



AIATSIS

Australian Institute of Aboriginal
and Torres Strait Islander Studies

RESEARCH GRANT AGREEMENT

G2010/

Project title:

GRANT AGREEMENT made on 2010

PARTIES The Australian Institute of Aboriginal and Torres Strait Islander Studies
("Institute")

..... ("Administering Organisation")

INTRODUCTION

- A. The Institute has approved a grant to the Administering Organisation to carry out research on the terms in this Grant Agreement.
- B. The grant is to be performed by ("Researcher"). The Researcher may be assisted by other suitable persons with appropriate skills and knowledge.

IT IS AGREED

1. Definitions and Interpretation

1.1 Unless the context otherwise requires:

"**Abstract**" means a short (800 – 1000 words) summary of the Results suitable for publication on the Institute's website or Journal;

"**Administering Organisation**" means an incorporated body, a State or Commonwealth body, or other organisation approved by the Institute;

"**Agreement**" includes this Grant Agreement, the Application Form and the Information for Applicants document;

"**AIATSIS Documents**" mean the Application Form, the Information for Applicants Document as it relates to the Research Project, and the AIATSIS Guidelines for Ethical Research in Indigenous Studies;

"**AIATSIS Research Materials and Results Form**" means the form made available by the Institute concerning the recommended curatorial procedures for dealing with the Research Materials;

"**Application Form**" means the form of application completed by the Administering Organisation or Researcher for the Funding by the Institute to carry out the Research Project;

"**Business Day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

"**Council**" means the Council of the Institute;

"**Director of Research**" means the person occupying the position of Director of Research at the Institute from time to time, and is the Institute's delegate for any matters to be dealt with under this Agreement;

“Final Report” means a report prepared by the Researcher after completion or termination of the Research Project, which includes a summary of the Research Project and the outcomes of the Research Project;

“Funding” means the funding specified in clause 3.1 of this Agreement;

“Information for Applicants document” means the document made available by the Institute concerning information about the Research Grants Program;

“Research Material” means data collected by the Researcher during the course of the Research Project, and material produced in the course of the Research Project as specified at **Part 4.4 and 4.5** of the Application Form or as otherwise agreed;

“Research Project” means the research project specified in the title of this Agreement;

“Results” means the material resulting from the Research Project in whatever form it may be produced, including journal articles, thesis, book chapters and similar products;

“Royalty Agreement” means an agreement negotiated between the Administering Organisation and the Institute with respect to the payment of royalties;

“Time Frame” means the time frame for the performance of the Research Project specified in clause 4.1 of this Agreement and includes any variations agreed by the Institute under clause 4.3.

1.2 Interpretation:

- (a) Reference to:
 - (i) one gender includes each other gender;
 - (ii) the singular includes the plural;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns; and
 - (v) a statute, regulation or provision of a statute or regulation (“Statutory Provision”) includes:
 - (1) that Statutory Provision as amended or re-enacted from time to time; and
 - (2) a statute, regulation or provision enacted in replacement of that Statutory Provision.
- (b) All monetary amounts are in Australian dollars.
- (c) Headings are for convenience only and do not affect the interpretation, or form part, of this Agreement.
- (d) “Including” and similar expressions are not words of limitation.

- (e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

2. Research Project

- 2.1 The Researcher will undertake the Research Project to a professional standard and within the Time Frame.
- 2.2 All research projects must comply with the AIATSIS Guidelines for Ethical Research in Indigenous Studies, unless AIATSIS has agreed otherwise.
- 2.3 The Researcher may not vary the Research Project in any significant manner, including a variation of location or which potentially impacts on ethical aspects of a project, without the consent in writing of the Institute.
- 2.4 In conducting the Research Project, the Parties are bound by the provisions of the AIATSIS Documents, except to the extent that they are inconsistent with this Agreement.

