



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
2005

Australian Research Council
Special Research Initiatives
Funding Agreement for 2005 Initiatives

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Parties & Recitals

THIS AGREEMENT is made on _____ day of _____

between the

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

and

«Organisation» ('the Organisation')

WHEREAS:

- A. The Commonwealth through the ARC operates a Scheme, being the *Special Research Initiatives Scheme* ('the Scheme').
- B. The Commonwealth accepts that the Organisation is an eligible body for the purposes of the Scheme, and the Commonwealth may provide financial assistance to enable the Organisation to conduct the Initiatives, being those described in Schedule A.
- C. The Commonwealth is required by law to ensure the accountability of Funding and, accordingly, the Organisation is required to be accountable for all Commonwealth Funding it receives under this Agreement.
- D. The Commonwealth wishes to provide Funding under the Scheme to the Organisation for the purposes, and subject to the terms and conditions, set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

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

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

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

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

'ARC'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, and described in Clause 27.5;

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

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

‘the Commonwealth’ means the Commonwealth of Australia;

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

‘End of Year Report’ means the report described in Clause 27.2;

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

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

‘Funding Rules’ means the *ARC Special Research Initiatives: Funding Rules for Funding commencing in 2005* and includes the *ARC Special Research Initiatives: E-Research - Instructions to Applicants for funding commencing in 2005* 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*;

‘Initiative’ or ‘Initiatives’ means the Initiative or Initiatives which form part of the Approved Proposal described in Schedule A;

‘Initiative Application’ or ‘Initiative Applications’ means the application or applications for an Initiative or Initiatives lodged with the ARC and given the application number or numbers specified in Schedule A;

‘Initiative Budget’ means the budget specified in Schedule A;

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

‘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 e-Research Support: Invitation for Funding Proposals under ARC Special Research Initiatives for funding to commence in 2005*;

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

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

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

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

‘Progress Report’ means the report described in Clause 27.3;

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

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

‘Scheme Coordinator’ means the occupant from time to time of the position of Scheme Coordinator (*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 that govern the use of the Initiative Budget; and

‘Specified Personnel’ means the Chief Investigator(s) and Partner Investigator(s) named in Schedule A to perform the Initiative.

2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) Clause headings, words capitalised or in bold format and notes in square brackets (“[]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference;
- (e) all references to Clauses are Clauses in this Agreement;
- (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

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

3. Entire Agreement and Variation

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

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

- (a) the terms and conditions contained in the Clauses of the Agreement;

- (b) the Schedules of this Agreement;
- (c) the Funding Rules;
- (d) the Invitation; and
- (e) the Initiative Application.

3.3 The Organisation and the Commonwealth may agree to vary this Agreement. Any variation to this Agreement must be in writing and signed by both parties.

4. Funding Period

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

5. Payment of Funding

5.1 Subject to parliamentary appropriation, the Commonwealth shall pay the Funds, in accordance with the Act, to the Organisation in the manner specified in the Schedule A.

5.2 The Commonwealth will pay to the Organisation, by way of financial assistance in accordance with the Act, the amount set out in Schedule A, which is exclusive of GST, where 'GST' has the meaning as given in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999. For government-related entities (such as a government funded university or research institute) there will be no GST payable on the funding transaction between the entity and the ARC. Non-government-related entities, which are liable to pay GST on this transaction with the ARC, will receive a base-funding amount and an additional amount to cover the GST.

5.3 The duration of the funding for Special Research Initiatives 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 Initiative granted financial assistance under such a determination.

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

5.5 Where the Commonwealth exercises its right under Clause 5.1, 5.2 or 5.3 and 5.4 above, it shall inform the Organisation of the variation within thirty (30) days of that variation.

5.6 The Commonwealth will not provide additional funding for any Initiative set out in Schedule A except where allowed for under Clause 5.1, 5.2, 5.3 and 5.4 above.

6. Accuracy of Information/Malpractice

6.1 The Organisation warrants that the information contained in all Initiative Applications is complete, accurate and not misleading. The Commonwealth regards inaccurate and misleading information as including, but not being limited to, claiming fictitious track records, inflating funds obtained from other sources and false claims in the publication record, e.g. describing a paper as being "in press" or accepted even if it has only been submitted.

