensure that investigators listed in Schedule A (or any replacement persons approved by the Minister under clause 14.1) have adequate time to carry out each Project and must provide the basic facilities required for each Project described in Schedule A. Basic facilities include but are not limited to:
- (a) accommodation (e.g. laboratory and office, suitably equipped and furnished in standard ways);
 - (b) access to workshop services e.g., machine tools and qualified technicians available to each member of staff, according to need, for research;
 - (c) access to film or music editing facilities where required for research;
 - (d) access to a basic library collection;
 - (e) standard reference materials or funds for abstracting services;
 - (f) provision of computers (excluding access to high-performance computers or other specialised applications) and basic computing facilities such as word processing and other standard software; and
 - (g) use of photocopiers, telephones, mail, fax, email and internet services.

7.5 As set out in the Funding Rules, Funds may not be used for:

- (a) costs of capital works and general infrastructure;
- (b) salaries of Chief Investigators and Partner Investigators;
- (c) Special Studies (Study Leave) Programs;
- (d) research support for investigators not resident in Australia;
- (e) international students' fees and HECS liability;
- (f) computer facilities for molecular analysis;
- (g) basic facilities;
- (h) publication costs;
- (i) costs not directly related to a Project; and/or
- (j) teaching or teaching relief, unless specifically approved for that purpose in this Agreement.

8. Use of the Funding: provision of salaries

- 8.1 The Funding must not be used to provide salary support for Chief or Partner Investigators.
- 8.2 Funding may not be used for the payment of a Partner Investigator's costs incurred because of their involvement in the Project, except for purposes outlined in the Proposal and not prohibited as a Special Condition as specified in Schedule A.
- 8.3 If expenditure is incurred as allowed for in clause 8.2 above, the Administering Organisation shall ensure that expenditure is in accordance with the broad structure of the Proposal Description and Project Cost contained in the Proposal, or any revised Project budget, aims and research plan approved by the ARC.
- 8.4 Funds may be used by the Administering Organisation to employ Personnel other than the Specified Personnel where provision for such was included in the Proposal. They may be employed full-time or part-time, as required.

- 8.5 The Administering Organisation must ensure that a person who is studying full-time for a postgraduate degree or other postgraduate qualification shall not be employed on a Project for more than 20 hours per week or such lesser time as the internal policies and procedures of the Administering Organisation provide.
- 8.6 In respect of Personnel other than Chief Investigators or Partner Investigators, unless the Minister otherwise determines:
- (a) in recruiting Personnel, the Administering Organisation shall follow its normal recruitment procedures;
 - (b) the provision of salaries, recreation leave, sick leave and other conditions of employment for Personnel shall be those of the Administering Organisation;
 - (c) the oncosts provisions beyond the ARC contribution of 28% remains the responsibility of the Administering Organisation, e.g., extended periods of leave, severance pay etc. shall not be provided from research funds. See also Clause 15. Negation of Employment by the Commonwealth.
- 8.7 Funding may only be used for relief of Specified Personnel from teaching or other duties for a maximum of six months per annum if it is specified as a Special Condition for a Project in Schedule A, and may not be used for any other purpose.
- 8.8 The Administering Organisation must ensure that any Personnel who are employed full-time on a Project and whose salary is provided from the Funding shall not, without the prior agreement of the Minister, accept any remuneration whatsoever from any source other than the Administering Organisation in respect of work performed on the Project.

9. Over-expenditure by the Organisation

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

10. Commencement of Project: final date for commencement

- 10.1 Subject to clause 11, the Projects must commence by 31 December 2006.

11. Deferment of Commencement of Project

- 11.1 If the Administering Organisation wishes to defer commencement of a Project a written request justifying the requested deferral in terms of special circumstances, must be made to the Scheme Coordinator, through the Administering Organisation's Research Office, at least 1 month prior to the applicable commencement date specified in clause 10.1 for that Project.
- 11.2 The Administering Organisation must not defer commencement of the Project unless the Administering Organisation has received written approval from the ARC, based on a decision made by the Minister.

