Funding Agreement
between the
Commonwealth of Australia
as represented by the
Australian Research Council
and
<<Administering Organisation>>

regarding funding for
Industrial Transformation Research Hubs
to commence in
2014
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Parties & Recitals

THIS AGREEMENT is made on the ________ day of _______________ 20___

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

<< Administering Organisation>> (‘the Administering Organisation’).

WHEREAS:

A. The Commonwealth through the ARC operates the Industrial Transformation Research Hubs scheme (‘the Scheme’);

B. The Commonwealth accepts that the Administering Organisation is an eligible body for the purposes of the Scheme, and the Commonwealth may provide financial assistance to support the Administering Organisation to conduct the Projects, including the approved Funding elements, being those described in Schedule A;

C. The Commonwealth is required by law to ensure the accountability of Funding and, accordingly, the Administering Organisation is required to be accountable for all Commonwealth Funding it receives under this Agreement; and

D. The Commonwealth wishes to provide Funding under the Scheme to the Administering Organisation for the purposes, and subject to the terms and conditions, set out in this Agreement.

IT IS HEREBY AGREED as follows:

1 Definitions

In this Agreement, unless the contrary intention appears:

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

Administering Organisation means an Eligible Organisation which submits a Proposal for funding under the Industrial Transformation Research Hubs scheme and which will be responsible for the administration of the funding if the Project is approved for funding.

AIATSIS means the Australian Institute of Aboriginal and Torres Strait Islander Studies.

ARC means the Australian Research Council, as established under the ARC Act.


ARC website is www.arc.gov.au.

Asset includes personal, real or incorporeal property, but shall not include Intellectual Property.

Cash Contribution means the cash funding from an organisation for the Project which is transferred to and managed by the Administering Organisation.
Chief Executive Officer or CEO means the occupant of the position from time to time of the Chief Executive Officer of the ARC, or the delegate, as established under the ARC Act.

Chief Investigator (CI) means a researcher named in the Proposal who satisfies the eligibility criteria for a CI (and may include the role of Hub Director) under the Funding Rules.

Commonwealth means the Commonwealth of Australia.

Commonwealth Entity has the meaning as given in Section 10 of the Public Governance, Performance and Accountability Act 2013.

Confidential Information means any information which the parties agree is confidential or that is by its nature confidential.

Conflict of Interest means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through a party engaging in any activity, participating in any association, holding any membership or obtaining any interest that is likely to conflict with or restrict that party participating in the Project. The ARC Conflict of Interest and Confidentiality Policy is available on the ARC website at www.arc.gov.au.

Department means the Commonwealth Department of Education.

Eligible Organisation means an organisation listed in Section A17 of the Funding Rules.

End of Year Report means the report described in clause 30.3.

Field Research means the collection of information integral to the Project outside of a laboratory, library or workplace setting and often in a location external to the researcher’s normal place of employment.

Final Report means the report described in clause 30.5.

Funding or Funds means the amount or amounts payable under this Agreement for each Project as specified in Schedule A.

Funding Agreement or the Agreement means this document.

Funding Period means the approved period set out in Schedule A for that Project, or as otherwise approved in writing by the ARC.

Funding Rules means the Funding Rules for schemes under the Linkage Program for the years 2014-2016 – Industrial Transformation Research Hubs, Industrial Transformation Training Centres, Linkage Projects and Linkage Infrastructure, Equipment and Facilities.

GST has the meaning as given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.
HDR means a Higher Degree by Research including a PhD or Masters Degree by Research.

Hub Director means the first-named CI on a Project listed at Schedule A, or as otherwise approved by the Minister and includes any replacement person approved by the ARC in accordance with clause 15.

Hub Manager means a person with relevant skills and experience who is able to manage and facilitate the day-to-day cooperation between Eligible Organisations and Partner Organisations.

In-kind Contribution means a contribution of goods, services, materials or time to the Project from an individual, business or organisation. Values should be calculated based on the most likely actual cost, for example current market, preferred provider or internal provider rates/valuations/rentals/charges (that is in the financial year of the date of the Proposal’s submission) of the costs of labour, work spaces, equipment and databases. The calculations covering time and costs should be documented by the Administering Organisation. The ARC may require these calculations to be audited.

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.

Key Performance Indicators means a set of quantifiable measures that the Project uses to monitor and report on progress of research outcomes as outlined in clause 30.2.

Material includes documents, equipment, software, goods, information and data stored by any means.

Minister means the Minister responsible for the administration of the ARC Act, or the Minister’s delegate.

NHMRC means the National Health and Medical Research Council.

NCGP means the ARC’s National Competitive Grants Program.

Other Eligible Organisation means any Eligible Organisation which is identified in the Proposal as a contributor to the Project but is not the Administering Organisation.

Other Organisation means any organisation which is identified in the Proposal as a contributor to the Project but is not an Eligible Organisation or a Partner Organisation.

Partner Investigator (PI) means a person named in the proposal who satisfies the eligibility criteria for a PI under the Funding Rules.

Partner Organisation means any company, government agency, incorporated body or other collaborating organisation, other than an Eligible Organisation or Other Organisation, named in Schedule A as a contributor to a Project or as otherwise approved
by the Minister and includes any replacement organisation or organisations approved by the ARC in accordance with clause 12.

**Personnel** means those persons involved in the conduct of the Project.

**Privacy Commissioner** means the person occupying the position of Privacy Commissioner from time to time pursuant to the *Privacy Act 1988*.

**Progress Report** means the report described in clause 30.4.

**Project** means any Project as described in Schedule A or as otherwise approved by the Minister for Funding under this Agreement.

**Proposal** means a request to the ARC for the provision of funding which is submitted in accordance with the Funding Rules.

**Research Office** means a business unit within an Eligible Organisation that is responsible for administrative contact with the ARC regarding Proposals and Projects.

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

**RMS** means the ARC’s online Research Management System.

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

**Special Condition** means a special condition specified in this Agreement which governs the use of the Funding provided by the ARC.

**Specified Personnel** means the Hub Director, Chief Investigator(s) and Partner Investigator(s) named in Schedule A to perform the Project or as otherwise approved by the ARC.

**UA** means Universities Australia.

## 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 or italic 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 and all references to a schedule refer to a schedule 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, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented; 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 is subject to the ARC Act. If there is any conflict between this Agreement and the ARC Act, then the ARC Act prevails to the extent of any inconsistency.

3 Entire Agreement and Variation

3.1 This Agreement, including Schedules, the Proposal for each Project 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 as provided for under the ARC Act. The Administering Organisation must as soon as possible or as otherwise agreed in writing with the ARC, comply (or procure compliance) with any other Ministerial conditions or requirements notified by the ARC from time to time. In the event of any inconsistency between this Agreement and any such further requirements or conditions, the Administering Organisation will not be taken to have breached this Agreement where it has acted consistently with any further requirements or conditions notified under this clause.

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

(a) the terms and conditions contained in the clauses of 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 third parties to do such incidental or reasonably necessary things. This includes, but is not limited to the Administering Organisation’s 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 period of Funding is the Funding Period unless the Funding is terminated earlier in accordance with this Agreement.