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

- 7.1 The Organisation will ensure that each Initiative described in Schedule A is carried out in accordance with this Agreement, in a diligent and competent manner, subject to the provision of indicative funds. In addition, each Initiative will be conducted in accordance with the Initiative Description contained in the Initiative Application, or any revised budget, aims and research plan, submitted by the Organisation and approved by the ARC.
- 7.2 The Organisation shall ensure that expenditure on each Initiative described in Schedule A is in accordance with the aims and research plan of the Initiative and within the broad structure of the proposed Initiative budget contained in the Initiative Application 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 Invitation;
 - (b) for purposes specifically excluded in this Agreement; or
 - (c) for purposes specifically excluded in the Special Conditions.
- 7.4 The Organisation must ensure that the researcher(s) has adequate time to do the Initiative and must provide the basic facilities required for each Initiative described in Schedule A. Basic facilities include but are not limited to:
 - (a) accommodation (eg., laboratory and office, suitably equipped in standard ways);
 - (b) access to workshop services (eg., machine tools and qualified technicians available to each member of staff, to enable them to carry out their research;
 - (c) access to a basic library collection;
 - (d) standard reference materials or funds for abstracting services;
 - (e) adequate access to computers (excluding access to high performance computers unless specified in the Initiative Application);
 - (f) adequate access to basic computing, word processing and microfilm reading facilities;
 - (g) use of photocopiers, telephones, mail, facsimile, email and internet services.
- 7.5 As set out in the Invitation, Funds may not be used for hardware or equipment purchase.

8. Use of the Funding: provision of salaries

- 8.1 Funding may not be used for the payment of a Partner Investigator's costs incurred because of their involvement in the Initiative, except for:
 - (a) in the case of overseas-based Partner Investigators only, their travel and living expenses while within Australia (but not in travelling to Australia) associated directly with visits for the purposes of the Initiative; and
 - (b) purposes outlined in the Initiative Application and not prohibited as a Special Condition as specified in Schedule A.
- 8.2 If expenditure is incurred as allowed for in Clause 8.1 above, the Organisation shall ensure that expenditure is in accordance with the broad structure of the Initiative

Description and costs contained in the Initiative Application or any revised Initiative Budget, aims and research plan approved by the ARC.

- 8.3 Funds may be used by the Organisation to employ Personnel other than the Specified Personnel where provision for such was included in the Initiative application. They may be employed full-time or part-time, as required.
- 8.4 The Organisation must ensure that a person who is studying full-time for a postgraduate degree or other postgraduate qualification shall not be employed on an Initiative for more than 20 hours per week or such lesser time as the internal policies and procedures of the Organisation provide.
- 8.5 In respect of Personnel other than Chief Investigators or Partner Investigators, unless the Minister otherwise determines:
 - (a) in recruiting Personnel, the 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 Organisation.
 - (c) the on-costs provisions beyond the ARC contribution of 26% (eg., extended periods of leave or severance pay) remains the responsibility of the Organisation and shall not be provided from the Initiative funding. See also Clause 16 – Negation of Employment by the Commonwealth.
- 8.6 The Organisation must ensure that any Personnel who are employed full-time on the Initiative 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 Organisation in respect of work performed on the Initiative.

9. Over-expenditure by the Organisation

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

10. Multi-Institutional Agreements

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

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

11. Commencement of Initiative: final date for commencement

- 11.1 Subject to Clause 12 below, all new Initiatives must commence by 31 December in the first year of the Funding. Failure to do so will result in the withdrawal of the Funding and termination of any individual Initiatives which have not commenced.

12. Deferment of Commencement of Initiative

- 12.1 If the Organisation wishes to defer commencement of an Initiative, a written request seeking permission to commence between 1 January and 31 March in the next year of the Funding, justifying the requested deferral in terms of special circumstances, must be made to the Scheme Coordinator, through the Organisation's Research Office prior to 31 December in the first year of the Funding.
- 12.2 The Organisation must not defer commencement of the Initiative unless the Organisation has received written permission from the ARC, based on a decision made by the Minister.
- 12.3 Any Initiatives which have not commenced by 31 December may be terminated and the funding recovered.

13. Specified Personnel

- 13.1 The Organisation shall ensure that the Specified Personnel will conduct the Initiative in a diligent and competent manner and will comply with this Agreement.
- 13.2 The Organisation shall provide each Chief Investigator with a copy of this Agreement within a reasonable time after the beginning of the Funding.

