



Australian Government

Australian Research Council

Funding Agreement

between the

Commonwealth of Australia

as represented by the

Australian Research Council

and

{Institution's Name}

regarding funding for

Research Networks

to commence in

2004

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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

[the Institution]

WHEREAS:

- A. The Commonwealth through the ARC operates a scheme, being the Research Networks Scheme ('the **Scheme**'), pursuant to the *Australian Research Council Act 2001* ('the **Act**').
- B. The Commonwealth accepts that the Institution is an eligible body for the purposes of the Scheme, and the Commonwealth may provide financial assistance to enable the Institution to support the Research Network described in Schedule A.
- C. The Commonwealth is required by law to ensure accountability for public money and, accordingly, the Institution is required to be accountable for all Funding it receives under the Act.
- D. The Commonwealth wishes to provide Funding under the Scheme to the Institution for the purposes, and subject to the terms and conditions, set out in this Agreement.
- E. In addition to conditions of Funding specified in the Act, this Agreement sets out additional conditions to which the Funding is subject and is a notice of those conditions for the purposes of paragraph 58(1)(g) of the Act.
- F. Under paragraph 58(1)(c) of the Act, failure to fulfil a condition to which the Funding is subject may result in the Institution's being required to repay to the Commonwealth all or part of the Funding.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

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

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

'**Annual Report**' means the report described in clause 21.2;

'**Approved Proposal**' means a proposal for expenditure under the Research Networks Scheme for purposes that will assist programs of research undertaken by Institutions approved by the Minister, as specified in the determination made under section 51 of the Act, and, in this Agreement, includes all Research Networks funded at the Institution and set out in Schedule A;

'**Australian Research Council**' or '**ARC**' means the Australian Research Council established under the *Australian Research Council Act 2001* or subsequent relevant legislation, as

amended from time to time and includes the members of its Board, Committees and staff;

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

‘**Asset**’ includes personal, real or incorporeal property, but does not include Intellectual Property;

‘**Audited Financial Statement**’ means the statement described in paragraph 58(1)(b) of the Act;

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

‘**Commonwealth Material**’ means any Material provided by the Commonwealth to the Institution for the purposes of this agreement or which is copied or derived from that Material, except for Research Network Material;

‘**Conflict**’ refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Institution's engaging in any activity or obtaining any interest that is likely to interfere with or restrict the Institution in fulfilling its obligations to the Commonwealth under this Agreement fairly and independently.

‘**Contributing Organisation**’ means an organisation named in the Institution's Approved Proposal as a contributor of funding for the Research Network;

‘**Funding**’, ‘**Funds**’ or ‘**Research Networks Funding**’ means the amount or amounts payable to the Institution in accordance with the ministerial determination for the Approved Proposal and to be paid to the Institution as specified in Schedule A;

‘**Funding Period**’ means the period described in clause 4.

‘**Funding Rules**’ in relation to a particular year, means the rules approved by the Minister under section 60 of the Act for the year as amended from time to time;

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

‘**Institution**’ means the higher education institution or administering organisation approved by the Minister under section 51 of the Act as the body responsible for administering the Funding;

‘**Intellectual Property**’ includes all copyright (including rights in relation to phonograms and broadcasts), 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;

‘**Interest**’ means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis;

‘**Material**’ includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

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

‘**Network Convenor**’ or ‘**Convenor**’ means the person named in Schedule A of this Agreement, and who is responsible, on behalf of the Institution, for leading the Research Network in accordance with paragraph 4.1 of the Funding Rules;

‘Network Participant’ or ‘Participant’ means a person who contributes to the Research Network and who is listed on the Register of Participants as a Participant;

‘Register of Participants’ means the register referred to in paragraph 7.2 of the Funding Rules;

‘Research Network’ has the same meaning as **‘Approved Proposal’** above;

‘Research Network Material’ means all Material:

- (a) brought into existence for the purpose of performing this Agreement;
- (b) incorporated in or supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

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

‘Scheme Coordinator’ means the person for the time being performing the duties of the office of the ARC described in clause 26.1 or any other person notified in writing to the Institution.

2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

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

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

3. Entire Agreement and Variation

3.1 This Agreement, including the Schedules, the Approved 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 If any part of this Agreement is inconsistent with any other part, that part higher in the following list will prevail to the extent of the inconsistency:

- (a) the terms and conditions of this Agreement;
- (b) the Schedules;
- (c) the Funding Rules;
- (d) the Approved Proposal for the Research Network;

3.3 Except for action the Commonwealth is expressly authorised to take under the Act or elsewhere in this Agreement (including without limitation clause 5.4), no variation of this Agreement is binding unless it is agreed in writing and signed by the parties.