4.3 The Funding Period for any Project including any element of the 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 54 of the ARC Act to vary the Funding, this Agreement will continue to apply to any Project under such a determination.

5 Payment of Funding

5.1 Subject to the provisions of the ARC Act, the terms of this Agreement and sufficient program funding being available for the Scheme, the Commonwealth shall pay the Funds to the Administering Organisation for 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 13;

(b) that the Hub Director listed in Schedule A lead and coordinate the Project 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 the Project substantially in accordance with the ‘Project Description’ contained in the Proposal, or in the event of any variation to the Project, in accordance with the description, aims and research plan as otherwise approved by the ARC;

(d) that the Administering Organisation spend all Funds paid under this Agreement for each Project substantially in accordance with the ‘Project Cost’ detailed in the Proposal for that Project and any Special Conditions, or the budget as otherwise approved by the ARC and any conditions otherwise imposed by the ARC in accordance with the ARC Act, and in accordance with the requirements of this Agreement and the Funding Rules;

(e) that the Administering Organisation only receive Funding under this Agreement to which it is properly entitled;

(f) that the Administering Organisation enter into (and maintain) an agreement with each Other Eligible Organisation that meets the requirements of clause 10.

(g) that the Administering Organisation enter into (and maintain) an agreement with each Partner Organisation that meets the requirements of clause 11;

(h) that the total Partner Organisation Contribution for a Project satisfies the minimum requirements set out in this Agreement (including in Schedule B) and the Funding Rules, unless otherwise approved by the ARC;

(i) that the Administering Organisation submit on time all reports required under this Agreement, in the form and with content satisfactory to the ARC, including Key Performance Indicators;

(j) that progress of the Project is, in the opinion of the ARC, satisfactory;

(k) that all Specified Personnel listed in Schedule A, at all times during their participation in a Project, meet the criteria specified in the Funding Rules, and have direct responsibility for the strategic decisions and the communication of results for the Project;
(l) that each participant or organisation named in a Proposal must declare to the Administering Organisation all Conflicts of Interest that exist or are likely to arise in relation to any aspect of the Project, which may have the potential to influence or appear to influence the research and/or activities related to the Project;

(m) that the Administering Organisation has documented processes in place for managing Conflicts of Interest in accordance with the NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2007);

(n) that the ARC is advised in a timely manner of any and all other Commonwealth funding which has been, is being, or is intended to be provided for the research and/or activities funded under this Agreement;

(o) that there is no duplication of Commonwealth funding for the research and/or activities funded for the Project under this Agreement;

(p) that the ARC is notified in writing in a timely manner if any Specified Personnel is not able to undertake the Project, or to continue to undertake the Project, and that any change in Specified Personnel is approved in accordance with clause 16;

(q) that the Administering Organisation’s funding contribution for each Project satisfies the requirements set out in the Funding Rules, unless otherwise approved by the Minister;

(r) that the Administering Organisation is responsible for any and all taxation implications associated with receiving the Funds; and

(s) that the Administering Organisation comply with any other requirements or conditions imposed by the ARC 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) 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; and/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 ARC Act, the approved amounts set out in Schedule A, which is exclusive of any GST which may be imposed on the supply.

5.6 Where the invoice relates to a taxable supply made under this contract, the invoice must comply with the requirement for a tax invoice as defined in the GST Act.

5.7 The Commonwealth shall have the right to vary unilaterally the amounts for any or all Projects.

5.8 In the event that the Minister makes a determination under section 54 of the ARC Act, the Commonwealth shall have the right to vary unilaterally the rates set out in this Agreement.
5.9 Where the Commonwealth exercises its right under clause 5.3, 5.7 or 5.8 above, it shall inform the Administering Organisation in writing of the variation within 30 days of that variation having been made.

6 **Accuracy of Information**

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, for example, describing a paper as being ‘in press’ or accepted even though it has only been submitted.

6.2 If the Commonwealth considers that a Proposal for a Project or any report provided under this Agreement contains incomplete, inaccurate or misleading information, the Commonwealth may by notice in writing to the Administering Organisation do any or all of the following:

(a) not pay the Administering Organisation any further Funds for that Project;

(b) 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; and/or

(c) vary the amount of Funding approved for that Project.

7 **Use of the Funding: Activities, Facilities and Types of Work**

7.1 The Administering Organisation will ensure that each Project described in Schedule A 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 ‘Project Description’ contained in the Proposal, or any revised budget, aims and research plan which have been submitted by the Administering Organisation and approved by the ARC. In the case that the Administering Organisation is granted a lesser amount of funding than was requested for a Project, the Administering Organisation should ensure that a revised budget is agreed with the Hub Director before the commencement of the Project.

7.2 The Administering Organisation must ensure that expenditure on each Project described in Schedule A is in accordance with the ‘Project Description’ contained in the Proposal and within the broad structure of the proposed ‘Project Cost’ detailed in the Proposal or any revised budget, aims and research plan submitted by the Administering Organisation which has been approved by the ARC.

7.3 The Administering Organisation must not use the Funding:

(a) for purposes specifically excluded in the Funding Rules;

(b) for items excluded as a Special Condition in Schedule A;

(c) to purchase alcoholic beverages; or

(d) for purposes specifically excluded in this Agreement.

7.4 Refer to the Funding Rules for further information regarding supported and not supported budget items.

7.5 The Administering Organisation must ensure that the Specified Personnel listed in Schedule A (or any replacement person(s) approved by the ARC) have adequate time and
capacity to carry out each Project and must provide basic facilities, where relevant, for each Project.

7.6 Unless otherwise approved by the ARC, the Funding must not be used to fund any research and/or activities for which other financial assistance from the Commonwealth has been, is being, or is intended to be provided.

7.7 Unless otherwise approved by the ARC, the Administering Organisation must provide the resources to undertake each Project as specified in the Proposal.

7.8 The Administering Organisation must obtain the agreement of all parties necessary to allow each Project to proceed. Evidence of agreement must be obtained from all relevant persons and organisations involved in the Project and is to be retained by the Administering Organisation. This evidence must be made available if requested by the ARC.

7.9 Overseas PIs who are not employed by an Administering Organisation do not need to provide certification from their employing organisation.

7.10 If any other Commonwealth funding is approved for any research and/or activity which is similar to research or activities being conducted for any Project, the ARC must be notified immediately and the ARC may consider whether or not to terminate or recover Funding to the extent that it is duplicated by another Commonwealth source.

7.11 The ARC will not provide Funding for relocation expenses under this Funding Agreement.

8 Use of the Funding: Provision of Salaries, Salary Support, Relief for Teaching and for Other Duties

8.1 The Funding specified in Schedule A must not be used to provide salary support for the Hub Director, CIs or PIs.

8.2 Funding may not be used for the payment of a PI’s costs incurred because of her/his involvement in the Project, except for short-term project support for PIs visiting from overseas and domestic and international travel associated with a Project where such visits and costings were outlined in the Proposal and were not prohibited (as a Special Condition).