3. Funding

- 3.1 The Institute will provide Funding to the Administering Organisation for the Research Project. The maximum amount available for this project is \$18,000. Funding will be payable within 30 days of the Institute receiving a correct invoice and a statement from the Administering Organisation that the Researcher is ready to start work on the Research Project.
- 3.2 If GST is applicable to the Funding, it is additional to the amount specified in clause 3.1. In this case, a tax invoice must be provided by the Administering Organisation.
- 3.3 On completion or termination of the Research Project, the Administering Organisation will refund the unexpended balance of the Funding, if any, to the Institute.

4 Time-frame

- 4.1 In conducting the Research Project, the grantee shall comply with the following time-frame:

Commencement Date: August 2007

Completion Date: December 2007

- 4.2 If the Researcher or Administering Organisation form an opinion, or could reasonably be expected to have formed an opinion, that the Research Project will not be completed within the Time Frame, the Researcher must:

- (a) advise the Institute of that opinion; and
- (b) provide a new timetable setting out the expected new Time Frame.

- 4.3 Upon receipt of advice under clause 4.2 the Institute may:
- (a) agree to the new timetable; or
 - (b) negotiate an alternative timetable (which might include progress targets); or
 - (c) if the project is not progressing at an acceptable rate, and appears unlikely to achieve acceptable progress, terminate the project.

5. Reports

5.1 During the course of the Research Project:

- (a) the Administering Organisation will provide to the Institute, for the periods ended 31 December and 30 June each year until a Final Report is provided, a financial statement outlining income and expenditure for the period ended and for the period of the Research Project in total;
- (b) the Researcher will provide to the Institute, for the periods ending 31 December and 30 June each year until a Final Report is provided, an Interim Report outlining current activities and progress in carrying out the Research Project. The Interim Report must include information on any substantial change to the project since the previous Interim Report.
- (c) if the period of the initial reports required under this clause would be less than three months, then those reports may be deferred and incorporated into the next reports due under this clause.

5.2 Reports under clause 5.1 are due within one month of the end of each period.

5.3 Within 3 months of completion or termination of the Research Project, the Researcher will lodge with the Institute:

- (a) a Final Report; and
- (b) a copy of the Research Material.

5.4 If applicable, the Researcher will provide the Institute with a copy of his or her thesis within 3 months of its acceptance.

5.5 The Institute may refuse to accept Research Material in its absolute discretion.

5.6 If the Research Material is to be lodged in a university repository accredited under the Research Quality Framework or similar arrangement, the requirement under 5.3(b) will be met if AIATSIS is provided with free access to that material in the repository.

6. Ownership

6.1 The Administering Organisation warrants to the Institute that the Administering Organisation is entitled to deal with any rights in or arising from the Research Materials or Results in accordance with the terms of this Agreement.

6.2 If the Administering Organisation commercialises the Results, a royalty agreement must be entered into with the Institute.

7. Sensitive Information

7.1 In order for the Institute to comply with its obligations under section 41 of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* the Researcher will, prior to delivery to the Institute of any information, Research Materials, Results or other matter, notify the Institute in writing of:

- (a) any conditions of which the Researcher is aware, or could reasonably be expected to be aware, restricting access to information or other matter lodged with the Institute, including conditions relating to cultural information, privacy, legislative or other ethical reasons; and
- (b) any views or sensitivities of which the Researcher is aware, or could reasonably be expected to be aware, of relevant Aboriginal persons or Torres Strait Islanders which may be inconsistent with the disclosure of information or other matter proposed to be delivered.

7.2 The Researcher acknowledges and agrees that the Institute may conduct its own inquiries to ascertain the nature of any views or sensitivities referred to in Clause 7.1. The Researcher will do all things reasonably necessary on his or her part to enable the Institute to carry out those inquiries.

7.3 Following any inquiries conducted under clause 7.2, the Institute may:

- (a) agree that the conditions advised under clause 7.1 (a) are reasonable and necessary; or
- (b) request the Researcher to amend the conditions to take account of the results of any inquiry.

7.4 The obligations of the Researcher imposed under clauses 7.1 and 7.2 will survive expiration or earlier termination of this Agreement.

