

Multi-Institution Agreement

(ARC Linkage Project)

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|  |

Deakin University (**Deakin**)

[***name of other party*** (***short name***)]

**Office of the University Solicitor**

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Multi-Institution Agreement

**Australian Research Council**

**Linkage Grants**

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| --- | --- |
| **ARC Project ID:** |  |
| **Approved Project Title:** |  |
| **ARC Funding Commencement Date:** |  |
| **Administering Organisation and its first named Chief Investigator:** | **Deakin University (Deakin)** | **CI:** |
| **Other Eligible Organisation(s), Other Organisation(s), or Partner Organisation(s) and their first named Chief Investigator(s) or Partner Investigators:** (add rows as required) (collectively the **Collaborating Organisation(s))** | **Org:** | CI/PI name:Email address: |
| **Org:** | CI/PI name:Email address: |
| **Org:** | CI/PI name:Email address: |
| **Org:** | CI/PI name:Email address: |

**Background**

1. The Australian Research Council (**ARC**) operates the Linkage Projects Scheme, the objectives of which include encouraging collaborative research between universities and industry.
2. The ARC has awarded a Linkage grant to enable the conduct of the project and Deakin is the Administering Organisation for that grant.
3. The ARC requires that an Administering Organisation must not allow a Project to commence nor Funding to be expended, until it has entered into a written agreement in respect of the Project with each Collaborating Organisation in accordance with the Linkage Program Funding Agreement and the Funding Rules.

**Agreement**

1. Definitions and Interpretation

Definitions

* 1. In this Agreement, unless otherwise defined, terms will have the same meaning as set out in the Funding Agreement or, as relevant, the Funding Rules.
	2. In this Agreement:

**Background Intellectual Property** means pre-existing or independently developed Intellectual Property, owned or controlled by a Party which it determines, in its discretion, to make available for the carrying out of the Project.

**Cash Contribution** means the cash from a Party for the Project which is transferred to and managed by the Administering Organisation.

**Collaborating Organisation(s)** means each of the Other Eligible Organisation(s), Other Organisation(s), and Partner Organisation(s).

**Commercialisation and Commercial Use** means:

* + 1. where the Project Intellectual Property is a product, to make, hire, sell or otherwise dispose of the product; or
		2. where the Project Intellectual Property is a method or process, to use the method or process or do any act mentioned in paragraph (a) above in respect of a product resulting from such method or process; or
		3. licensing or permitting any third party to do anything set out in paragraphs (a) and (b) above.

**Completion Date** means the date set out in **Item 4** of **Schedule 1**.

**Confidential Information** means and includes any information contributed by a Party (**Disclosing Party**) to another Party (**Receiving Party**), that by its nature is confidential, is designated by a Party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

* + 1. is or becomes public knowledge other than by breach of this Agreement; or
		2. was properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party; or
		3. was properly available to the Receiving Party having received it from a third party having no obligation of confidentiality to the Disclosing Party; or
		4. is demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information which is the subject of the disclosure.

**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](http://www.arc.gov.au).

**Funding** means the cash contributions to be made by the ARC pursuant to the Linkage Programme Funding Agreement for the purposes of the Project.

**Funding Offer** means the Project Details listed online in the ARC Research Management System (RMS) under Funding Offers and attached at **Table 1** of **Schedule 2**.

**In-Kind Contribution** means a contribution of goods, services, materials or time to the Project from a Party. Values are to 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 are to be documented by the Administering Organisation. The ARC may require these calculations to be audited from time-to-time.

**Intellectual Property** means 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.

**Linkage Program Funding Agreement** or **Funding Agreement** means the funding agreement between the Commonwealth (as represented by the ARC) and the Administering Organisation for Linkage Projects funding applied for in 2018, a copy of which is attached as **Annexure A**.