12. Specified Personnel

- 12.1 The Administering Organisation shall ensure that the Specified Personnel will conduct the Project in a diligent and competent manner and will comply with this Agreement.
- 12.2 The Administering Organisation shall provide each Chief Investigator with a copy of this Agreement within a reasonable time after the commencement of the Funding.
- 12.3 The Administering Organisation warrants that it has made proper inquiries of the Specified Personnel in relation to their eligibility to perform the Project.
- 12.4 The Administering Organisation shall ensure that, unless otherwise approved by the Commonwealth, all Chief Investigators named in Schedule A or subsequently approved to perform any Project meet the criteria specified at Appendix 4 of the Funding Rules for the full term of their participation in the Project as a Chief Investigator.
- 12.5 The Administering Organisation shall ensure that all Partner Investigators named in Schedule A to perform any Project have the approval of his/her employing organisation to participate in the Project.

13. Change of Specified Personnel

- 13.1 If a Chief Investigator or Partner Investigator is at any time during the term of a Project no longer able to continue the Project, the Project may be continued under another Chief Investigator or Partner Investigator provided that:
 - (a) he/she meets the eligibility criteria, as specified in the Funding Rules for the particular role they are to perform, for the period for which they are perform that role;
 - (b) approval is sought from the ARC for the change in Specified Personnel:
 - i in writing (including the proposed Personnel's Curriculum Vitae); and
 - ii within three months of the date that the Specified Personnel cease working on the Project; and
 - (c) the change is approved, in writing, by the Minister.

14. Transfer of Project

- 14.1 The Administering Organisation must promptly notify the ARC of any Specified Personnel on the Project who moves to an Eligible Organisation other than the Administering Organisation at any time during the Funding Period for that Project.
- 14.2 If the transferring Specified Personnel is the Project Leader, then the Administering Organisation may seek the Minister's approval for the transfer, by submitting a "Variation of Funding Agreement" request outlining arrangements for the continuation of the Project and the continued administration of the funding.
- 14.3 Where the proposed arrangements include a transfer of the Funding from the Administering Organisation to another Eligible Organisation ('the recipient Eligible Organisation'), the Minister shall have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as the Minister considers appropriate. The request must provide evidence that:

- (a) the following parties agree to the transfer:
 - i. the Administering Organisation; and
 - ii. the recipient Eligible Organisation;
- 14.4 When the ARC receives a proposal requesting the transfer of Funding it will seek the Minister's approval for the transfer of unspent Funds and indicative Funding for the Project and any Assets (as outlined in clause 19.3) to the recipient Eligible Organisation.
- 14.5 If Ministerial approval is granted to transfer the Funding (and any assets);
 - (a) the Administering Organisation must:
 - i. agree to any variation or termination (as applicable) of this Agreement proposed by the ARC to give effect to the changed Funding arrangements;
 - ii. provide to the ARC, in writing, the amount of all unspent Funds for the Project and pay the ARC such unspent Funds. The ARC will then provide the unspent Funds to the recipient Eligible Organisation;
 - iii. report expenditure of Funding for the Project prior to the transfer in its End of Year Report and identify the transfer in the 'Notes' column; and
 - iv. comply with any other directions reasonably given by the ARC to give effect to the transfer;
 - (b) the recipient Eligible Organisation will be required to:
 - i. enter into a new, or vary an existing, funding agreement it has with the ARC to give effect to the changed funding arrangements; and
 - ii. report expenditure of Funding for the Project subsequent to the transfer in its End of Year Report and identify the transfer in the 'Notes' column.
- 14.6 The Project or any equipment purchased with the Funding must not be transferred to the recipient Eligible Organisation until Ministerial approval for the transfer of the Funding is granted.

15. Negation of Employment by the Commonwealth

- 15.1 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.
- 15.2 Specified Personnel and/or Organisations shall not by virtue of this Agreement be 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.

16. Conduct of Research

- 16.1 Projects shall be conducted in accordance with any Special Conditions specified in this Agreement and with any other requirements or conditions imposed by the Minister in connection with any Funding covered by this Agreement.

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

17. Material produced under this Agreement

- 17.1 The Administering Organisation shall establish and comply with its own procedures and arrangements for the ownership of all Material produced as a result of any Project funded under this Agreement.
- 17.2 For any Material produced under this Agreement and subject to any agreement to the contrary with a Partner Organisation which can be justified to the satisfaction of the ARC on the grounds of commercial sensitivity (including Intellectual Property considerations), the Administering Organisation shall ensure that Specified Personnel (Chief Investigators and Partner Investigators):
- (a) take reasonable care of, and safely store, any data or specimens or samples collected during, or resulting from, the conduct of their Project;
 - (b) make arrangements acceptable to the ARC for lodgement with an appropriate museum or archive in Australia of data or specimens or samples collected during, or resulting from their Project; and
 - (c) include details of the lodgement or reasons for non-lodgement in the Progress Report and the Final Report for the Project.