8. Licences

8.1 This section is subject to any restrictions advised to the Institute under clause 7.1.

8.2 The Administering Organisation grants to the Institute a non-exclusive royalty free, perpetual licence to use the Research Material for the following purposes:

- (a) to make the Research Material available for public access and use for research purposes;
- (b) to make copies of the Research Material, including in other formats; and
- (c) to reproduce the Research Material.

8.3 The Administering Organisation grants to the Institute a non-exclusive royalty free, perpetual licence to use the Results for the following purposes:

- (a) to make the Results available for public access and use for research purposes;

- (b) to make copies of the Results in other formats;
- (c) to reproduce the Results.

8.4 The Administering Organisation may request that the distribution of any material provided to the Institute under clauses 8.2 and 8.3 be subject to embargo for a specified period, to allow publication. The Institute will not unreasonably refuse such a request.

8.5 The Institute may use extracts from the Results for promotional purposes, including publication of an abstract in the Institute's Journal.

8.6 If either Party proposes to publish a press release or similar document relating to the Results, a notice outlining the proposed contents of the document must be provided to the other Party prior to issue, in sufficient time for that other Party to provide any appropriate comment.

8.7 If the Results are published, the Researcher will lodge with the Institute a printed copy of the published material. The Institute may request a copy of the Results in digital format.

8.8 The Administering Organisation indemnifies the Institute, its employees and Council against all actions, proceedings, claims or demands incurred by the Institute in respect of any breach of intellectual property rights or secrecy obligations caused by the Administering Organisation or its employees.

9. Conflict of Interest

9.1 The Researcher and the Administering Organisation warrant that, at the date of entering into this Agreement they are not aware of, or could not reasonably be aware of, any conflict of interest which is likely to arise in the performance of its obligations under this Agreement.

9.2 If a conflict of interest arises during the term of this Agreement, the Researcher and the Administering Organisation will immediately notify the Institute that a conflict exists and the proposed actions to resolve that conflict.

10. AIATSIS premises

10.1 If the Researcher visits the AIATSIS premises to pursue the Research Project, the Researcher will comply with all security and other policies imposed by the Institute and advised to the Researcher, in respect of its premises.

11. Insurance and Indemnity

11.1 The Administering Organisation is responsible for taking out the following insurances:

- (a) public liability and professional indemnity, in a sum no less than \$1,000,000 each, or such lesser amount as the Institute determines; and
- (b) such other insurance as may be reasonably requested by the Institute prior to signing this Agreement.

11.2 If requested to do so by the Institute, the Administering Organisation will provide a copy of the certificates of currency of insurance referred to in clause 11.1.

11.3 The Administering Organisation indemnifies and agrees to keep indemnified the Institute, its officers, employees and agents against any action, proceeding, claim or demand that may be brought against it or any of them by any person in respect of any such action, proceeding or claim or demand arising directly out of any negligent or unlawful act or omission or wilful misconduct by the Administering Organisation, its employees, agents or the Researcher.

11.4 The liability of the Administering Organisation to indemnify the Institute shall be reduced to the extent that the Institute's negligence, unlawful conduct, or wilful misconduct contributed to the cause of action, proceeding, claim or demand brought against it.

11.5 The indemnities referred to in clauses 8.8 and 11.3 include any costs, damages and expenses reasonably incurred by the Institute in defending any such claim, action or proceeding and will survive expiration or earlier termination of this Agreement.

12. Termination

12.1 Either Party may terminate this Agreement :

- (a) by giving 1 month's notice to the other Party of its intention to do so; or
- (b) if a Party is in breach of any of the terms of this Agreement and that Party fails to rectify the breach, after having been given not less than 14 days' notice of the nature of the breach and requiring it to be rectified within 14 days after the giving of the notice; or
- (c) if the Director of Research concludes, on reasonable grounds, that there is no realistic likelihood that the Research Project will be completed to a satisfactory standard or that there has been significant non-compliance with the terms of the AIATSIS Documents.