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

**Party** means a party to this Agreement and Partiesmeans all the parties to this Agreement.

**Personnel** mean all employees, agents and consultants engaged on or allocated to the Project by a Party.

**PhD Stipend** means a stipend funded by the ARC and awarded to a postgraduate student involved in the Project.

**Project** means the project named in **Item 2** of **Schedule 1** and more specifically detailed in the Proposal, as otherwise varied with the approval of the Parties and, if applicable, with the prior approval of the ARC.

**Project Intellectual Property** means any Intellectual Property that has been created, developed or discovered in the conduct of the Project, excluding copyright in a Student's Thesis.

**Proposal** means the application submitted to the ARC which describes the Project and is attached in **Annexure B**.

**Research Misconduct** has the meaning set out in clause 2.3 of the ARC Research Integrity and Research Misconduct Policy, and for the purposes of this Agreement also includes a Research Integrity Breach as defined in the ARC Research Integrity and Research Misconduct Policy.

**Specified Personnel** means the Chief Investigator(s) and Partner Investigator(s) and ARC Fellows named in the Funding Offer to perform the Project or as otherwise approved by the ARC, as set out in **Item 5** of **Schedule 1**.

**Student** means a student of the Administering Organisation or an Other Eligible Organisation who is involved in the conduct of the Project, and includes a recipient of a PhD stipend.

**Thesis** means the materials created and activities undertaken by a student and submitted for assessment as part of the student’s program of postgraduate study.

Interpretation

* 1. In this Agreement, unless the context requires otherwise, a reference to:
		1. a clause or schedule is a reference to a clause of or schedule to this Agreement;
		2. this Agreement includes any schedules and attachments;
		3. a document or agreement, including this Agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
		4. unless otherwise stated ‘dollars’ or ‘$’ is a reference to Australian dollars;
		5. a business day means a day other than a Saturday or Sunday on which banks are open for business in the jurisdiction in which the recipient of a Notice or the Party required to perform an obligation or exercise a right is located and if the day on which a thing is to be done under this Agreement is not a business day, it must be done on the next business day;
		6. any law or legislation includes any statutory modification, amendment or replacement of that law or legislation and any subordinate legislation or regulations made under that law or legislation;
		7. writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form;
		8. the word ‘include’ or ‘including’ is to be interpreted without limitation;
		9. the singular includes the plural and the plural includes the singular; and
		10. a gender includes all genders.
	2. If a word or phrase is given a defined meaning, other grammatical forms of that word or phrase have a corresponding meaning.
	3. Headings are for reference only and do not affect the meaning of this Agreement.
	4. This Agreement and any clause of this Agreement may not be interpreted adversely to a Party only because that Party was responsible for preparing it.
1. Duration

This Agreement commences on the date on which it is properly executed in accordance with **clause 23.8** and, unless terminated earlier in accordance with **clause 16**, will continue until the Completion Date.

1. Conduct of The Project
	1. The Parties agree:
		1. that the conduct and management of the Project and the Funding must at all times be in accordance with the Linkage Program Funding Agreement and Funding Rules;
		2. that they have each received a copy of the Proposal and agree that the roles and contributions of each of the Parties in relation to the Project are set out accurately in the Proposal and this Agreement;
		3. that in the event of any inconsistency between the terms and conditions of this Agreement and the Linkage Program Funding Agreement, the Parties agree to amend the terms and conditions of this Agreement to the extent of such inconsistency;
		4. to each carry out their roles and provide their Cash Contributions and In-Kind Contributions as set out in the Proposal and this Agreement;
		5. that the Project must conform to the principles outlined in the following and their successor documents (where applicable):
			1. NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2007);
			2. as applicable, the NHMRC/ARC/UA National Statement on Ethical Conduct in Human Research (2007, updated 2015);
			3. as applicable, NHMRC Values and Ethics – Guidelines for Ethical conduct in Aboriginal and Torres Strait Islander Health Research (2003);
			4. as applicable, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Guidelines for Ethical Research in Australian Indigenous Studies (2012);
			5. as applicable, Australia Council for the Arts Indigenous Cultural Protocols for producing Indigenous Music; Writing; Visual Arts; Media Arts; and Performing Arts (2007);
			6. 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

provided that if there is any conflict between a successor document and its predecessor, then the successor document prevails to the extent of any inconsistency.