8.3 If expenditure is incurred as allowed for in clause 8.2 above, the Administering Organisation must ensure that expenditure is in accordance with the broad structure of the ‘Project Description’ and ‘Project Cost’ detailed in the Proposal, or any revised Project budget, aims and research plan submitted by the Administering Organisation which are approved by the ARC.

8.4 Funds may be used by the Administering Organisation to support the salary for a Hub Manager, a business liaison officer, research associates and assistants, technicians and laboratory attendants at an appropriate salary level, including 28 per cent on-costs, for the Administering Organisation. Such requests must be included in the Proposal and not be prohibited as a Special Condition. They may be employed full-time or part-time, as required.

8.5 In respect of Personnel other than the Hub Director, CIs or PIs, unless the ARC 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; and

(c) the on-costs provisions beyond the ARC contribution of 28 per cent remain the responsibility of the Administering Organisation, for example extended periods of leave, severance pay, and such like must not be provided from ARC funds.

8.6 Funding may be used by the Administering Organisation to fund the relief of CIs from teaching or other duties, where provision for such was included in the Proposal. The ARC’s funding contribution is limited to a maximum total of $50,000 per annum, for all CIs, over the duration of the Project.

8.7 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 ARC, accept any remuneration whatsoever from any source other than the Administering Organisation in respect of work performed on the Project.

8.8 Notwithstanding clause 8.8, a Partner Organisation’s Cash Contribution to the Administering Organisation for the Project may be used to raise the levels of the salaries paid to Personnel, excluding the salaries of the Hub Director, CIs and PIs.

8.9 Where an HDR stipend is to be paid from Project costs:
(a) the HDR stipend per annum must be at an appropriate level for the Administering Organisation or the relevant industry;
(b) the HDR stipend recipient must be enrolled in a HDR at an Eligible Organisation as listed in Section A17 of the Funding Rules;
(c) management of candidature of HDR stipend recipients will be at the discretion of the Administering Organisation or host organisation as appropriate. This includes but is not limited to selection, appointment, periods of leave and/or suspension of candidature; and
(d) other costs of candidature will be the responsibility of the Administering Organisation or host organisation as appropriate. Costs of candidature may include, but are not limited to, costs of relocation, periods of leave and thesis production.

8.10 Project payments can only commence once the Funding Agreement has been executed by both parties. Retrospective salary payments will not be paid for employment prior to the date the Funding Agreement is executed.

9 Over-expenditure by the Administering 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 ARC, is the responsibility of the Administering Organisation. The Commonwealth will not reimburse the Administering Organisation for such costs under any circumstances.

10 Multi-Institutional Agreements

10.1 The Administering Organisation must not allow a Project to commence, nor Funding to be expended, until it has entered into an agreement with each Other Eligible Organisation in accordance with this clause 10.
A written agreement must be entered into with each Other Eligible Organisation before the final date of Project commencement as stated in clause 13 and must include provisions that:

(a) outline the role and contribution, if any, of the Other Eligible Organisation;
(b) outline the responsibilities of the Other Eligible Organisation in contributing to the governance of the Project;
(c) confirm the participation of the CI(s) from the Other Eligible Organisation;
(d) outline Contributions and research undertaken by the Other Eligible Organisation;
(e) describe the Intellectual Property (IP) arrangements that apply to the IP each party brings to the project or ‘Background IP’ as well as the outcome or results generated by the Project or ‘Project IP’. Such arrangements must, unless otherwise approved by the ARC, comply with the National Principles of Intellectual Property Management for Publicly Funded Research;
(f) do not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement;

The Administering Organisation must ensure that each Other Eligible Organisation and Other Organisation is provided with timely notice of progress made on the Project.

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

11 Partner Organisation Agreements

The Administering Organisation must not allow a Project to commence, nor Funding to be expended, until it has entered into a written partner agreement with each Partner Organisation in accordance with this clause 11. The Administering Organisation must reach agreement with each Partner Organisation and enter into a written partner agreement with each such organisation before the final date for commencement of the Project as determined in accordance with clause 13.

An agreement entered into with a Partner Organisation must include provisions that:

(a) outline the role and contribution of the Partner Organisation;
(b) outline the Contributions and research undertaken by the Partner Organisations involved;
(c) confirm the participation of the PI(s) from the Partner Organisations;
(d) describe the Intellectual Property arrangements that apply to the IP each party brings to the project or ‘Background IP’ as well as the outcome or results generated by the Project or ‘Project IP’. Such arrangements must, unless otherwise approved by the ARC, comply with the National Principles of Intellectual Property Management for Publicly Funded Research;
(e) provide an assurance from the Partner Organisation that the Partner Organisation’s relationship with the Administering Organisation and the Specified Personnel for the Project complies with the requirements specified in the Funding Rules, including:
i. that the Partner Organisation’s relationship with the Hub Director and CI(s) on the Project would not generate or represent a Conflict of Interest, or if a Conflict of Interest did exist or arise, that it will be managed in accordance with subsections 19.3 and 19.4;

ii. that the Partner Organisation satisfies the requirements for a Partner Organisation stipulated in sections A9.2 and B8.2 of the Funding Rules; and

iii. if one or more of the PIs are employees of the Partner Organisation, that the Partner Organisation will make an appropriate contribution of time and operating costs towards the Project in relation to the participation of those PIs in the Project;

(f) other than where the Partner Organisation is a Commonwealth Entity which contracts as part of the Commonwealth, an indemnity from the Partner Organisation in favour of the Administering Organisation that covers any loss, liability or expense incurred or suffered by the Administering Organisation as a result of any breach of this Agreement caused by the Administering Organisation’s reliance on the assurance given by the Partner Organisation in accordance with paragraph (e) above;

(g) are consistent with details contained in the Proposal, except as provided for in clause 11.6; and

(h) do not impede or prevent the Administering Organisation from complying with any of its obligations under this Agreement.

11.3 A written partner agreement entered into under this clause 11 must continue to satisfy the requirements of this clause 11 at all times during the Funding Period for the Project.

11.4 The Administering Organisation must ensure that the total Partner Organisation Contribution for a Project satisfies the requirements of this Agreement (including using the criteria set out in Schedule B) and the Funding Rules.

11.5 In exceptional circumstances, the ARC will consider approving an exemption to 11.4 where a Project is not able to meet the Partner Organisation Cash Contribution requirements of the Funding Rules. The Project must still have Partner Organisation Cash and/or In-kind Contributions to at least match dollar-for-dollar the financial assistance to be provided by the Commonwealth.

11.6 Unless otherwise approved by the ARC, the Administering Organisation must ensure that each Partner Organisation provides contributions as set out in the Proposal. However, if the Funding for a Project is less than the amount requested in the Proposal for that Project, the Partner Organisation Contribution may be reduced by the same proportion. In all cases, the minimum requirements for the Partner Organisation Contribution as set out in this Agreement and the Funding Rules continue to apply.

11.7 The Administering Organisation must ensure that the Commonwealth and each Partner Organisation is provided with timely notice of progress made on the Project.

11.8 Once the written partner agreement for a Project has been entered into by all participating Partner Organisations and the Administering Organisation, the Administering Organisation must provide to the ARC the Partner Organisation Agreed Contribution Report, on the relevant form made available by the ARC.