18. ARC Assessments

- 18.1 The Administering Organisation must ensure that, for the term of this Agreement, if requested by the ARC, Chief Investigators agree to assess up to twenty new proposals for ARC funding per annum for each year of Funding.
- 18.2 If the ARC determines that a Chief Investigator has failed to meet the obligation to assess proposals assigned by the ARC for assessment, the ARC will notify the Administering Organisation in writing of that failure.
- 18.3 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 18.2 above, the Administering Organisation will be considered to be in breach of this Agreement and Funding for the relevant Projects on which the Chief Investigator is listed as Specified Personnel under this Agreement, may be terminated.

19. Assets

- 19.1 The Administering Organisation shall establish and comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring all items of equipment purchased with the Funds.
- 19.2 The Administering Organisation shall ensure that any Personnel shall have first priority in the use and operation of equipment purchased for the Project and the Administering Organisation shall so far as is practicable permit persons authorised by the Minister to have priority access to that equipment in preference to other persons.

- 19.3 The ownership of any Asset purchased wholly or partly with the Funding shall be vested in the Administering Organisation, located on its campus and listed in its assets register unless:
- (a) otherwise specified in the Proposal;
 - (b) the Project is terminated, in which case the Minister may, by notice in writing, require the transfer of any such item of equipment to the Commonwealth; or
 - (c) the Project is transferred to another organisation in accordance with clause 14, in which case, subject to the agreement of both the Administering Organisation and the recipient Eligible Organisation under that clause, the equipment purchased with funds provided under this Agreement for the relevant Project may be transferred in accordance with clause 14.6.

20. Intellectual Property

- 20.1 The Administering Organisation must adhere to an Intellectual Property policy, approved by the Administering Organisation’s governing body, which has as one of its aims the maximisation of benefits arising from research. The Commonwealth makes no claim on the ownership of Intellectual Property brought into being as a result of the Projects for which Funding is provided.
- 20.2 Unless otherwise approved by the ARC, the Administering Organisation’s Intellectual Property policy referred to in clause 20.1 must comply with the “National Principles of Intellectual Property Management for Publicly Funded Research” as amended from time to time (currently located on the ARC’s web-site).
- 20.3 The Administering Organisation shall at all times indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as ‘those indemnified’) from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement (or alleged infringement) of Intellectual Property rights by the Administering Organisation, its employees, agents or subcontractors in the course of, or incidental to, performing the Project or the use by the Commonwealth of the Proposal or reports provided by the Administering Organisation under this Agreement.
- 20.4 The indemnity referred to in clause 20.3 shall survive the expiration or termination of this Agreement.

21. Protection of Personal Information

- 21.1 The Administering Organisation agrees with respect to all activities related to or in connection with the performance of the Project or in connection with this Agreement:
- (a) to comply with the Information Privacy Principles set out in Section 14 of the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use and disclosure of personal information to the extent that the content of those principles 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 CEO in relation to the management of personal information by the Administering Organisation or breaches or alleged breaches of privacy;
- (d) to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the *Privacy Act 1988*) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph (a) above;
- (e) to comply with any policy guidelines laid down by the Commonwealth or issued by the 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 Administering Organisation that the Federal Privacy Commissioner considers to be a breach of the obligations in paragraph (a) above;
- (g) to comply with any reasonable direction of the CEO to provide the Federal Privacy Commissioner access for the purpose of monitoring the Administering Organisation's compliance with this clause;
- (h) to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the obligations of the Administering Organisation under this clause or any misuse of personal information by the Administering Organisation or any disclosure by the Administering Organisation in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise;
- (i) to ensure that any record (as defined in the *Privacy Act 1988*) containing personal information provided to the Administering Organisation by the Commonwealth or any other person pursuant to this Agreement is, at the expiration or earlier termination of this Agreement, either returned to the ARC or deleted or destroyed in the presence of a person duly authorised by the ARC to oversee such deletion or destruction; and
- (j) to the naming or other identification of the Administering Organisation in reports by the Federal Privacy Commissioner.

21.2 The Administering Organisation shall immediately notify the ARC if the Administering Organisation becomes aware of a breach of its obligations under clause 21.1.

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

21A. Confidentiality

21A.1 Subject to clause 21A.2, the ARC agrees not to disclose any confidential information of the Administering Organisation, without the Administering Organisation's consent.