* 1. All Parties shall at all times comply with the requirements of all applicable laws including the *Disability Discrimination Act 1992* and the *Racial Discrimination Act 1975* and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, ethnicity, sex, age, disability, nationality, marital status or sexual orientation.
	2. The Administering Organisation and each Other Eligible Organisation acknowledge and agree that they are each responsible for notification of research integrity matters in accordance with the *ARC Research Integrity and Research Misconduct Policy,* and investigation and management of breaches of the NHMRC/ARC/UA *Australian Code for the Responsible Conduct of Research (2007)* in accordance with *the Code.* Each Party is responsible for the investigation and management of breaches of the Code in accordance with the Code.
	3. The Collaborating Organisations agree not to do or omit to do anything that may cause the Administering Organisation to be in breach of the Administering Organisations obligations under the Linkage Program Funding Agreement and Funding Rules.
	4. The Collaborating Organisations agree to abide by the terms and conditions of the Linkage Program Funding Agreement and Funding Rules and to do all things reasonably required to enable the Administering Organisation to meet its obligations under the Linkage Program Funding Agreement and the Funding Rules, including, without limitation,
		1. reporting and financial management of the Funding, Cash Contributions and In-kind Contributions;
		2. compliance with the *ARC Open Access Policy* to satisfy the requirements of clause 22.4 and clause 22.5 of the Linkage Program Funding Agreement; and
		3. compliance with the *ARC Research Integrity and Research Misconduct Policy* to satisfy the requirements of clause 34.1 and 34.2 of the Linkage Program Funding Agreement.
	5. The Parties will cooperate with each other with respect to any allegations of Research Misconduct in respect of the Project. A Collaborating Organisation must notify the Administering Organisation if findings of Research Misconduct are made against any of its personnel or Students involved in the conduct of the Project and the Administering Organisation will make all notifications required under the ARC Research Integrity and Research Misconduct Policy.
	6. The Parties acknowledge that research work is of its nature uncertain, and that particular outcomes and results from the Project cannot be guaranteed.
1. Conflict of Interest
	1. Each Party warrants that:
		1. at the date of signing this Agreement, no actual or potential Conflict of Interest exists or is likely to arise in respect of that Party, its employees, agents or students involved in the Project;
		2. it will take all reasonable steps to ensure that no such Conflict of Interest arises or is likely to arise; and
		3. if any such Conflict of Interest or risk of Conflict of Interest arises it will comply with the disclosure obligations set out in clause 20.3 of the Funding Agreement and will take all reasonable steps to avoid or minimise the Conflict of Interest or risk of Conflict of Interest including any steps advised by the Administering Organisation.
	2. Each Party will ensure that its Personnel and Students involved in the Project are aware of and abide by the obligations of disclosure under this clause.
	3. If, as a result of a Party or any of its employees, agents or Students failing to disclose a Conflict of Interest in accordance with this clause, the ARC takes action under clause 4.3 of the Funding Agreement to seek recovery of some or all of the Funding already paid, or to reduce the scope of the Funding, that Party agrees to:
		1. if the Project is able to proceed, pay to the Administering Organisation the amount by which the Funding has been reduced or the ARC has sought repayment so that the Project can be continued on the basis of its original scope; or
		2. if the Project is unable to proceed, indemnify each other Party for any costs, losses or expenses incurred by a Party as a result of or in any way connected with the discontinuance of the Project.
	4. A Party will not under any circumstances be liable under **clause 4.3** for any indirect or consequential loss including but not limited to loss of profit, loss of revenue, loss of goodwill, or loss of opportunity.
2. Contributions of the Parties and Distribution of Funding

In-kind Contributions

* 1. Each Party must make its In-Kind Contribution available to the Project at the time, location and in the manner set out in **Schedule 2**.