11.9 If a written agreement between a Partner Organisation and the Administering Organisation is revised in accordance with this Agreement to change the level of Partner Organisation Contribution, the Administering Organisation must provide to the ARC a
revised *Partner Organisation Agreed Contribution Report*, on the relevant form made available by the ARC within 90 days of ARC approved changes as outlined in clause 12.4.

11.10 The Administering Organisation will retain the written partner agreement, and make it available to the ARC if required.

12 **Default of Partner Organisation**

12.1 If the Administering Organisation receives notice that a Partner Organisation wishes to reduce or withdraw its support for the Project, or reasonably believes that a Partner Organisation is in default of any of its obligations under a written partner agreement entered into between that Partner Organisation and the Administering Organisation under clause 11, the Administering Organisation must immediately notify the ARC, and may attempt to find a replacement Partner Organisation for the Project, or modify remaining Partner Organisation arrangements, in accordance with the procedure outlined in clause 12.2.

12.2 Should the Administering Organisation wish to proceed with a replacement Partner Organisation or modified Partner Organisation agreements as allowed under clause 12.1, it must complete the procedure listed below within three months from the date of notification from the Partner Organisation or from the date on which the Administering Organisation became aware that the Partner Organisation is not meeting its obligations, whichever is the earlier. By the end of the three-month period referred to in this clause:

(a) the Administering Organisation must request, in writing, the ARC’s approval of a replacement Partner Organisation or modified remaining Partner Organisation arrangements which comply with the requirements for Partner Organisations and Partner Organisation Contributions specified in this Agreement and the Funding Rules;

(b) the replacement or remaining Partner Organisations must provide a written undertaking to provide (in total) a replacement contribution equivalent to that which would have been provided by the Partner Organisation in default and which satisfies the requirements of this Agreement (including using the criteria set out in Schedule B) and the Funding Rules; and

(c) the Administering Organisation and the replacement Partner Organisation or remaining Partner Organisations must enter into a written partner agreement, or amend any existing agreement (as appropriate) consistent with clause 11 to reflect the revised Partner Organisation Contribution arrangements.

12.3 The ARC may approve a replacement Partner Organisation if the Partner Organisation meets the eligibility criteria as specified in the Funding Rules.

12.4 If the ARC approves a replacement Partner Organisation or modified remaining Partner Organisation arrangements proposed under clause 12.2, the Administering Organisation must within three months of the date of approval by the ARC provide to the ARC a revised *Partner Organisation Agreed Contribution Report*, on the relevant form made available by the ARC, reflecting the new approved arrangements.

12.5 To avoid doubt, the funding condition set out in clause 5.2(g) will not have been satisfied if:

(a) the ARC does not approve any replacement Partner Organisation or the modified Partner Organisation arrangements proposed under clause 12.2; or
(b) the Administering Organisation does not attempt to find any replacement Partner Organisation or modify existing Partner Organisation Contribution arrangements in accordance with clause 12.2.

13 Commencement of Project: Final Date for Commencement

13.1 The Project must commence by no later than 30 June 2016.

13.2 Commencement of the Project cannot be deferred beyond the commencement date stated in clause 13.1. Requests for deferred commencement dates will only be considered in exceptional circumstances. The ARC may recover Funding for any Project which has not commenced by the date specified in clause 13.1.

14 Conditions of Employment

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

14.2 The Administering Organisation shall provide each Specified Personnel with a copy of this Funding Agreement within a reasonable time after the execution of the Agreement.

14.3 The Administering Organisation warrants that it has made proper inquiries of the Specified Personnel in relation to their eligibility to perform the Project.

14.4 The Administering Organisation must ensure that, unless otherwise approved by the ARC, all Specified Personnel meet the criteria specified in the Funding Rules for the full term of their participation in the Project.

14.5 The Administering Organisation must ensure that each of the Specified Personnel who is to work on a Project has the approval of her/his employing organisation to participate in the Project. The Administering Organisation does not require the agreement of the employing organisation of an overseas-based PI (unless they are employed by the Administering Organisation) to participate in the Project.

14.6 The Administering Organisation shall ensure that all Conditions of Employment as detailed in this agreement are met.

15 Change of Specified Personnel

15.1 If a CI or PI is at any time during the term of a Project no longer able to continue working on the Project, the Project may continue provided that:

(a) there remain at least two (2) CIs from the Administering Organisation, where one (1) will be the Hub Director, at least one (1) CI from each Eligible Organisation and at least one (1) PI from each Partner Organisation;

(b) all replacement CIs or PIs meet the eligibility criteria, as specified in the Funding Rules for the particular role they are to perform, for the period for which they are to perform that role;

(c) all replacement CIs must have the relevant expertise which is commensurate with the standard of the original research team which was awarded the Project;

(d) all replacement PIs must have research and/or supervision/mentoring and/or management expertise which is commensurate with the standard of the original research team which was awarded the Project;
approval is sought from the ARC for the change in Specified Personnel by submitting a Variation of Funding Agreement request to the ARC within three months of the date that the Specified Personnel cease working on the Project;

any replacement CIs or PIs (‘New Personnel’) proposed for a Project will require the Administering Organisation to obtain certifications from the New Personnel and their employers that are equivalent to the certifications for other Specified Personnel on the Project; and

the change in Specified Personnel is approved, in writing, by the ARC.

15.2 If, at any time during the Funding Period, the Hub Director is unable to continue in the role due to exceptional circumstances, a Project may be continued under another Hub Director provided that:

(a) he/she meets the eligibility requirements for a Hub Director as set out in the Funding Rules;

(b) the ARC is notified in writing within five days of the Administering Organisation becoming aware of the circumstances;

(c) a request is made by the Administering Organisation to the ARC in writing within 20 days of the Administering Organisation becoming aware of the circumstances to approve a variation to this Agreement; and

(d) the request is approved by the ARC.

15.3 The request to the ARC must include:

(a) the reason for the departure of the current Hub Director;

(b) a curriculum vitae of the proposed Hub Director;

(c) agreement from the proposed Hub Director to undertake the role;

(d) letters of support from all Other Eligible Organisations, Other Organisations and Partner Organisations agreeing to the appointment of the proposed Hub Director; and

(e) a brief explanation of the Project’s continued operation under the proposed Hub Director, including, but not limited to, arrangements for the management of the Project and administration of the Funding.

15.4 When the ARC receives notice that a Hub Director is unable to continue in this role, the ARC will undertake a review of the Project and its activities to examine the research planning and management arrangements of the Project. The Administering Organisation must provide any reasonable assistance requested by the ARC to undertake the review.

16 Transfer of a Project or Specified Personnel

16.1 The Administering Organisation must promptly notify the ARC of any Specified Personnel on a Project who moves to another organisation at any time during the Funding Period for that Project.

16.2 The transfer of a Project to another Administering Organisation may only be considered if the Hub Director is transferring to another Eligible Organisation.