4. Funding Period

4.1 Subject to clause 5 of this Agreement, the Funding Period is the period set out in Schedule A for each Research Network, unless the Funding is terminated earlier in accordance with the Act.

5. Payment of Funding

5.1 Subject to Parliamentary appropriation and compliance with the terms of this Agreement and the Act, the Commonwealth will pay the Funds, in accordance with the Act, to the Institution at the times and in the manner specified in Schedule A.

5.2 The Commonwealth will pay to the Institution, by way of financial assistance in accordance with the Act, the amount set out in Schedule A exclusive of GST.

5.3 The duration of the Funding for the ARC Research Network 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 Contract will continue to apply to the Research Network granted financial assistance under such determination.

5.4 The Commonwealth may vary unilaterally the amounts set out in Schedule A in accordance with the Act.

5.5 Where the Commonwealth exercises its right under clause 5.3 or 5.4 above, it must notify the Institution in writing within thirty (30) days.

6. Accuracy of Information

6.1 The Institution warrants that the information contained in all Approved Proposals is accurate, complete and not misleading.

6.2 For the purposes of this clause 6, "misleading" includes, without limitation, claiming fictitious track records, inflating and deflating funds obtained from other sources and false

claims in the publication record, e.g. describing a paper as being published even if it has only been submitted.

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

7.1 The Institution must ensure that each Research Network described in Schedule A is operated during the Funding Period:

- (a) in accordance with the Act;
- (b) in accordance with this Agreement, in a diligent, competent and effective manner and to a high professional standard
- (c) in accordance with the Approved Proposal, or any revised budget, aims and research plan, submitted by the Institution and approved by the Commonwealth;
- (d) in accordance with the Funding Rules.

7.2 The Institution must not use the Funding:

- (a) for purposes specifically excluded in the Funding Rules; or
- (b) for purposes specifically excluded in this Agreement.

7.3 The Institution must ensure that the Network Convenor has adequate time to convene and otherwise contribute to the Research Network and must provide the basic facilities required for each Research Network described in Schedule A. Basic facilities include but are not limited to:

- (a) accommodation;
- (b) basic information infrastructure and word processing; and
- (c) use of photocopiers, telephones, mail, facsimile, email and internet services.

7.4 The Institution must enter into a written agreement with each Contributing Organisation covering the role of each Contributing Organisation in the Research Network including:

- (a) contributions by the Contributing Organisation as set out in the Approved Proposal;
- (b) payment of salaries using the Funds;
- (c) Intellectual Property arrangements; and
- (d) an undertaking by all organisations to abide by the terms of this Agreement.

The Institution must provide a copy of this agreement to the ARC within 30 days of the agreement's being signed by the parties, upon the request of the Scheme Coordinator

7.5 The Funding must not be used to pay full or partial salaries except as specified in clause 3.1(a) of the Funding Rules and in accordance with the Approved Proposal.

8. Management of Funding

8.1 The Institution must:

- (a) ensure that the Funds are held in an account in the Institution's name, and which the Institution solely controls, with a bank or credit union carrying on banking business in Australia;
- (b) on request from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with an authority for the Commonwealth to obtain all details relating to any use of the account;
- (c) identify the receipt and expenditure of the Funds separately within the Institution's accounting records so that at all times the Funds are identifiable and ascertainable; and
- (d) manage the Research Networks set out in Schedule A so that they are in compliance with the Special Conditions specified in Schedule B.

8.2 The Institution must keep financial records relating to the Research Network to enable:

- (a) all income and expenditure related to the Research Network to be identified in the Institution's accounts;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the audit of those records in accordance with Australian Auditing Standards.

8.3 The Institution must not use the Funds:

- (a) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
- (b) for the preparation of, or in the course of, any litigation.

9. Over-expenditure by the Institution

9.1 Any expenditure incurred by the Institution for a Research Network additional to the approved amount for that Research Network specified in Schedule A in the columns headed 'Indicative Funds' is the responsibility of the Institution. The Commonwealth will not reimburse the Institution for such costs.

10. Commencement of Research Network

10.1 The Research Network must commence as specified in the Approved Proposal. Failure to do so may result in termination of funding in accordance with this Agreement.