Specified Personnel

* 1. Each Party must make its Specified Personnel available for the Project.
	2. Each Collaborating Organisation confirms that they have consented to the participation of their Specified Personnel in the Project and will notify the Administering Organisation immediately if such consent is withdrawn in relation to any person and will comply with any direction from the ARC with respect to the involvement of that person in the Project.
	3. The Parties must ensure that each of their Specified Personnel meet the criteria for their respective roles in the Project as specified in the Funding Rules for the full term of their participation in the Project. Each Collaborating Organisation must immediately notify the Administering Organisation if a member of their Specified Personnel ceases to meet the specified criteria and must comply with any direction from the ARC with respect to the involvement of that person in the Project.
	4. If any Specified Personnel of a Party become unavailable to participate in the Project, that Party must use all reasonable endeavours to provide comparably qualified replacement personnel to the Project in accordance with the terms of the Funding Agreement and the Funding Rules and must ensure that such replacement personnel comply with all relevant obligations set out in the Funding Agreement. Each Collaborating Organisation must immediately notify the Administering Organisation of any proposed change in Specified Personnel. In accordance with the Funding Agreement the Administering Organisation will seek the approval of the ARC to any proposed change in Specified Personnel notified to it under this clause and to any proposed change of its own Specified Personnel. The Administering Organisation will advise each Party in writing of the ARC’s response to any request for approval of a change to Specified Personnel.
	5. If a Party is unable to provide suitably qualified replacement personnel as contemplated by **clause 5.5** then the Parties must meet to discuss whether continuation of the Project is viable or whether the Project and this Agreement should be terminated.

Cash Contributions

* 1. Each Party must make its cash Contributions available to the Project as set out in **Schedule 2**. The Administering Organisation must promptly deposit all cash Contributions into a separate and identifiable project sub-account (**Project Sub-Account**).
	2. The Administering Organisation will apply monies held in the Project Sub-Account only for payment of expenses incurred and for work undertaken in respect of the Project.

Distribution of Funding

* 1. The Administering Organisation will transfer portions of the Funding to the Collaborating Organisations as set out in **Table 2** of **Schedule 2** subject always to receipt of corresponding Funding from the ARC and Cash Contributions from each Collaborating Organisation.
	2. An Other Eligible Organisation must apply the Funding paid pursuant to **clause 5.9** only for payment of expenses incurred and work undertaken in the conduct of the Project and must provide an annual financial acquittal to the Administering Organisation by 31 January of each year, for the Funding transferred to it in the previous calendar year. An Other Eligible Organisation must also provide to the Administering Organisation any other assistance it may reasonably require to satisfy the Partner Organisations and the ARC that funds were expended by the Other Eligible Organisation in accordance with the terms and conditions of this Agreement and the Funding Agreement.
	3. If the Administering Organisation incurs an obligation to a Collaborating Organisation or to the ARC with respect to an expenditure by an Other Eligible Organisation which is not authorised by this Agreement or the Funding Agreement, the relevant Other Eligible Organisation will return to the Administering Organisation, within 30 days of being requested to do so, the amount of funding that the Administering Organisation owes to the Partner Organisation or to the ARC on account of the relevant Other Eligible Organisation's unauthorised expenditure.
	4. Each Party must keep clear records of and account for all cash and in-kind Contributions made to the Project and for any Funding it receives pursuant to this **clause 5**.

PhD Stipend Recipients

* 1. It is the responsibility of the Administering Organisation and/or Other Eligible Organisation at which a PhD Stipend recipient is enrolled to:
		1. manage the candidature of its PhD Stipend recipients in accordance with its legislation, policies and procedures; and
		2. assume responsibility for all costs of its PhD stipend recipient's candidature including, but not limited to, costs of relocation, periods of leave and thesis production.
1. Goods and Services Tax and other Value-added Taxes
	1. Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of any form of GST or other value-added taxes.