14. Change of Specified Personnel

- 14.1 If a Participant is at any time during the Initiative no longer able to continue the Initiative, the Initiative may be continued under another Participant provided that:
- (a) he/she meets the eligibility criteria, as specified in the Funding Rules for Funding commencing in 2005;
 - (b) approval is sought from the Scheme Coordinator for the change in Specified Personnel:
 - i. in writing (including the proposed Participant's Curriculum Vitae); and
 - ii. within three months of the date that the Specified Personnel ceased working on the Initiative; and
 - (c) the change has prior approval, in writing, by the Minister.
- 14.2 Failure to fulfil the requirements set out in Clause 14.1 will result in immediate termination of the Initiative.

15. Transfer of Initiative

- 15.1 Under Section 54 of the Act, Ministerial approval for transfers of Initiatives is required.
- 15.2 The Organisation must notify the ARC of any Specified Personnel on the Initiative who change Organisations.

- 15.3 If the Specified Personnel that change Organisations is a first-name Chief Investigator the Organisation must provide, for the Minister's approval, a written proposal outlining arrangements for the continuation of the Initiative and the continued administration of the Funding.
- 15.4 Where the proposed arrangements include a transfer of the Funding from one Organisation ('the relinquishing Organisation') to another Organisation ('the recipient Organisation'), the Minister shall have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as the Minister considers appropriate. The written request must include evidence that the following parties agree to the transfer:
- (a) the relinquishing Organisation;
 - (b) all Specified Personnel on the Initiative; and
 - (c) the recipient Organisation.
- 15.5 When the ARC receives a proposal requesting the transfer of Funding it will:
- (a) seek the Minister's approval for the transfer of unspent Funds and indicative Funding for the Initiative to the recipient Organisation; and
 - (b) vary the Funding Agreement for the relevant Organisations once Ministerial approval is granted.
- 15.6 Once approval has been granted to transfer the Funding:
- (a) the relinquishing Organisation must:
 - i. Provide to the ARC, in writing, the amount of unspent Funds for the Initiative and pay the ARC such unspent Funds. The ARC will then provide the unspent Funds to the recipient Organisation; and
 - ii. report expenditure of Funding for the Initiative prior to the transfer in its End of Year Report and identify the transfer in the 'Notes' column; and
 - (b) the recipient Organisation must:
 - i. report expenditure of Funding for the Initiative subsequent to the transfer in its End of Year Report and identify the transfer in the 'Notes' column.
- 15.7 If the Chief Investigator changes Organisation and the Minister's approval is not given for arrangements for the continuation of the Initiative and the continued administration of the Initiative, the Initiative may be terminated.
- 15.8 Relocation expenses will not be paid on the transfer of any Specified Personnel from the relinquishing Organisation to the recipient Organisation.
- 15.9 The Initiative must not be transferred to the recipient Organisation unless Ministerial approval for the transfer of the Funding is granted.

16. Negation of Employment by the Commonwealth

- 16.1 Specified Personnel and/ or Organisations shall not represent themselves as being employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 16.2 Specified Personnel and/or Organisations shall not by virtue of this Agreement 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.

17. Conduct of Research

- 17.1 Initiatives shall be conducted in accordance with any special conditions specified in this Agreement.
- 17.2 The Organisation shall ensure that an Initiative under this Agreement will not be permitted to proceed without appropriate ethical clearances having been obtained from the relevant committees and/or authorities referred to in Schedule B or prescribed by the Organisation's research rules. Responsibility for ensuring such clearances have been obtained remains with the Organisation.

18 Material produced under this Agreement

- 18.1 The Organisation shall establish and comply with its own procedures and arrangements for the ownership of all material produced as a result of any Initiative under this Agreement.
- 18.2 For any Material produced under this Agreement, the Organisation shall ensure that all Specified Personnel:
- (a) take reasonable care of, and safely store any data or specimens or samples collected during, or resulting from the conduct of the Initiative;
 - (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 Initiative; and
 - (c) include details of the lodgement or reasons for non-lodgement in the Final Report for the Initiative.

19 ARC Assessments

- 19.1 The Organisation must ensure that, for the duration of the Funding under *Special Research Initiatives*, if requested by the ARC, Chief Investigators agree to assess up to 20 new applications for ARC funding.
- 19.2 If the ARC determines that a Chief Investigator has failed to meet the obligation to assess applications assigned by the ARC for assessment, the ARC will notify the Organisation in writing of that failure.
- 19.3 If a Chief Investigator does not undertake assessment of the assigned applications within a period specified by the ARC, in the notice referred to in Clause 19.2 above, the Organisation will be considered to be in breach of this Funding Agreement and the relevant Initiative, may be terminated, in which case any unspent funds will be recovered by the ARC.

20 Intellectual Property

- 20.1 The Organisation must adhere to an Intellectual Property policy, approved by the Organisation's governing body, which has as one of its aims the maximisation of benefits arising from research. The Commonwealth makes no claim on the ownership of Intellectual Property brought into being as a result of the Initiatives for which Funding is provided.

- 20.2 The Organisation must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* as amended from time to time and currently located at the following URL:
http://www.arc.gov.au/grant_programs/national_ip.htm.
- 20.3 The Organisation shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this Clause referred to as ‘those indemnified’) from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property rights by the Organisation, its employees, agents or subcontractors in the course of, or incidental to, performing the Initiative or the use by the Commonwealth of reports provided by the Organisation.
- 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 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 Organisation is undertaking under this Agreement, as if it were a record-keeper as defined in the Privacy Act 1988;
 - (b) not to transfer personal information held in connection with this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;
 - (c) to co-operate with any reasonable demands or inquiries made by the Federal Privacy Commissioner or the CEO in relation to the management of personal information by the Organisation or breaches or alleged breaches of privacy;
 - (d) to ensure that any person who has an access level which would enable that person to obtain access to any personal information (as defined in the Privacy Act 1988) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph (a) above;
 - (e) to comply with any policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of personal information;
 - (f) to comply with any reasonable direction of the CEO to observe any recommendation of the Federal Privacy Commissioner relating to any acts or practices of the Organisation that the Federal Privacy Commissioner considers to be a breach of the obligations in paragraph (a) above;
 - (g) to comply with any reasonable direction of the CEO to provide the Federal Privacy Commissioner access for the purpose of monitoring the Organisation’s compliance with this Clause;
 - (h) to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the obligations of the Organisation under this Clause or any misuse

of personal information by the Organisation or any disclosure by the Organisation in breach of an obligation of confidence whether arising under the Privacy Act 1988 or otherwise;

- (i) to ensure that any record (as defined in the Privacy Act 1988) containing personal information provided to the Organisation by the Commonwealth or any other person pursuant to this Agreement is, at the expiration or earlier termination of This Agreement, either returned to the ARC or deleted or destroyed in the presence of a person duly authorised by the ARC to oversee such deletion or destruction; and
- (j) to the naming or other identification of the Organisation in reports by the Federal Privacy Commissioner.

21.2 The Organisation shall immediately notify the ARC if the 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.

22. Compliance with Commonwealth Policies

22.1 The Organisation shall, when using the Commonwealth's premises or facilities, comply with all reasonable directions and ARC procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

22.2 The Organisation shall comply with its obligations, if any, under the Equal Opportunity for Women in the Workplace Act 1999 and shall not enter into a 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 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 Special Research Initiatives are expected to be communicated to the research community and, where appropriate and possible, to the community at large.

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

24. Administration of the Funding

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

25. Audit and Monitoring

- 25.1 The Organisation is responsible for monitoring the expenditure of Funding and certifying to the ARC that the Funding has been expended in the End of Year Report. If at any time, in the opinion of the Responsible Officer, the Funding is not being expended in accordance with this Agreement, the Organisation shall take all action necessary to minimise further expenditure in relation to the Initiative 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 Organisation. Persons nominated by the ARC to conduct these reviews are to be given full access by the Organisation, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funds in general.