11. Network Convenor and Network Participants

11.1 The Institution must ensure that the Network Convenor convenes the Research Network in accordance with clause 7.1.

11.2 The Institution must cause a copy of this Agreement (including all components) and the Funding Rules to be available to the Network Convenor within a reasonable time after the commencement of this Agreement.

11.3 The Network Convenor must assist the ARC on request to consult with and advise those Australian researchers and research communities having an interest in fields represented by the Research Network. The ARC will not request assistance which would exceed 20% of the Network Convenor's time commitment to the Research Network.

11.4 Register of Participants

The Institution must create and maintain a Register of Participants as specified in this clause and in accordance with paragraph 7.2 of the Funding Rules.

- (a) The Register of Participants must contain details of each Participant including, but not limited to: Last Name, First Name, Title, highest qualification, date of award of highest qualification, Department, Institution, Email Address, GAMS ID (if any), role in the Research Network; and
- (b) A computer-readable copy of the Register of Participants must be provided to the ARC by the Institution within 30 days upon the request of the Scheme Coordinator.

11.5 The Institution must obtain from each Participant written verification (including signatures) that they have been informed about ARC policies regarding Ethics, Intellectual Property and Acknowledgement of ARC financial assistance, as well as the terms of this Agreement. The Institution must provide the Commonwealth with evidence of verification (including signatures) on request.

12. Change of Network Convenor

12.1 The Commonwealth must be informed in writing within 14 days, if the Institution becomes aware that the Network Convenor is, or is expected to become, no longer able to convene the Research Network. The Research Network may be continued under another Network Convenor provided that:

- (a) he/she meets the eligibility criteria, as specified in the Funding Rules;
- (b) approval is sought from the Scheme Coordinator for the change of the Network Convenor in writing (including the proposed Network Convenor's Curriculum Vitae); and
- (c) the change is approved, in writing, by the Minister.

12.2 Failure to fulfil the requirements set out in clause 12.1 may result in immediate termination of Funding.

13. Negation of Employment by the Commonwealth

13.1 The Institution must ensure that the Institution, the Network Convenor, Participants and the Contributing Organisation do not by virtue of this Agreement represent themselves as being employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

13.2 The Network Convenor, Participants, the Institution and the Contributing Organisation will not by virtue of this Agreement or for any purpose be deemed to be employees, partners, or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

14. Intellectual Property

14.1 Subject to this clause 14, ownership and Intellectual Property in Research Network Material vests immediately in the Institution.

14.2 The Institution grants to the Commonwealth a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property in reports under this Agreement for any purpose.

14.3 If a third party has Intellectual Property in existing Material incorporated or supplied with reports, the Institution must arrange for the grant to the Commonwealth of a licence in the same terms as set out in clause 14.2.

14.4 The Institution must, if requested by the Commonwealth to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 14.

14.5 The Institution warrants that it:

- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Research Network Material and any pre-existing Material in accordance with this clause 14;
- (b) has obtained valid written consents from all authors (including any authorised subcontractors under this agreement) involved in creating reports so that the Commonwealth's use of the reports in any way will not infringe any author's moral rights under the *Copyright Act 1968*.

14.6 If requested by the Commonwealth, the Institution must provide the Commonwealth with a copy of the Research Network Material in the form requested.

14.7 The Institution will 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 Institution, its employees, agents or subcontractors in the course of, or incidental to, undertaking or contributing to the Research Network or the use by the Commonwealth of reports provided by the institution.

14.8 The indemnity referred to in this clause 14 will survive the expiration or earlier termination of this Agreement.

14.9 Subject to the Act, public accountability reporting requirements (including, without limitation, reports to Ministers and Parliamentary Committees) and clause 21, the Commonwealth agrees that, for a period of three years from the date of submission of the Final Report for the Research Network, it will seek the agreement of the Institution before any information which is contained in any reports related to the Research Network, and which the Institution indicates is confidential and should not be disclosed, is disclosed to any person other than an officer or a member of the ARC or other Commonwealth body or the Minister.

14.10 Notwithstanding clause 14.9, the Commonwealth may publicise and report offers or awards of funding, including information about the proposed research, the name and institution of any applicant, the identity of the Institution and any other institution or organisation involved in the Research Network, the title and summary descriptions of the Research Network and its intended outcomes, and the level and nature of financial assistance from the Commonwealth.