Parties registered for GST in Australia

* 1. **Clauses 6.3** to **6.7** apply to recipients of goods or services who are registered for GST in Australia.
	2. If GST is imposed on any supply made under this Agreement, unless the consideration for that supply is specifically described in this Agreement as 'GST inclusive', the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on the taxable supply. Subject to the recipient receiving a tax invoice in respect of the supply, payment of the GST must be made at the same time as payment for the taxable supply.
	3. If this Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing of another Party, and that other Party can obtain an input tax credit on an acquisition associated with the expense, loss or outgoing, the amount required to be paid, reimbursed or contributed by the first Party will be the amount of the expense, loss or outgoing reduced by the amount of that input tax credit. The reduction is to be made before any increase for GST under **clause 6.3**.
	4. If GST is payable on an in-kind contribution made by a Party:
		1. the recipient will issue a recipient created tax invoice to the supplier for the GST inclusive value of the in-kind contribution within 28 days of the supply being made;
		2. the supplier will not issue a tax invoice for its in-kind contribution.
	5. Each Party warrants that its ABN provided for the purpose of this Agreement is current and will remain so for the duration of this Agreement.
	6. Terms used in **clauses 6.2** to **6.6** have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Parties not registered for GST in Australia

* 1. If a Party is not registered for GST in Australia (**International Party**) and is required under its domestic legislation to collect goods and services or other form of value-added tax (**Tax**) as a consequence of this Agreement, the International Party will be responsible for remittance of such domestic Tax and will not deduct from any cash contribution payable to Deakin an amount to satisfy such Tax.
	2. An International Party must make all required remittances and will indemnify Deakin against any liability, cost and expense of any nature that Deakin may incur arising from its failure to make such remittances when due.
1. Project Management
	1. The Chief Investigator first named in the Proposal is the principal academic contact for the purposes of this Agreement and is responsible for the day to day management of the Project.
	2. The Parties may agree to convene a management committee, made up of at least one representative of each Party, to oversee the conduct of the Project (**Management Committee**). The Management Committee will regulate its own procedures, including:
		1. the frequency and format of meetings;
		2. the keeping of minutes of meetings; and
		3. the decision making process.
	3. Each Collaborating Organisation must give all reasonable assistance to the Administering Organisation and, where relevant, to the Management Committee in monitoring the performance and progress of the Project, including providing access to their respective premises and personnel and copies of Materials relevant to the Project.
2. Venue
	1. The Project will be conducted at those locations specified in the Proposal or where the Proposal is silent as to venue, at those locations specified in **Item 6** of **Schedule 1**.
	2. Where personnel or Students of a Party are required to attend at premises owned or controlled by another Party (**Occupier**), the Occupier must have in place a policy and/or procedure on safety, covering at least building and office security and emergency procedures, and must ensure that the Party employing such personnel or Students is given a copy of, or access to, such policies and/or procedures prior to their personnel or Students attending the premises.
	3. The Parties must ensure that their personnel and Students comply with the policies and procedures referred to in **clause 8.2** and with all reasonable directions with respect to occupational health and safety while on the Occupier's premises.
3. Confidential Information
	1. The Parties agree to keep confidential all Confidential Information of another Party. The Parties will not, without the written consent of a Party to whom Confidential Information belongs:
		1. use the Confidential Information other than for the purposes of the Project; or
		2. directly or indirectly disclose the information to any third party, beyond those reasonably involved in the Project.
	2. A Party will not be in breach of **clause 9.1** where Confidential Information is required by law or regulation to be disclosed, provided that the Party required to make disclosure promptly notifies the Party who has made the Confidential Information available, to allow the latter Party to assert whatever exclusions or exemptions may be available to it under such law or regulation.
	3. Subject to **clause 9.4**, on termination or expiry of this Agreement each Party must:
		1. at the option of the owner of any Confidential Information in a Party’s possession or control, return all copies of that Confidential Information to the owner or securely and permanently destroy all such copies; and
		2. permanently delete all such Confidential Information stored electronically.
	4. A Party may retain one copy of any Confidential Information where that Party is required to do so in order to meet its professional or legal obligations or the Party’s obligations under this Agreement. Any Confidential Information retained under this clause remains subject to a Party’s obligations of confidentiality under this Agreement.
	5. Each Party will assume responsibility for the actions of its employees, Students and agents who have access to the Confidential Information from time to time and must ensure that its employees, Students and agents are aware of and strictly bound by the confidentiality obligations created under this Agreement.
4. Publication
	1. The Parties acknowledge and agree that a Party is entitled to publish material arising from the conduct of the Project (**Publication**), subject to the procedures set out in this **clause 10**. Publications include speeches, seminars, articles and other written presentations.
	2. A Party wishing to publish any part of the Project Intellectual Property (**Publisher**) must obtain the consent of each other Party prior to submission for publication, which consent cannot be unreasonably withheld.
	3. The Publisher must submit for review by each other Party (**Reviewers**) a copy of the proposed Publication at least thirty days prior to the proposed submission date.
	4. A Reviewer may object to publication only if the proposed Publication discloses its Confidential Information or prejudices the Reviewer’s ability to obtain registered Intellectual Property protection for, or to pursue Commercialisation of, the Project Intellectual Property.
	5. If no Reviewer objects to the Publication in writing within twenty days of receipt of a request for consent, consent to the Publication will be deemed to have been given.
	6. If a Reviewer objects to publication in writing within twenty days of receipt of a request for consent, the Reviewer and the Publisher must negotiate with a view to preparing an acceptable version of the proposed Publication for submission within the original thirty day period referred to in **clause 10.3**.
	7. All Publications arising from the Project must acknowledge the support of the ARC and must refer to the relevant Linkage Grant Number as required by the Linkage Program Funding Agreement.
	8. Each Collaborating Organisation agrees to provide the Administering Organisation with any publications resulting from the Project in order for the Administering Organisation to comply with the obligations under clauses 29.1 to 29.3 of the Linkage Program Funding Agreement.
	9. The candidature of a higher degree by research Student must be administered and examined in accordance with the normal procedures of the organisation at which the Student is enrolled. If a thesis contains Confidential Information, the contributor of that Confidential Information may request that thesis examiners sign a non-disclosure agreement and that the thesis be kept confidential to the examiners, supervisors, head of department and staff of the relevant Party for up to one year after submission of the thesis.
5. Intellectual Property