26. Access to Premises & Records

- 26.1 The Organisation shall, at all reasonable times, give to the CEO or any person authorised in writing by the CEO:
- (a) unhindered access to:
 - i. the Organisation's employees;
 - ii. premises occupied by the Organisation; and
 - iii. Material;
 - (b) reasonable assistance to:
 - i. inspect the performance of the Initiative;
 - ii. to locate and inspect Material; and
 - iii. make copies of Material and remove those copies,
 - iv. relevant to the Initiative.
- 26.2 The access rights in Clause 26.1 above are subject to:
- (a) the provision of reasonable prior notice by the ARC;
 - (b) the Organisations' reasonable security procedures.
- 26.3 If a matter is being investigated which, in the opinion of the CEO, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, Clause 26.2 will not apply.
- 26.4 Upon receipt of reasonable written notice from the CEO, the Organisation shall provide any information required by the Commonwealth for monitoring and evaluation purposes.

- 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 Organisation, may:
- (a) require the Organisation to provide records and information which are directly related to this Agreement;
 - (b) have access to the premises of the Organisation for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Organisation which are directly related to this Agreement; and
 - (c) where relevant, inspect any Commonwealth Assets and Commonwealth Material held on the premises of the Organisation.
- 26.7 This Clause shall survive the expiration or earlier termination of this Agreement.

27. Reporting Requirements

- 27.1 The Organisation must submit the following reports and statement, in accordance with this Agreement and the Act, in the format required by the ARC, if specified.
- 27.2 End of Year Report
- (a) The Organisation shall submit an End of Year Report by 31 March in the year following each calendar year for which the Funding was awarded. The ARC will provide the Organisation with a proforma and instructions for completion of this report.
 - (b) The End of Year Report will contain information on all expenditure under the Approved Proposal, on an Initiative by Initiative basis, including:
 - i. any unspent funds to be recovered by the Commonwealth;
 - ii. any unspent funds that the Organisation is seeking to have carried over into the next year;
 - iii. the reasons why the unspent funds are required to be carried over; and,
 - (c) Under Subsection 58(e) of the Act, Funds provided by the Commonwealth to the Organisation which are not spent during the year of the Funding period to which those funds were allocated may be carried over where approved by the Minister. The Organisation must request this approval in the End of Year Report.
 - (d) Where a carry over of 75% or more of the Funding provided is requested, separate written detailed justification must be provided.
 - (e) Funds will be carried over for more than 12 months only in exceptional circumstances. Separate written justification must be provided in this instance.
- 27.3 Progress Report
- (a) The Organisation shall ensure that all Chief Investigators provide an annual Progress Report in respect of each ongoing Initiative by 31 January of each year, except in the first year of funding, on a proforma available on the ARC's website (www.arc.gov.au).

- (b) The ARC will review the outputs and outcomes against the objectives of the Initiative as stated in the Initiative Application, or any approved revised budget, aims and research plan. Any Chief Investigator whose Progress Report is deemed inadequate or unsatisfactory will be contacted for further information.
- (c) If the ARC is not satisfied with the progress of the Initiative, further payment of funds will not be made until satisfactory progress has been made on the Initiative. If satisfactory progress is still not achieved, the Funding will be terminated and all outstanding monies recovered by the ARC.
- (d) Unsatisfactory progress on the Initiative will be noted against any further applications under any ARC scheme submitted by, or on behalf of, the Chief Investigator and will be taken into account in the assessment of those applications.

27.4 Final Report

- (a) The Organisation shall ensure that Final Reports are provided for each Initiative within 6 months of the final payment to the Initiative (including any approved carry forward). The proforma for this report is available on the ARC's website (www.arc.gov.au) via GAMS. The ARC will review the outcomes against the objective(s) of the Initiative as stated in the Initiative Application or any approved revised budget, aims and research plan.
- (b) If a Final Report is deemed inadequate, the Chief Investigator will be contacted for further information. If the ARC is not satisfied with the outcomes of the Initiative, this will be noted against any further Initiative Applications under any ARC scheme submitted by, or on behalf of, the Chief Investigator and will be taken into account in the assessment of those applications.
- (c) If the Final Report is not submitted on time this will be noted against any further Initiative Applications under any ARC Scheme submitted by, or on behalf of the Chief Investigator and will be taken into account in the assessment of those applications.
- (d) Applications under any ARC Scheme submitted by, or on behalf of a Chief Investigator on an Initiative for which the Final Report is outstanding may be deemed ineligible.

27.5 Audited Financial Statement

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

28. Copyright in Reports

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

the requirements of Clause 28.2 below, except where disclosure is required or authorised by law.