15. Protection of Personal Information

15.1 The Institution agrees:

- (a) to comply with the Information Privacy Principles in the *Privacy Act 1988* ('the **Privacy Act**') when doing any act or engaging in any practice in relation to personal information within the meaning of the Privacy Act for the purposes of this Agreement, as if it were an agency as defined in the Privacy Act; and
- (b) to deal with personal information received, created or held by it for the purposes of this Agreement only to fulfil its obligations under this Agreement and in accordance with any conditions or restrictions specified in Schedule A.

15.2 An act done or a practice engaged in by the Institution or a subcontractor to meet (directly or indirectly) an obligation under this Agreement:

- (a) is authorised by this clause 15 for the purposes of subsections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to the Institution or the subcontractor; but
- (b) is subject to the other obligations in this Agreement including this clause 15.

15.3 In this clause 15, "received" includes "collected".

16. Compliance with Commonwealth Policies

16.1 The Institution must, in carrying out its obligations under this Agreement, comply with:

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
- (b) any of the Commonwealth's policies notified by the Commonwealth to the Institution in writing.

16.2 The Institution acknowledges that:

- (a) it may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and it must comply with those obligations;
- (b) 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;
- (c) giving false or misleading information is a serious offence under the Criminal Code;
- (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 10.7 of the Criminal Code 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;
- (f) it is aware of its obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;

Note: More information about the Charter of United Nations Act and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations is available at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html.

- (g) it may be subject to the provisions of the *Trade Practices Act 1974* and the *Archives Act 1983*.

16.3. The Institution must:

- (a) when using the Commonwealth's premises or facilities (including information systems), comply with the Commonwealth's reasonable directions and procedures relating to occupational health and safety;
- (b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section.
- (c) when dealing with its employees, have regard to the Commonwealth's policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.

17. Publicity

17.1 Subject to the need by the Institution to maintain confidentiality for the purpose of exploiting Intellectual Property arising from Network activities, the outcomes produced by Participants in Research Networks must be communicated to the research community and, where appropriate and possible, to the community at large.

17.2 When, at any time during or after completion of a Research Network, the Institution publishes material, books, articles, television or radio programs, newsletters or other literary or artistic works which relate to the Research Network, the Institution must acknowledge, at a prominent place in the publication, the support of the ARC in a form acceptable to the Commonwealth.

17.3 Advice on acceptable forms of acknowledgement and use of the logo is provided on the ARC website at www.arc.gov.au

17.4 The Research Network must publish and maintain a web site which must, at a minimum, list all sources of funding support, the Participants and their institutional affiliation, the activities supported by the Funding, and all Annual Reports.

18. Administration of the Funding

18.1 The Institution must maintain reasonable records relating to the Funding in general and the Research Network(s) conducted with the Funding, in particular to ensure its compliance with this Agreement.

19. Audit and Monitoring

19.1 The Institution is responsible for monitoring the expenditure of the funding and certifying to the ARC that the Funding has been expended and the progress of the Research Network is satisfactory in the Annual Report and the End of Year Report. If at any time, in the opinion of the Responsible Officer, the Funding is not being expended in accordance with this Agreement, the Institution will take all action necessary to minimise further expenditure in relation to the Research Network and inform the ARC immediately.

19.2 The ARC may conduct 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 Institution. Persons nominated by the ARC to conduct these reviews are to be given full access by the Institution, if required, to all accounts, records, documents and premises in relation to the Funding and the administration of the Funds in general.

19.3 Some Research Networks may be co-funded. Where that is the case, the ARC reserves the right to consult with other agencies in the management of the Research Network, including in assessment of the performance and in reporting requirements.

20 Access to Premises & Records

20.1 The Institution must at all reasonable times give to the CEO, or any person authorised in writing by the CEO, the Auditor-General, the Privacy Commissioner or the Scheme Coordinator:

- (a) unhindered access to:
 - (i) the Institution's employees;
 - (ii) premises occupied by the Institution; and
 - (iii) Material;
- (b) reasonable assistance to:
 - (i) inspect the performance of the Research Network;
 - (ii) to locate and inspect Material; and
 - (iii) make copies of Material and remove those copies, relevant to the Project.

20.2 The access rights referred to in clause 20.1 are subject to:

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

20.3 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 20.2 will not apply.

20.4 Upon receipt of reasonable written notice from the CEO, the Institution shall provide any information required by the Commonwealth for the purposes of clauses 20.1 and 20.2.