16.3 If, at any time during the Funding Period, the Administering Organisation becomes aware that a Hub Director intends to transfer to another Eligible Organisation (‘the recipient Eligible Organisation’), the Administering Organisation must notify the ARC in writing as soon as possible.
16.4 The Administering Organisation must submit a Variation of Funding Agreement to the ARC. The request must provide evidence that all parties agree to the transfer, and that:

(a) the recipient Eligible Organisation agrees to provide support (including costs and in-kind financial support and facilities of commensurate quality) equivalent to or greater than that which would have been provided by the Administering Organisation and which satisfies the requirements of this Agreement and the Funding Rules;

(b) the eligibility and accountability requirements set out in the Funding Rules and the terms and conditions of this Agreement will be met;

(c) the proposed transfer of the Project will not adversely affect the collaboration, critical mass and research capability developed at the Administering Organisation;

(d) there is sufficient time available during the remainder of the Funding Period to build collaboration, critical mass and research capability at the recipient Eligible Organisation;

(e) the research already undertaken will not be put at risk as a result of the proposed transfer; and

(f) Project Personnel and the administration of the Funding will not be adversely affected by the proposed transfer.

16.5 When the ARC receives notice that a Project proposes to transfer its operations to another Eligible Organisation due to the intended transfer of the Hub Director, the ARC will undertake a review of the Project and its activities to examine the research planning and management arrangements of the Project, the Administering Organisation and the recipient Eligible Organisation. The Administering Organisation and the recipient Eligible Organisation must provide any reasonable assistance requested by the Commonwealth to undertake the review.

16.6 The ARC will have regard to the circumstances surrounding the proposed transfer and may approve the transfer subject to such conditions as the ARC considers appropriate.

16.7 If the transfer is approved by the ARC, unspent Funds and indicative Funding for the Project and any Assets as set out in clause 22.4 will be provided to the recipient Eligible Organisation, subject to clause 16.8 below.

16.8 If the transfer of Funding and any Assets is approved by the Commonwealth:

(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, including any unspent funds not located at the Administering Organisation and pay the ARC such unspent Funds. The ARC may 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 relevant field; and

iv. comply with any other directions reasonably given by the ARC to give effect to the transfer.

(b) the recipient Eligible Organisation must:
i. enter into a new, or vary an existing, Funding Agreement with the Commonwealth to give effect to the changed Funding arrangements;

ii. report expenditure of Funding for the Project subsequent to the transfer in its End of Year Report and identify the transfer in that Report; and

iii. enter into a written agreement, or agreements, with each Other Eligible Organisation, Partner Organisations and Other Organisation which satisfy the requirements of clauses 10 and 11 of this Agreement.

iv. report expenditure of Funding for the Project after the transfer in its End of Year Report and identify the transfer in that Report.

16.9 Relocation expenses associated with the transfer will not be paid by the ARC.

16.10 The Project or any equipment purchased with either the Funding or Contributions from Other Eligible Organisations, Partner Organisations and/or Other Organisations must not be transferred to the recipient Eligible Organisation until ARC approval for the transfer of Funding is granted.

16.11 If the transfer is not approved by the ARC, the Project may be terminated and any unspent Funds recovered by the Commonwealth.

17 Relinquishment of Project

17.1 The relinquishment of a Project will be considered only if the circumstances are exceptional and all associated parties and Specified Personnel agree to the termination of the Project.

17.2 If, at any time during the term of the Funding Period, the Project is relinquished by the Administering Organisation, Funding for the Project will be terminated. In such cases, any unspent Funding for the Project will be recovered by the ARC.

17.3 The Administering Organisation must ensure that the Hub Director gives notice of one month to the Administering Organisation if they intend to relinquish the Project. The Administering Organisation shall immediately advise the ARC of the relinquishment of the Project by means of submitting a Variation of Funding Agreement request to the ARC. The End of Year Report must also contain details regarding any Projects that have been relinquished.

18 Negation of Employment by the Commonwealth

18.1 Specified Personnel, any Personnel funded by a Project and the Administering Organisation, any Other Eligible Organisation, any Other Organisation and/or any Partner Organisation must not represent themselves as being employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

18.2 Specified Personnel, any Personnel funded by a Project, and the Administering Organisation, any Other Eligible Organisation, any Other Organisation and/or any Partner Organisation shall not by virtue of this Agreement or for any purpose be, or be deemed to be, employees, partners, or agents of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.
19 Conduct of Research

19.1 The Project must be conducted in accordance with any Special Conditions specified in this Agreement and with any other requirements or conditions imposed by the ARC in connection with any Funding covered by this Agreement.

19.2 The Administering Organisation must ensure that a Project under this Agreement will not proceed without appropriate ethical clearances from the relevant committees and/or authorities referred to in clause 40 or prescribed by the Administering Organisation’s research rules. Responsibility for ensuring such clearances have been obtained remains with the Administering Organisation.

19.3 All parties involved in or associated with a Project are required to disclose to the Administering Organisation, and the other parties involved in the Project any actual or potential Conflict of Interest which has the potential to influence, or appear to influence, the research and activities, publications and media reports, or requests for funding related to the Project.

19.4 If a Conflict of Interest exists or arises, the Administering Organisation must have documented processes in place for managing the Conflict of Interest for the duration of the Project. Such processes must comply with the NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2007), the ARC Conflict of Interest and Confidentiality Policy and any relevant successor document.

19.5 Each Project must, unless otherwise approved by the ARC in writing, conform to the principles outlined in the following and their successor documents:

(a) the NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2007);

(b) as applicable, the NHMRC/ARC/UA National Statement on Ethical Conduct in Human Research (2007, updated 2014);

(c) as applicable, NHMRC Values and Ethics - Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research (2003);

(d) as applicable, AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies (2012); and

(e) as applicable, the Australian Code for the care and use of animals for scientific purposes (2013) endorsed by the NHMRC, the ARC, the Commonwealth Scientific and Industrial Research Organisation and UA.

20 Material Produced Under this Agreement, Publication and Dissemination of Research Outputs

20.1 The Administering Organisation must establish and comply with its own policies, procedures and arrangements for the ownership of all Material produced as a result of any Project funded under this Agreement.

20.2 For any Material produced under this Agreement, the Administering Organisation must ensure that all Specified Personnel:

(a) take reasonable care of, and safely store, any data, 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, specimens or samples collected during, or resulting from their Project; and
20.3 The ARC will support publication and dissemination costs as per the Funding Rules.

20.4 All Proposals and ARC-funded research projects must comply with the ARC Open Access Policy, which is available at www.arc.gov.au. In accordance with this policy, the ARC requires that any publications arising from a Project must be deposited into an open access institutional repository within a twelve month period from the date of publication.

20.5 The ARC strongly encourages the depositing of data arising from a Project in an appropriate publicly accessible subject and/or institutional repository.

20.6 The Final Report must justify why any publications from a Project have not been deposited in an open access institutional repository within twelve months of publication. The Final Report must outline how data arising from the Project have been made publicly accessible where appropriate.

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

21 **ARC Assessments**

21.1 The Administering Organisation must ensure that, for the term of this Agreement, if requested by the ARC, Hub Directors and CIs agree to assess up to 20 new proposals per awarded project for ARC funding per annum for each year of Funding.