12.2 If the Researcher terminates their working relationship with the Administering Organisation, AIATSIS may:

- (a) direct the Administering Organisation to repay any unspent funding, or transfer it to a new Administering Organisation, in which case this Agreement is terminated; or
- (b) request the Administering Organisation to nominate a new Researcher with suitable skills and experience, who is acceptable to AIATSIS.

12.3 Upon receipt of a notice of termination each Party shall:

- (a) stop work as specified in the notice; and
- (b) take all available steps to minimise loss resulting from that termination and to protect Research Material.

12.4 Upon termination, the Institute shall be liable only for:

- (a) payments for work performed before the date of termination; and
- (b) any reasonable costs incurred by the Administering Organisation and directly attributable to the termination of this Agreement, as agreed by the Institute.

12.5 The Administering Organisation may request the AIATSI Principal to review termination of this Agreement. Following any such review, the Administering Organisation may request the Council to reconsider the termination. A decision by the Council is final and binding.

13. No Partnership or Employment

13.1 Nothing in this Agreement is intended to create a partnership as between the Parties. The Parties each acknowledge that they have no authority to bind the other Party without that Party's specific consent.

13.2 This Agreement does not constitute a relationship of employer and employee between the Institute and the Administering Organisation.

14. No Assignment

14.1 No Party to this Agreement may assign or otherwise deal with the whole or part of it except with the prior written consent of each other Party.

14.2 The Administering Organisation acknowledges and agrees that any permitted assignment of its rights, title and interests in the Results or Research Material (including any copyright or other intellectual property rights) to a third party will be subject to the licences granted to the Institute pursuant to clause 7.

15. Severability

15.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

16. Entire Understanding

16.1 This Agreement:

- (a) contains the entire agreement and understanding between the Parties and everything connected with the subject matter of this Agreement;
- (b) supersedes and merges any prior agreement or understanding on anything connected with that subject matter.

16.2 Each Party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

17. Variation

17.1 Either Party may request a variation to any aspect of this Agreement. The other Party may or may not agree to any such request, or variation thereof.

18. Waiver

18.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

18.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

18.3 No waiver is effective unless it is in writing.

18.4 The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it was given.

19. Notices

19.1 A notice or any other communication ("Notice") connected with this Agreement has no legal effect unless it is in writing and:

- (a) delivered by hand at the address for service of the addressee;
- (b) sent by post, postage prepaid, to the address for service of the addressee; or
- (c) sent by facsimile number to the facsimile number of the addressee; or
- (d) sent by electronic mail to the e-mail address of the addressee.

19.2 A Notice is deemed given and received:

- (a) if delivered, upon delivery;
- (b) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting; or

- (c) if sent by facsimile before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

19.3 Despite clause 19.2(c) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the number of pages comprised in the Notice have been sent.

19.4 At the date of this Agreement, the addresses for service of Notices are:

For the Institute – Lawson Cres, Acton, ACT, 2601 or facsimile (02) 6249 7714 or e-mail grants@aiatsis.gov.au.

For the Administering Organisation ...

20 Dispute Resolution

20.1 If a dispute arises between any of the Parties in any matter arising from or in connection with this Agreement and the dispute is not mutually resolved within 14 days from either Party having received written notice of the dispute, then the dispute must, upon the request of a Party, be referred to mediation or arbitration in accordance with the laws relating to mediation or arbitration in force in the Australian Capital Territory.

20.2 This clause 20 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

21. Governing Law and Jurisdiction

21.1 The law of the Australian Capital Territory applies to this Agreement.

21.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.

22. Inconsistency

22.1 In this Agreement, in the event of any inconsistency between:

- (a) the Agreement and any other document not expressly incorporated as part of the Agreement, the Agreement will prevail;
- (b) the Application Form and the Information for Applicants Document, the Information for Applicants Document will prevail.

SIGNED for and on behalf of the Institute, by
in the presence of:

SIGNED for and on behalf of the Administering Organisation, by
in the presence of: