

**DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA**

**AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
FOR COOPERATION IN SCIENTIFIC RESEARCH AND
TECHNOLOGICAL DEVELOPMENT**

Jakarta, 11 July 2005

**Not yet in force
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AGREEMENT BETWEEN
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FOR COOPERATION IN SCIENTIFIC RESEARCH AND
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THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA (hereafter referred to as the “Parties”),

DESIRING to promote further the close and friendly relations existing between the Parties;

CONSIDERING their common interest to promote and encourage their scientific research and technical progress and have the reciprocal advantages resulting from cooperation in the fields of mutual interest;

CONVINCED of the need for effective cooperation in the scientific research and technical fields which will enhance the economic and social development of both countries; and

FOLLOWING FROM the Agreement between the Government of Australia and the Government of the Republic of Indonesia for the Cooperation in Scientific Research and Technological Development signed at Canberra on August 24, 1994

HAVE AGREED as follows:

Article 1

For the purpose of this Agreement:

1. “Territory”:

- (a) In respect of the Republic of Indonesia means the territory under the sovereignty of the Republic of Indonesia and such parts of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights as well as other rights in accordance with the 1982 United Nations Convention on the Law of the Sea.
- (b) In respect of Australia means the territory under the sovereignty of Australia and the adjacent seas over which Australia exercises its sovereignty consistent with the 1982 United Nations Convention on the Law of the Sea, and other adjacent seas and the continental shelf over which Australia exercises sovereign rights and jurisdiction in accordance with that Convention.

2. "Intellectual Property" shall have the meaning provided for in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967 and as amended on 28 September 1979.
3. "Background Intellectual Property" means Intellectual Property that has been developed independently of a Cooperative Activity and that is made available by one of the Participants for use in a Cooperative Activity.
4. "Foreground Intellectual Property" means Intellectual Property created in, or as a direct result of, a Cooperative Activity.
5. "Objects and/or materials" means biological and non-biological resources used in a Cooperative Activity.
6. "Participant" means any person, legal entity, research institute, government agency or any other body participating in a Cooperative Activity under this Agreement, including the Parties themselves.
7. "Cooperative Activity" means an activity carried on under this Agreement and undertaken jointly by Participants.
8. "Implementing Arrangements" means the arrangements referred to in Article 5, and under which Participants undertake a Cooperative Activity.
9. "Confidential Information" means all trade secrets and know-how, show-how, scientific or technical data, results or methods of research and development, commercial or financial information or other information of whatever description and in whatever form (whether written or oral, visible or invisible) that meets all of the following conditions:
 - (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - (b) has commercial value because it is secret; and
 - (c) has been a subject to responsible steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
10. "Executive Officer" means an official occupying a relevant position in the Ministry of each of the Parties which has responsibility for science and technology policy and development and is nominated by each of the Parties for this role.

Article 2

1. The Parties shall, on the principle of equality and mutual benefit, promote scientific and technological cooperation between them.
2. Scientific and technological cooperation may be undertaken in the following areas:
 - (a) human resources development;
 - (b) global weather and environment;
 - (c) environmental science and technology;

- (d) marine scientific research and technology;
 - (e) biotechnology;
 - (f) agriculture;
 - (g) forestry;
 - (h) aircraft and space;
 - (i) telecommunications and information technology;
 - (j) instrumentation, calibration, and measurement systems;
 - (k) energy;
 - (l) standardization and quality, and
 - (m) other areas of cooperation as may be mutually decided.
3. A Cooperative Activity, involving collaborative research, shall not proceed under this Agreement unless the Parties are satisfied that the Participants have agreed to an Implementing Arrangement or the Parties have decided that an Implementing Arrangement is not necessary.
4. Should the Cooperative Activities utilize biological materials, the Implementing Arrangements shall take into account the agreed Objectives and Principles under the Convention on Biological Diversity.

Article 3

Forms of the Cooperative Activities under this Agreement may include:

- (a) exchange of information;
- (b) visits and exchanges of scientists and other experts or technical personnel;
- (c) meetings of various forms, such as joint seminars, workshops and exhibits on scientific research and technological development;
- (d) execution of joint or cooperation projects and programs;
- (e) provision of necessary materials and equipment;
- (f) education, training, and participation in on going programs; and
- (g) other forms of cooperation as may be mutually decided.

Article 4

1. Each Party shall designate an Executive Officer responsible for the coordination and facilitation of Cooperative Activities under this Agreement.
2. The Executive Officers shall discuss and review, from time to time in Indonesia or Australia, the implementation of this Agreement, matters of importance in the field of

research and technology, and policy issues related to the overall research and technology relationship between the two countries. In particular, the Executive Officers shall work towards developing appropriate guidelines for Implementing Arrangements, including with respect to those matters dealt with in Article 5 and the Annex.