21A.2 The ARC will not be taken to have breached its obligations under clause 21A.1 to the extent that the ARC discloses confidential information:

- (a) to its officers, employees, agents, external professional advisers or contractors solely to comply with obligations, or to exercise rights, under this Agreement;

- (b) to its internal management personnel solely to enable effective management or auditing of this Agreement or the National Competitive Grants Program or the Initiative;
- (c) for a purpose directly related to the enforcement or investigation of a possible breach of any Commonwealth, State, Territory or local law;
- (d) to the Minister, or in response to a demand by a House or a Committee of the Commonwealth Parliament;
- (e) within the ARC, the Department or another government agency or authority, where this serves the ARC's, the Department's or the Commonwealth's legitimate interests;
- (f) as required or permitted by any other law, or an express provision of this Agreement, to be disclosed; or
- (g) that is in the public domain other than due to a breach of this clause 21A.

21A.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.

22. Compliance with Commonwealth Policies

- 22.1 The Administering Organisation shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and ARC procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.
- 22.2 The Administering Organisation shall comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and shall not enter into a subcontract with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.
- 22.3 The Administering Organisation shall, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.

23. Acknowledgments, Publications and Publicity

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

- 23.2 When, at any time during or after completion of a Project, the Administering Organisation publishes promotional material, books, articles, television or radio programs, newsletters or other literary or artistic works which relate to the Project, the Administering Organisation shall acknowledge, at a prominent place in the publication, the support of the ARC in a form acceptable to the ARC. Advice of acceptable forms of acknowledgement and use of the logo is provided on the ARC's website.

24. Administration of the Funding

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

25. Audit and Monitoring

- 25.1 The Administering Organisation is responsible for monitoring the expenditure of the Funding and certifying to the ARC that the Funding has been expended in accordance with this Agreement in the End of Year Report. If at any time, in the opinion of the Responsible Officer, the Funding is not being expended in accordance with this Agreement, the Administering Organisation shall take all action necessary to minimise further expenditure in relation to the Project and inform the ARC immediately.
- 25.2 The ARC may conduct ad hoc on-site reviews in relation to financial and other reports to ensure that the terms of this Agreement are being, or were met and that reports submitted to the ARC are an accurate statement of compliance by the Administering Organisation. Persons nominated by the ARC to conduct these reviews are to be given full access by the Administering Organisation, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funds in general.
- 25.3 During the fourth year of funding, a review may be conducted by the ARC of the performance of the Projects in relation to the proposed goals and objectives for the Project and progress and financial expenditure outlined within the Proposal.

26. Access to Premises & Records

- 26.1 The Administering Organisation shall, at all reasonable times, give to the CEO or any person authorised in writing by the CEO:
- (a) unhindered access to:
 - i. the Administering Organisation's employees;
 - ii. premises occupied by the Administering Organisation; and
 - iii. Material;
 - (b) reasonable assistance to:
 - i. inspect the performance of any or all Projects;
 - ii. to locate and inspect Material relevant to any or all Projects or the Administering Organisation's compliance with this Agreement; and
 - iii. make copies of any such Material and remove those copies and use them for any purpose connected with this Agreement or the Scheme.

- 26.2 The access rights in clause 26.1 are subject to:
- (a) the provision of reasonable prior notice by the ARC; and
 - (c) the Administering Organisation's reasonable security procedures.
- 26.3 If a matter is being investigated which, in the opinion of the CEO of the ARC, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, clause 26.2 will not apply.
- 26.4 Upon receipt of reasonable written notice from the CEO of the ARC, the Administering Organisation shall provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 26.5 Nothing in clause 26.1 to 26.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.
- 26.6 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.
- 26.7 This clause shall survive the expiration or earlier termination of this Agreement.

27. Reporting Requirements

- 27.1 The Administering Organisation must submit the following reports and statement, in accordance with this Agreement and the Act, in the format required by the ARC, if specified.
- 27.2 The ARC may provide the reports to the NHMRC, as a co-funder of the *Thinking Systems* initiative, for consideration.
- 27.3 End of Year Report
- (a) The Administering Organisation shall submit an End of Year Report by 31 March in the year following each calendar year for which the Funding was awarded, with the first report due 31 March 2007. The ARC will provide the Administering Organisation with a proforma for this report.
 - (b) The End of Year Report will contain information on all expenditure under the Approved Proposal, on a Project by Project basis, including:
 - i. any unspent Funds to be recovered by the Commonwealth;
 - ii. any unspent Funds that the Administering 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 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 where approved by the Minister. The Administering Organisation must request this approval in the End of Year Report.
- (d) Where a carry over is requested for carry over of 75% or more of the Funds allocated for a calendar year (excluding any Funds carried over from the previous calendar year), separate written justification must be provided.
- (e) Funds may be carried over more than twelve months only in exceptional circumstances and subject to approval by the Minister. Separate written justification must be provided in this instance.