20.5 Nothing in clauses 20.1 to 20.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.

20.6 This clause shall survive the expiration or earlier termination of this Agreement.

21. Reporting Requirements

21.1 The Institution must submit the following reports, in accordance with this Agreement and the Act, in the format required by the Commonwealth.

21.2 Annual Report

The Institution must submit to the Scheme Coordinator, by 31 March in the year following each year for which the funding was awarded, an Annual Report. The Commonwealth will review the outcomes specified in the Annual Report against the objective(s) of the Research Network as stated in the Approved Proposal or any revised budget, aims and research plan, submitted by the Institution and approved by the Commonwealth. The Annual Report must include details regarding the following matters:

- (a) the extent to which the objectives of the Scheme and the Approved Proposal have been met;
- (b) the achievements of the Research Network, Network Participant contributions to the Research Network and other outputs achieved resulting from the use of the Funds, including any advances in knowledge, relevant publications or international collaboration;
- (c) any contributions to the Research Network of particular significance during that year;
- (d) the Register of Participants, current up to the date of the Annual Report;
- (e) contribution to the National Benefit;
- (f) all expenditure under the Approved Proposal by the Research Network, including the purchase of specific Assets or Intellectual Property; and
- (g) Funding and/or other resources provided by any other Institution, Contributing Organisation or Participant towards meeting the objectives of the Research Network.

The Institution will present items (a) – (e) on the website specified in clause 17.4

21.3 End of Year Report

- (a) The Institution must submit to the Scheme Coordinator, by *31 March* in the year following each year for which the funding was awarded, an End of Year Report.
- (b) The End of Year Report must contain information on all expenditure under the Approved Proposal, separately for each administered Research Network, including:
 - (i) any unspent funds as to be recovered by the Commonwealth;
 - (ii) any unspent funds that the Institution is seeking to have carried over into the next year; and
 - (iii) the reasons why the unspent funds are required to be carried over.
- (c) Under paragraph 58(1)(e) of the Act, Funds provided by the Commonwealth to the Institution 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 Institution must request this approval in the End of Year Report. Where the carry over of 75% or more of the Funding provided is requested, separate written justification must be provided.

If an Annual Report or End of Year Report is deemed by the Commonwealth, in its sole discretion, to be inadequate, the Commonwealth may request, in writing, further information from the Institution. The Institution must make any changes reasonably requested by the Commonwealth.

21.4 Audited Financial Statement

The Institution must submit an Audited Financial Statement by 30 June of the year following the calendar year for which the Funding was awarded in accordance with section 58 of the Act. In completing the Audited Financial Statement, the Institution must ensure that the amount shown in that statement as 'approved carry forward funds' is the same as the amount (if any) that the Institution sought and approval was given to carry over in accordance with the Act and this Agreement.

21.5 The Institution must also provide to the Commonwealth any other reports specified in Schedule A at the times and in the manner stated in Schedule A.

22. Recovery of Unspent Funds or Overpayments of Funds

22.1 Any unspent Funds may be recovered by the Commonwealth under subsection 58(1) of the Act. Any overpayment of Funds made to an Institution may be recovered under subsection 58(1) of the Act. If the Institution fails to fulfil a condition applicable to the funding, the Commonwealth may recover Funds under subsection 58(1) of the Act.

22.2 The Commonwealth may offset the unspent or overpaid Funds against the total of any other Funds payable to the Institution.

23. Indemnity

23.1 The Institution agrees to indemnify the Commonwealth against any:

- (a) loss or liability incurred by the Commonwealth;
- (b) loss of or damage to the Commonwealth's property; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising from:

- (i) any act or omission by the Institution, or any of its employees, agents, or subcontractors in connection with this Agreement;
- (ii) any breach by the Institution or any of its employees, agents, or subcontractors of obligations or warranties under this Agreement;

- (iii) any use or disclosure by the Institution, its officers, employees, agents or subcontractors of personal information held or controlled in connection with this Agreement; or
- (iv) the use by the Commonwealth of the Research Network Material, including any claims by third parties about the ownership or right to use Intellectual Property (including moral rights) in Research Network Material.

23.2 The Institution's liability to indemnify the Commonwealth under this clause 23 will be reduced proportionally to the extent that any fault on the Commonwealth part contributed to the relevant loss, damage, expense, or liability.