21.2 If the ARC determines that a Hub Director and/or CI has failed to meet the obligation to assess proposals assigned by the ARC for assessment, the ARC may notify the Administering Organisation in writing of that failure.

21.3 If a Hub Director and/or CI does not undertake assessment of the assigned proposals within a period specified by the ARC in the notice referred to in clause 21.2 above, the Administering Organisation will be considered to be in breach of this Agreement and Funding for the relevant Projects on which the Hub Director or CI is listed as Specified Personnel under this Agreement, may be terminated.

22 **Assets**

22.1 Unless otherwise approved by the ARC, Assets purchased with Funding must be purchased for the exclusive purposes of the Project for the duration of the Funding Period.

22.2 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.

22.3 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 must, so far as is practicable, permit persons authorised by the ARC to have priority access to that equipment in preference to other persons.

22.4 Unless otherwise approved by the ARC, 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 or provided for in Schedule A;

(b) the Project is terminated, in which case the ARC may, by notice in writing, require the transfer of any such item of equipment to the Commonwealth; or
22.5 Subject to clause 22.4, after the expiration or termination of this Agreement the Administering Organisation retains ownership of all Assets purchased using the Funds.

23 Intellectual Property

23.1 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 ARC makes no claim on the ownership of Intellectual Property brought into being as a result of the Projects for which Funding is provided.

23.2 Unless otherwise approved by the ARC, the Administering Organisation’s Intellectual Property policy referred to in clause 23.1 must comply with the National Principles of Intellectual Property Management for Publicly Funded Research as amended from time to time.

23.3 The Administering Organisation, if it is not a Commonwealth Entity which is contracting on behalf of the Commonwealth, will indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement (or alleged infringement) of Intellectual Property rights by the Administering Organisation, its employees, agents or subcontractors in the course of, or incidental to, performing the Project or the use by the Commonwealth of reports provided by the Administering Organisation under this Agreement.

23.4 The indemnity referred to in clause 23.3 shall survive the expiration or termination of this Agreement.

24 Protection of Personal Information

24.1 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 Australian Privacy Principles set out in Schedule 1 of 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 cooperate with any reasonable demands or inquiries made by the 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 Australian Privacy Principles referred to in paragraph (a) above;
(e) to comply with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of personal information;

(f) to comply with any reasonable direction of the CEO to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Administering Organisation that the Privacy Commissioner considers to be a breach of the obligations in paragraph (a) above;

(g) to comply with any reasonable direction of the CEO to provide the Privacy Commissioner access for the purpose of monitoring the Administering Organisation’s compliance with this clause;

(h) to 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 authorised by the ARC to oversee such deletion or destruction; and

(i) to the naming or other identification of the Administering Organisation in reports by the Privacy Commissioner.

24.2 The Administering Organisation must immediately notify the ARC if the Administering Organisation becomes aware of a breach of its obligations under clause 24.1.

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

25 Confidentiality

25.1 Subject to clause 25.2, the ARC agrees not to disclose any Confidential Information of the Administering Organisation, without the Administering Organisation’s consent.

25.2 The ARC will not be taken to have breached its obligations under clause 25.1 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 NCGP or the Scheme;

(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 25.

25.3 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 Information 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.

26 Acknowledgments, Publications and Publicity

26.1 Subject to commercial sensitivities and 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.

26.2 When, at any time during or after completion of a Project, the Administering Organisation or the researchers or any other party publishes, produces or is involved in promotional material, such as books, articles, television or radio programs, electronic media, newsletters or other literary or artistic works which relate to the Project, the Administering Organisation must ensure (wherever possible) that the ARC’s contribution and support of the Project is acknowledged in a prominent place and an appropriate form acceptable to the ARC. Similar efforts should be made when publicly speaking about a Project. Advice of acceptable forms of acknowledgement and use of the logo is provided on the ARC website. With respect to publications, where ARC support is acknowledged, the relevant grant number should be included.

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

27 Administration of the Funding

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

27.2 Records maintained under clause 27.1 must be retained by the Administering Organisation for each Project for a period of no less than seven years after whichever is the later of:

(a) the final payment of Funds by the ARC for the Project; or
(b) the final approved carryover of Funds for the Project.

28 Audit and Monitoring

28.1 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 of the Administering Organisation, the Funding is not being expended in accordance with this Agreement, the Administering Organisation must take all action necessary to minimise further expenditure in relation to the Project and inform the ARC immediately.

28.2 The ARC may at any time conduct ad hoc on-site reviews 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.

28.3 The Administering Organisation must:
(a) provide information to the ARC, or a person nominated by the ARC, as reasonably required by the ARC;
(b) comply with all reasonable requests, directions, or monitoring requirements received from the ARC; and
(c) cooperate with and assist the ARC in any review or other evaluation that the ARC undertakes.

29 Access to Premises and Records

29.1 The Administering Organisation must, 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; and

(b) reasonable assistance to:
   i. inspect the performance of any or all Projects;
   ii. locate and inspect Material relevant to any Project or the Administering Organisation’s compliance with this Agreement or the Scheme; 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.

29.2 The access rights in clause 29.1 are subject to:

(a) 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);
(b) the provision of reasonable prior notice by the ARC; and
(c) the Administering Organisation’s reasonable security procedures.

29.3 If a matter is being investigated which, in the opinion of the ARC, or any person authorised in writing by the CEO, may involve an actual or apprehended breach of the law, clause 29.2 will not apply.

29.4 Upon receipt of reasonable written notice from the ARC, or any person authorised in writing by the CEO, the Administering Organisation must provide any information required by the Commonwealth for monitoring and evaluation purposes.

29.5 Nothing in clauses 29.1 to 29.4 inclusive affects the obligation of each party to continue to perform its obligations under this Agreement unless otherwise agreed between them.

29.6 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.

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

30 Reporting Requirements

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

30.2 Key Performance Indicators Report

(a) The Administering Organisation must submit Key Performance Indicators for each Project for ARC approval by 30 September 2015.

(b) The Key Performance Indicators for each Project must include targets for each year of funding against standard Key Performance Indicators as well as Project specific Key Performance Indicators and targets for each year of funding. The ARC will provide the Administering Organisation with a pro forma and instructions for this report.

(c) The Administering Organisation must report against the agreed Key Performance Indicators annually in Progress Reports as outlined in clause 30.4.

30.3 End of Year Report

(a) The Administering Organisation must submit an End of Year Report by 31 March in the year following each calendar year for which the Funding was awarded, in accordance with the instructions to be provided by the ARC each year. The first End of Year Report is due on 31 March 2016. The form for this report will be made available by the ARC in RMS, with instructions on the ARC website.

(b) The End of Year Report will contain information on all expenditure for that year for the Project 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; and
   
   iii. the reasons why the unspent Funds are required to be carried over.

(c) Under paragraph 58(1)(c) of the ARC Act, Funds provided by the Commonwealth to the Administering Organisation which are not spent during the year of the Funding Period to which those Funds were allocated may be carried over if approved by the ARC. If the Administering Organisation wishes any Funds to be carried over from one year to the next year, the Administering Organisation must request this approval in the End of Year Report for the calendar year for which those Funds were initially paid.

(d) All unspent funds are to be reported to the ARC. If a carryover is requested it must include all unspent funds allocated to the Project even if they are not located at the Administering Organisation.

(e) Where a carryover is requested for 75 per cent or more of the Funds allocated for a calendar year (excluding any Funds carried over from the previous calendar year), written justification must be provided.

(f) Funds may be carried over more than twelve months only in exceptional circumstances and subject to approval by the ARC. Written justification must be provided in this instance.
30.4 Progress Report

(a) The Administering Organisation must submit a Progress Report by 31 March each year following each calendar year for which the Funding was awarded. The first Progress Report is due on 31 March 2016. A form for this report will be made available by the ARC. The Progress Report will seek details regarding the following matters:

i. the extent to which the objectives of the Scheme and the Proposal have been met;

ii. summary of highlights, achievements in research and other outputs achieved resulting from the use of the Funds, including any advances in knowledge, relevant publications or international collaboration and any issues, including mitigation strategies;

iii. measurement and account of performance against Key Performance Indicator targets as set out in clause 30.2;

iv. a detailed activity plan for the next twelve months;

v. all expenditure for the calendar year, including any transfer of specific Assets or Intellectual Property;

vi. funding and/or other resources provided by the Administering Organisation, Other Eligible Organisations, Other Organisations and Partner Organisations, and any other sources of support; and

vii. any other matters which from time to time may be requested in writing by the ARC as matters which must be included in a Progress Report.

(b) If the ARC is not satisfied with the progress of the Project, further payment of Funds will not be made until satisfactory progress has been made on the Project. If satisfactory progress is still not achieved within a reasonable period of time, the Funding may be terminated and all outstanding monies will be recovered by the ARC.

(c) Unsatisfactory progress on the Project may be noted against any further proposals under any ARC scheme submitted on behalf of the Hub Director and/or CI and will be taken into account in the assessment of those proposals.

30.5 Final Report

(a) Unless otherwise approved by the ARC, the Administering Organisation must ensure that a Final Report is provided for the Project within twelve months of the final payment of Funds by the ARC for the Project or within twelve months of the final carryover of Funds approved by the ARC, whichever is the later. The form for this report will be made available by the ARC in RMS, with instructions on the ARC website. 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) The Final Report must justify why any publications from a Project have not been deposited in an open access institutional repository within twelve months of publication. The Final Report must outline how data arising from the Project have been made publicly accessible where appropriate.

(c) The ARC may also seek additional information about subsequent outputs and outcomes after submission of the Final Report.
(d) If a Final Report is considered by the ARC to be inadequate or is not submitted on time, the Administering Organisation of 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 on behalf of the Hub Director or CIs and may be taken into account in the assessment of those proposals.

(e) Proposals submitted under any ARC scheme on behalf of any Hub Director or CI on a Project for which the Final Report is outstanding may be deemed ineligible for approval of Funding.

30.6 The ARC requires Administering Organisations to inform the ARC when significant problems occur with an ARC-funded Project and/or with any serious matters concerning associated named Personnel. Such reporting matters should be directed to the ARC Postaward team.

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

31 Complaints and Allegations Relating to Research Integrity and Research Misconduct

31.1 All ARC funded research projects must comply with the ARC Research Integrity and Misconduct Policy, which is available at www.arc.gov.au. The ARC will enforce reporting requirements and impose sanctions, when required, under this policy.

31.2 The ARC Research Integrity and Misconduct Policy applies to:

(a) all institutions currently applying for funding or that have received ARC funding in the last seven years;

(b) individuals who have been named as investigators on ARC funded proposals, and any associated project personnel, whether the allegation or complaint relates to the ARC funded activity or not; and

(c) anyone engaged on ARC business such as ARC College members, Selection Advisory Committee members, external assessors and contractors.

32 Australian Research Integrity Committee

32.1 The Administering Organisation must provide to the Australian Research Integrity Committee (ARIC) upon request, any documentation and information concerning allegations of its mishandling of internal reviews into alleged cases of research misconduct, and/or non-compliance with the NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2007).

33 Copyright in Proposals and Reports

33.1 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 or must procure for the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence to use and reproduce information contained in a Proposal or a report and publish it on a non-profit basis for any purpose related to:
(a) the evaluation and assessment of proposals;
(b) verifying the accuracy, consistency and adequacy of information contained in a Proposal, or otherwise provided to the ARC;
(c) the preparation and management of any funding agreement;
(d) the administration, auditing, management or evaluation of the NCGP or any funding scheme administered by the ARC;
(e) the sharing of information by the ARC within the ARC’s organisation, or with another Commonwealth Department or agency, or Commonwealth Minister or parliamentary committee, where this serves the Commonwealth’s legitimate interests; or
(f) where the use, reproduction or publication of the material is authorised or required by law.

33.2 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.

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

34 Recovery of Unspent Funds or Overpayments of Funds

34.1 Any unspent Funds may be recovered by the Commonwealth under paragraph 58(1)(c) of the ARC Act. Any amount of Funding paid to the Administering Organisation which exceeds the amount of financial assistance that is properly payable to it may be recovered under paragraph 58(1)(d) of the ARC Act.

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

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

35 Indemnity

35.1 The Administering Organisation, if it is not a Commonwealth Entity which is contracting on behalf of the Commonwealth, will indemnify the Commonwealth, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person, 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.

35.2 The Administering Organisation’s liability to indemnify the Commonwealth under clause 35.1 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.

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

36 Insurance

36.1 The Administering Organisation must effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its participation in Industrial Transformation Research Hubs Projects and, if requested, provide the Commonwealth with a copy of the relevant policies or when appropriate Certificate of Currency. The
Administering Organisation will be responsible for effecting all insurances required under workers’ compensation legislation and for taking all other action required as an employer.

37 Dispute Resolution

37.1 The Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement until the procedure provided by this clause 37 has been followed.

37.2 The Parties agree that the following procedure will be used in an expeditious way to resolve a dispute:

(a) the Party claiming there is a dispute will notify the other Party in writing, setting out the nature of the dispute;

(b) the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;

(c) the Parties have ten business days from the date of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure;

(d) if:

i. there is no resolution of the dispute;

ii. there is not agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or

iii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 30 business days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 30 business days;

then, either Party may commence legal proceedings.

37.3 This clause 37 does not apply to action that the Commonwealth takes, or purports to take, under clause 5, 34 or 38 or where a Party commences legal proceedings for urgent interlocutory relief.

37.4 Despite the existence of the dispute, the Administering Organisation must (unless requested in writing by the Commonwealth not to do so) continue to perform its obligations under this Agreement.