Article 5

1. Implementing Arrangements shall provide for the protection of Background Intellectual Property and Foreground Intellectual Property.
2. The Parties shall use their best endeavours to ensure that the ownership of any Foreground Intellectual Property is apportioned between the Participants in accordance with the provisions specified in the Implementing Arrangements which shall be developed taking into account:
 - (a) the intellectual contributions of each Participant;
 - (b) the financial contributions of each Participant;
 - (c) the contributions of Background Intellectual Property, research effort and preparatory work of each Participant;
 - (d) the value of the contribution of objects and/or materials of each Participant;
 - (e) the facilities provided by each Participant;
 - (f) legal considerations; and
 - (g) such other relevant considerations as the Participants may decide upon.
3. Implementing Arrangements shall include provision for checking for and protection against infringement of Intellectual Property rights of third parties. Unless otherwise decided by the parties to them, Implementing Arrangements shall be legally enforceable under the respective domestic laws of the Parties.
4. The Parties shall use their best endeavors to ensure that prospective Participants in a Cooperative Activity enter into a confidentiality deed with each other before they exchange information about their Intellectual Property.
5. Unless the Parties otherwise decide, Cooperative Activities shall be conducted in accordance with Implementing Arrangements, which address the matters in Article 2(4), this Article and the Annex.

Article 6

The implementation of this Agreement shall take place in accordance with the prevailing laws and regulations of the Parties and the availability of appropriated funds in each country.

Article 7

Each Party shall facilitate entry to and exit from its Territory of personnel, materials and equipment of the other Party engaged on, or for use in, Cooperative Activities under this Agreement, in accordance with its prevailing laws and regulations.

Article 8

Nothing in this Agreement shall be construed to prejudice other arrangements for cooperation between the Parties existing at the date of signature of this Agreement or concluded thereafter.

Article 9

The Parties shall endeavour to resolve any dispute between them connected with this Agreement by prompt and friendly consultations and negotiations.

Article 10

This Agreement shall apply to the Territory of Australia and the Territory of Indonesia.

Article 11

1. This Agreement shall enter into force upon an exchange of notes confirming that all constitutional and other legal requirements for entry into force have been fulfilled by each Party. This Agreement shall remain in force for a period of five (5) years, unless it is terminated by either Party giving prior written notice to the other of at least six (6) months.
2. Amendments to this Agreement may be made at any time by mutual written agreement between the Parties.
3. Any Cooperative Activity being undertaken at the time that this Agreement expires or terminates shall, unless otherwise decided by the Parties or the Participants, continue until its completion. In such a case, the terms of this Agreement and relevant Implementing Arrangements shall remain effective in relation to such Cooperative Activity until its conclusion.
4. In addition, the expiration or termination of this Agreement or an Implementing Arrangement shall not affect the rights and obligations in respect of Intellectual Property that exist at the time of such expiration or termination, unless otherwise decided by the Parties or the relevant Participants.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Jakarta on this Eleventh day of July two thousand and five, in duplicate in English, both texts being equally authentic.

FOR THE GOVERNMENT OF
AUSTRALIA

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA

Hon Dr Brendan Nelson
Minister for Education, Science
and Training

H E Dr Kusmayanto Kadiman
State Minister for Research
and Technology.

ANNEX

Protection, Ownership and Allocation of Intellectual Property Rights by Participants in Activities under this Agreement

1. This Annex provides an indication of the Intellectual Property issues that should be addressed by Participants in the Implementing Arrangement.
2. Notwithstanding anything stated or implied in this Annex, it is the sole responsibility of prospective and actual Participants to take all necessary steps, including obtaining expert professional advice, to ensure that their legal and commercial positions are adequately and effectively protected and to ensure adequate legal and physical protection for Background Intellectual Property, Foreground Intellectual Property and Confidential Information.
3. Implementing Arrangements should contain clauses that:
 - (a) specify appropriate procedures for checking –
 - (i) prior to the commencement of the Cooperative Activity; and
 - (ii) as appropriate during the Cooperative Activityfor third party Intellectual Property that might:
 - A. be infringed by the Participants while carrying out Cooperative Activities; or
 - B. infringe Intellectual Property created under the Implementing Arrangement;
 - (b) identify each Participant's Background Intellectual Property and:
 - (i) the nature of the protection that has been, or needs to be, accorded to that Background Intellectual Property; and
 - (ii) the nature of any third party rights restricting the use of Background Intellectual Property;
 - (c) specify appropriate procedures for:
 - (i) identifying;
 - (ii) determining ownership of; and
 - (iii) protecting;Foreground Intellectual Property;
 - (d) specify appropriate procedures for approving the conditions on which each Participant may be licensed to use Foreground Intellectual Property for its own non-commercial purposes (which purposes exclude sub licensing and commercial purposes such as manufacturing and having manufactured) and for commercial purposes;
 - (e) specify appropriate clauses allowing a Participant to be licensed to use another Participant's Background Intellectual Property when it is reasonably necessary for the commercial use of Foreground Intellectual Property;

- (f) specify appropriate procedures for licensing third parties to use Foreground Intellectual Property, including where such use requires access to another Participant's Background Intellectual Property and the conditions upon which a license to the Background Intellectual Property shall be granted;
- (g) specify appropriate procedures for approval by all the Participants, prior to disclosure, of the public disclosure of information through publications, seminars or any other means;
- (h) specify the rights and obligations of visiting researchers involved in the Cooperative Activity and particularly in relation to Intellectual Property created by them during their work in the Cooperative Activity;
- (i) nominate the governing law of the Implementing Arrangement; and
- (j) specify appropriate procedures for the resolution of disputes, including international commercial arbitration.

4. The value of objects and/or materials used in a Cooperative Activity will be measured by taking into account the following factors:

- (a) the specificity and/or scarcity of those objects and/or materials; and
- (b) the potential commercial value of the results of the research.