27.4 Progress Report

- (a) Unless otherwise approved by the ARC, the Administering Organisation shall ensure that Project Leaders provide Progress Reports in respect of each ongoing Project every twelve months, with the first report due by 31 January 2008, on a proforma which will be made available on the ARC's website.
- (b) The ARC may review the outcomes reported against the objectives of the Project as stated in the Proposal, or any approved revised budget, aims and research plan. Any Chief Investigators who were involved in a Project for which a Progress Report was deemed inadequate or unsatisfactory may be contacted for further information.
- (c) If the ARC is not satisfied with the progress of any Project, further payment of Funds will not be made until satisfactory progress has been made on the Project. If satisfactory progress is still not achieved within a reasonable period of time, the Funding may be terminated and all outstanding monies will be recovered by the ARC.
- (d) Unsatisfactory progress on any Project may be noted against any further proposals under any ARC scheme submitted by, or on behalf of the Chief Investigator(s) and will be taken into account in the assessment of those proposals.

27.5 Final Report

- (a) Unless otherwise approved by the ARC, the Administering Organisation shall ensure that Final Reports are provided for each Project within six months of the final payment of Funds by the ARC for the Project or within six months of the final carry over of Funds approved by the ARC, whichever is the later. The proforma for this report will be made available by the ARC. The ARC may review the outcomes against the objective(s) of the Project as stated in the Proposal or any approved revised budget, aims and research plan.
- (b) If a Final Report is considered by the ARC to be inadequate, the Chief Investigators who were involved in the Project may be contacted for further information. If the ARC is not satisfied with the outcomes of the Project, this may be noted against any further proposals under any ARC scheme submitted by, or on behalf of, the Chief Investigators and may be taken into account in the assessment of those proposals.
- (c) If the Final Report is not submitted on time this may be noted against any further proposals under any ARC scheme submitted by, or on behalf of the Chief Investigators and may be taken into account in the assessment of those proposals.
- (d) Proposals submitted under any ARC scheme by, or on behalf of, any Chief Investigator on a Project for which the Final Report is outstanding may be deemed ineligible for approval or funding.

27.6 Audited Financial Statement

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

28. Copyright in Reports

- 28.1 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 them on a non-profit basis for any purpose the Commonwealth sees fit.
- 28.2 If a Proposal or a report contains information belonging to a third party, the Administering Organisation must ensure that it has in place all necessary consents sufficient to allow the ARC to deal with the information or any report in accordance with this Agreement.

29. Recovery of Unspent Funds or Overpayments of Funds

- 29.1 Any unspent Funds may be recovered by the Commonwealth under paragraph 58(1)(c) of the Act. Any amount of funding paid to the Administering Organisation which exceeds the amount of financial assistance that is properly payable to it may be recovered under paragraph 58(1)(d) of the Act.
- 29.2 The Commonwealth may offset the unspent or overpaid Funds against the total of any further Funds payable to the Administering Organisation.

30. Indemnity

- 30.1 The Administering Organisation shall at all times indemnify the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the Administering Organisation, its employees, agents or subcontractors in connection with this Agreement.
- 30.2 The Administering Organisation's liability to indemnify the Commonwealth under clause 30.1 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.
- 30.3 The indemnity referred to above shall survive the expiration or termination of this Agreement.

31. Insurance

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

32. Termination

Termination of Funding for a Project

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

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

32.2 If the ARC terminates Funding for a Project under clause 32.1:

- (a) the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on the Project;
- (b) the Administering Organisation must provide the reports required by this Agreement (or as otherwise notified by the ARC), within the timeframes specified in this Agreement (or as otherwise notified by the ARC); and
- (c) the ARC may recover all or any Funding for the Project in accordance with clause 5.3.