38 Termination of the Agreement

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

(a) the Administering Organisation commits any breach of this Agreement which the Commonwealth considers is not capable of remedy;

(b) in the opinion of the ARC, progress on the Project is not satisfactory;

(c) the ARC reasonably believes that it has received inaccurate, incomplete or misleading information in relation to the Project, including in the Proposal or in any report provided under this Agreement;
(d) the ARC reasonably believes there is fraud or misleading or deceptive conduct on the part of the Administering Organisation, any Personnel or an Other Eligible Organisation, Other Organisation or Partner Organisation in connection with the Project;

(e) the Administering Organisation fails to comply with any additional ARC requirement or condition notified by the ARC under clause 3.2;

(f) the ARC receives notice that work on the Project will cease, or has ceased;

(g) the Administering Organisation is unable to continue its role for any reason;

(h) the Commonwealth terminates its commitment in the event of a change of government policy or other related government requirements.

38.2 If the ARC terminates Funding for a Project under clause 38.1:

(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 unless otherwise specified by the Commonwealth; and

(c) the ARC may recover all or any Funding for the Project in accordance with clause 5.3.

38.3 Any amount notified to the Administering Organisation as payable under clause 38.2(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.

39 Compliance with Law

39.1 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.

39.2 The Administering Organisation acknowledges that:

(a) Chapter 7 of the Criminal Code Act 1995 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 Act 1995;

(c) the publication or communication of any fact or document by a person which has come to her/his knowledge or into her/his 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 10.7 of the Criminal Code Act 1995 which may attract a substantial penalty, including imprisonment;
39.3 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.


39.4 The Administering Organisation must ensure that in performing the obligations under, and arising from this Agreement, all necessary precautions for the health and safety of all persons have been identified and implemented.

39.5 The Administering Organisation must ensure that all officers, employees, agents and subcontractors in performing the obligations under and arising from this Agreement comply with any security and safety requirements of which they are or should be reasonably aware.

40 Research special conditions

40.1 Importation of experimental organisms: The Administering Organisation must ensure that, before experimental organisms are imported into Australia for the purposes of a Project, the Administering Organisation or the Hub Director of the Project must obtain agreement in principle for the importation from the appropriate Commonwealth and State authorities.

40.2 Research involving humans or other animals: Any Project conducted by the Administering Organisation including research on or involving humans or other animals, the Administering Organisation must ensure that the codes adopted for these purposes by the National Health and Medical Research Council, ARC, and Universities Australia 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.

40.3 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 must dispose of the material in accordance with the Administering Organisation’s established safeguards.

40.4 Genetic manipulation: If a Project involves the use of gene technology (as defined in the Gene Technology Act 2000), then before the proposed research commences, the
Administering Organisation must ensure that the research has been approved in writing by the relevant Biosafety and/or Ethics Committees (or equivalent) of the Administering Organisation. The Administering Organisation must retain all certificates relating to the above and will provide evidence to the ARC if required to do so. The Administering Organisation must be accredited with the Office of the Gene Technology Regulator.

40.5 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 must retain all such licences and shall provide them to the ARC if required to do so.

40.6 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 Hub Director is not intending to do so within the two-year period, he/she should include the reasons in the Project’s Final Report.

41 Liaison

41.1 Researchers should direct all queries regarding ARC Funding to their Administering Organisation’s Research Office in the first instance. All communications from the Administering Organisation to the ARC or the Minister, relating to the Funding should be made through the Responsible Officer of the Administering Organisation and should be directed to the ARC at the following address:

Post-award team
Australian Research Council

Phone: 02 6287 6600
Fax: 02 6287 6638

Postal address
GPO Box 2702
CANBERRA  ACT  2601

Post-award enquiries and report submission
Email: ARC-postaward@arc.gov.au

42 Applicable Law

42.1 This Agreement will be governed by and interpreted in accordance with the laws of the Australian Capital Territory and the Parties submit to the non-exclusive jurisdiction of the courts of that Territory.
SCHEDULE A

Details of *Industrial Transformation Research Hubs* Projects to receive Funding from the Commonwealth
SCHEDULE B

Evaluation of the Partner Organisation Cash and In-kind Contributions for the Industrial Transformation Research Hubs Scheme

This Schedule is to be used in determining the value of Partner Organisation Contributions that are required to be provided by Partner Organisations to the Administering Organisation to at least match dollar-for-dollar the financial assistance to be provided by the Commonwealth for Projects within the Industrial Transformation Research Hubs Scheme.

B1. Underlying principles and practical considerations

B1.1 The primary objectives in examining the Partner Organisation Contribution are to ensure that:

(a) the available support is adequate for the successful completion of the Project;
(b) the total combined Partner Organisation Contribution (Cash and In-kind) matches at least dollar-for-dollar the financial assistance provided by the Commonwealth over the life of the Project (Section B8.2 of the Funding Rules describes the specific financial commitment requirements of Partner Organisations); and
(c) the Partner Organisation Contribution is in accordance with the budget, aims and research plan contained in the Proposal or an approved revised budget, aims and research plan.

B1.2 The Partner Organisation Contribution requirements specified in the Funding Rules must be met, unless an exemption to the Partner Organisation Cash Contribution requirement is granted under clause 11.5 of this Agreement due to exceptional circumstances. If an exemption to the Partner Organisation Cash Contribution requirement is granted, the Project must still have Partner Organisation Cash and/or In-Kind Contributions to at least match dollar-for-dollar the financial assistance to be provided by the Commonwealth.

B1.3 In-kind Contributions that are shown to be essential and central to the conduct of the Project are given full recognition in evaluating the Partner Organisation Contribution. The onus is on the Administering Organisation to establish the merit of the case for recognition of the level and extent of the In-kind Contributions. As a general rule, the value of In-kind Contributions should reflect current internal and non-commercial rates.

B1.4 If the amount of total Commonwealth Funding for a Project varies from the amount sought in the Proposal for the Project, the Hub Director must discuss the matter with the Partner Organisation. If the Partner Organisation agrees that the research Project is viable within the parameters of the varied amount of Commonwealth funding, pro-rata adjustments may be made to the Proposal budget in accordance with clause 11.

B1.5 The Hub Director is responsible for providing the Research Office of the Administering Organisation with evidence of any such Partner Organisation agreement for Funding acquittal and reporting purposes.

B1.6 In-kind Contributions to a Project may include, but are not restricted to, scientific liaison and management, direct technical support, or unique access to reagents, data, processors or equipment.

B1.7 Corporate membership or subscription fees in industrial consortia do not qualify as Partner Organisation Contributions but the allocation of designated research funds,
together with the identification of the linkages between the member and the Project, do qualify.
IN WITNESS WHEREOF the parties have agreed to this Agreement on the date first above written.

SIGNED for and on behalf of
THE COMMONWEALTH OF AUSTRALIA

by ............................................................… ) .................................................
insert name of signatory above ) signatory to sign above

the ............................................................… )
insert signatory’s title above )
of the Australian Research Council )

In the Presence of:

............................................................… ) .................................................
insert name of witness above ) witness to sign above

SIGNED for and on behalf of
<<Administering Organisation>>

by ............................................................… ) .................................................
insert name of signatory above ) signatory to sign above

the ............................................................… )
insert signatory’s title above )
of the said Administering Organisation who,
by signing, certifies that he/she has the authority
so to sign )

In the Presence of:

............................................................… ) .................................................
insert name of witness above ) witness to sign above