- 28.2 The Commonwealth warrants that, for a period of 3 years from the date of submission of the Final Report for the Initiative, it will seek the agreement of the Organisation before any information which is contained in any reports related to the Initiative, and which the Organisation has indicated is confidential and should not be disclosed, is disclosed to any person other than an officer or a member of the ARC or the Minister.

29. Recovery of Unspent Funds or Overpayments of Funds

- 29.1 Any unspent Funds may be recovered by the Commonwealth under Subsection 58(1)(c) of the Act. Any overpayment of Funds made to an Organisation may be recovered under Subsection 58(1)(d) of the Act.
- 29.2 The Commonwealth may offset the unspent or overpaid Funds against the total of any further Funds payable to the Organisation.

30. Indemnity

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

31. Insurance

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

32. Termination

- 32.1 If the Organisation fails to comply with any obligations contained in this Agreement then the Commonwealth may, in accordance with Section 58 of the Act, terminate

any or all of the Initiatives and require the Organisation to return all or some of the Funds to the ARC.

32.2 The Organisation must terminate an Initiative:

- (a) where progress is not, in the opinion of the Responsible Officer, satisfactory; or
- (b) on the death, incapacity, resignation or withdrawal of any Specified Personnel unless suitable alternative arrangements, satisfactory to the participating researchers and the Minister, can be made by the Organisation for the continuance of the Funding; or
- (c) where the parties have agreed to the termination of the Funding.

32.3 Upon termination of the Funding under Clause 32.2 above:

- (a) the Organisation shall take all action necessary to minimise further expenditure under the Funding; and
- (b) the Minister will, under Section 58 of the Act, recover monies that have not been expended under the Funding.

33. Compliance with Law

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

33.2 The Organisation acknowledges that:

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

33.3 The Organisation undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the meaning of Section 79 of the *Crimes Act 1914* that prior to having access the officer, employee, agent and subcontractor will first be required by the

SCHEDULE A

Details of Special Research Initiatives to receive funding by the Commonwealth

SCHEDULE B

Research Special Conditions

- B1. *Importation of Experimental Organisms:* The Organisation must ensure that, before experimental organisms are imported into Australia for the purposes of an Initiative, they or the Chief Investigator of the Initiative must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.
- B2. *Research Involving Humans or Animals:* If any Initiative conducted by the Organisation involves research on or involving humans or animals, the Organisation shall ensure that the codes adopted for these purposes by the National Health and Medical Research Council are complied with and that the Initiative may not commence without clearance from the Organisation's Ethics or Biosafety Committee (or equivalent) and from any other relevant authority outside of the Organisation.
- B3. *Deposition of Biological Materials:* Any biological material accumulated during the course of an 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 Organisation shall dispose of the material in accordance with the Organisation's established safeguards.
- B4. *Genetic Manipulation:* If an Initiative involves the preparation and/or use of recombinant nucleic acids constructed *in vitro* from sources that do not ordinarily recombine genetic information, approval in writing by the Organisation's Biosafety Committee (or equivalent) or the Office of the Gene Technology Regulator (OGTR) must be obtained.
- B5. *Recombinant DNA techniques:* If an Initiative involves, or is concerned with the use of recombinant DNA techniques, the Organisation shall ensure that the principles and guidelines established and approved from time to time by the Australian Government's Recombinant DNA Monitoring Committee are observed.
- B6. *Recombinant DNA techniques on animals or humans:* If an Initiative involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the Organisation shall ensure that the research has been approved by the relevant Ethics or Biosafety Committee (or equivalent) of the Organisation. The Organisation shall retain all Certificates relating to the above and will provide such evidence to the Scheme Coordinator if required to do so.
- B7. *Ionising Radiation:* If an Initiative involves the use of ionising radiation, the Organisation shall ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority. The Organisation shall retain all such licences and shall provide them to the Scheme Coordinator if required to do so.
- B8. *Social Science Data Sets:* Any digital data arising from an Initiative involving research relating to the social sciences should be lodged with the Australian Social Science Data Archive (ASSDA) for secondary use by other investigators. This should normally be done within 2 years of the conclusion of any fieldwork relating to the Initiative research. If a Chief Investigator is not intending to do so within the 2-year period, s/he should include the reasons in the Initiative's Final Report.