Termination of Agreement

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

- (a) the ARC reasonably considers there is fraud, misleading or deceptive conduct on the part of the Administering Organisation, any Specified Personnel or a Partner Organisation in connection with any Project;
- (b) the Administering Organisation fails to comply with any Ministerial requirement or condition notified by the ARC under clause 3.2;
- (c) the Administering Organisation commits any breach of this Agreement that the ARC considers is capable of remedy, and has failed to rectify that breach within 30 days of receiving an earlier notice from the ARC requiring the breach to be remedied; or
- (d) the Administering Organisation commits any material breach of this Agreement which the ARC considers is not capable of remedy.

32.4 If the ARC terminates this Agreement under clause 32.3:

- (a) the Administering Organisation must immediately take all available and reasonable steps to stop any further expenditure of Funding on all Projects;
- (b) the Administering Organisation must provide all reports required by this Agreement (or as otherwise notified by the ARC), within the timeframes specified in this Agreement (or as otherwise notified by the ARC); and
- (c) the ARC will immediately stop payment of all Funding under this Agreement and may recover from the Administering Organisation (by notice in writing) any unspent Funds as at the date of termination and any Funds not spent in accordance with this Agreement.

32.5 Any amount notified to the Administering Organisation as payable under clause 32.4(c) is a debt due to the ARC (without further proof of the debt being necessary), payable within 30 days of the date of the notice.

33. Compliance with Law

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

33.2 The Administering Organisation acknowledges that:

- (a) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (b) it is aware that giving false or misleading information is a serious offence under the *Criminal Code*;
- (c) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than a person to whom the Administering Organisation is authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
- (d) in respect of data, including personal information, held in connection with this Agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Agreement is an offence under Part VIA of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment;
- (e) it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets.

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

Note: Administering Organisations should note also that they may be subject to the provisions and applications of the Trade Practices Act 1974 and the Archives Act 1983.

34. Liaison

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

Scheme Coordinator (*Special Research Initiatives: Thinking Systems*)

Australian Research Council

Phone: 02 6287 6600

Fax: 02 6287 6638

Postal address

GPO Box 2702

CANBERRA ACT 2601

Email: ncgp@arc.gov.au

Courier address

1st Floor, 8 Brindabella Ct,

Brindabella Business Park

Canberra Airport ACT 2609

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.

SCHEDULE A

Details of Special Research Initiatives: *Thinking Systems* Projects to receive funding by the Commonwealth

SCHEDULE B

Research Special Conditions

- B1. *Importation of Experimental Organisms:* The Administering Organisation must ensure that, before experimental organisms are imported into Australia for the purposes of a Project, they or the Chief Investigator of the Project must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- B2. *Research Involving Humans or Animals:* If any Project conducted by the Administering Organisation involves research on or involving humans or animals, the Administering Organisation shall ensure that the codes adopted for these purposes by the National Health and Medical Research Council are complied with and that the Project may not commence without clearance from the Administering Organisation's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority outside of the Administering Organisation.
- B3. *Deposition of Biological Materials:* Any biological material accumulated during the course of a Project shall be transferred to an Australian body with statutory responsibility for control of such material. If no such body is available to take control of the biological material then the Administering Organisation shall dispose of the material in accordance with the Administering Organisation's established safeguards.
- B4. *Genetic 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 Administering Organisation's Biosafety Committee (or equivalent) or the Office of the Gene Technology Regulator (OGTR) must be obtained.
- B5. If a Project involves, or is concerned with the use of, recombinant DNA techniques, the Administering Organisation shall ensure that the principles and guidelines established and approved from time to time by the Australian Government's Recombinant DNA Monitoring Committee are observed.
- B6. If a Project involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the Administering Organisation shall ensure that the research has been approved by the relevant Ethics or Biosafety Committee (or equivalent) of the Administering Organisation. The Administering Organisation shall retain all Certificates relating to the above and will provide such evidence to the Scheme Coordinator if required to do so.
- B7. *Ionising Radiation:* If a Project involves the use of ionising radiation, the Administering Organisation shall ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority. The Administering Organisation shall retain all such licences and shall provide them to the Scheme Coordinator if required to do so.
- B8. *Social Science Data Sets:* Any digital data arising from a Project involving research relating to the social sciences should be lodged with the Australian Social Science Data Archive (ASSDA) for secondary use by other investigators. This should normally be done within two years of the conclusion of any fieldwork relating to the Project research. If a Chief Investigator is not intending to do so within the two-year period, s/he should include the reasons in the Project's Final Report.