23.3 The Commonwealth's right to be indemnified under this clause 23 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

23.4 In this clause 23, "fault" means any negligent or unlawful act or omission or wilful misconduct.

23.5 The indemnity in this clause 23 will survive the expiration or termination of this Agreement.

24. Termination

24.1 If the Institution fails to comply with any terms or conditions as approved by the Minister and contained in this Agreement then the Minister may, in accordance with section 58 of the Act, terminate the funding of an approved proposal and require the Institution to return all or some of the Funds to the Commonwealth.

24.2 The Institution must terminate a Research Network:

- (a) where progress is not, in the opinion of the Responsible Officer, satisfactory; or
- (b) on the death, incapacity, resignation or withdrawal of the Network Convenor unless suitable alternative arrangements, satisfactory to the Participants and approved by the Minister in accordance with clause 12, are made by the Institution for the continuance of the Funding; or
- (c) where the parties to this Agreement have agreed to the termination of the Funding.

24.3 Upon termination of the Funding under clause 24.2 above:

- (a) the Institution must take all action necessary to minimise further expenditure of the Funding; and
- (b) the Minister may, under section 58 of the Act, recover money that has not been expended under the Funding Agreement.

25. Use of Title for Research Network

25.1 Unless otherwise agreed in writing by the ARC, the Institution shall ensure that the Research Network uses the words 'ARC Research Network' in its title. If a Research Network is co-funded with the NHMRC, the Institution shall ensure that the Research Network uses the words 'ARC-NHMRC Research Network' in its title.

25.2 Unless otherwise agreed in writing by the ARC, the Institution shall not allow the words 'National', 'Commonwealth', or 'Australia' to be used in the title of the Research Network. A Research Network may use the word 'Commonwealth' in its sub-title, for example, 'Cultural Media policy, A Commonwealth ARC Research Network'.

25.3 Subject to clause 25.4, an ARC Research Network may continue to designate itself as an 'ARC Research Network' after the funding period.

25.4 The Institution shall ensure that the ARC Research Network complies with any direction from the Scheme Coordinator concerning the continued use of the title 'ARC Research Network'.

26. Liaison

26.1 All communications from the Institution to the Commonwealth, or the Minister, relating to the Funding must be made through the Responsible Officer of the Institution and must be directed to the Scheme Coordinator at the following address:

Scheme Coordinator (*Research Networks*)
Australian Research Council

Postal address
GPO Box 2702
CANBERRA ACT 2601

Courier address
cnr Jerrabomberra Avenue and Hindmarsh Drive
SYMONSTON ACT 2609

Phone: 02 6284 6600
Fax: 02 6284 6638
Email: ncgp@arc.gov.au

27. Applicable Law

27.1 This Agreement will be governed by and construed in accordance with the laws in the Australian Capital Territory and the parties agree, subject to the Agreement, that the Courts of the Australian Capital Territory will have jurisdiction to entertain any action in respect of, or arising out of, this Agreement.

28. Waiver

28.1 If either party does not exercise (or delays in exercising) any rights under this agreement, that failure or delay does not operate as a waiver of those rights.

28.2 A waiver by either party of any rights does not prevent the further exercise of any right.

28.3 Waiver of any provision of, or right under, this agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

28.4 In this clause 28, 'rights' means rights or remedies provided by this agreement or at law.

29. Incorporation

29.1 If the Institution is a body corporate, it warrants that the Institution's constitution is not inconsistent with this Agreement.

29.2 The Institution must notify the Commonwealth if it intends to amend its constitution in a way which affects its ability to comply with this Agreement.

29.3 If the Institution alters its constitution in a way which affects its ability to comply with this Agreement, the Commonwealth may terminate this Agreement under clause 24.

30. Conflict of Interest

30.1 The Institution warrants that, to the best of its knowledge after making diligent inquiries, at the date of signing this Agreement, no Conflict exists or is likely to arise in the performance of its obligations under this Agreement.

30.2 If during the term of this agreement, a Conflict arises, or is likely to arise, the Institution must:

- (a) immediately notify the Commonwealth in writing of that Conflict and of the steps it proposes to take to resolve or otherwise deal with the Conflict;
- (b) make full disclosure to the Commonwealth of all relevant information relating to the Conflict; and
- (c) take steps as the Commonwealth may, if it chooses to, reasonably require to resolve or otherwise deal with that Conflict.

30.3 If the Institution fails to notify the Commonwealth under this clause 30, or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this agreement under clause 24.

SCHEDULE A

Details of Research Networks to receive funding by the Commonwealth

SCHEDULE B

Research Network Special Conditions

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