Background Intellectual Property

* 1. Each Party retains ownership of its Background Intellectual Property and grants to each other Party a non-exclusive, non-transferable, royalty-free licence to use its Background Intellectual Property to the extent necessary to carry out the Project in accordance with this Agreement.
	2. No representations or warranties are made or given in relation to Background Intellectual Property, however, each Party making available Background Intellectual Property acknowledges that to the best of its knowledge, such Background Intellectual Property when used in accordance with this Agreement will not infringe any third party Intellectual Property rights.

Project Intellectual Property

* 1. Unless otherwise specified in **Schedule 3**:
		1. the Parties agree that the Administering Organisation will own the Project Intellectual Property.
		2. Subject to any decision to obtain registered Intellectual Property protection for the Project Intellectual Property in accordance with **clauses 12.1** to **12.3**, the Administering Organisation grants:
			1. to each Other Eligible Organisation a non-exclusive, non-transferable, royalty-free licence to use the Project Intellectual Property for non-commercial research, education and training and publication purposes; and
			2. to each Partner Organisation and Other Organisation a non-exclusive, non-transferable, royalty-free licence to use the Project Intellectual Property for internal research and development but not for Commercial Use.
		3. for the purposes of **this clause** where the Project Intellectual Property comprises work in which copyright subsists, the term “use” means the right to reproduce, publish and communicate the original work together with a notification of copyright ownership and adherence to the moral rights of individuals, but not the right to adapt or modify the work.

Licence to Commonwealth

* 1. Each owner of Project Intellectual Property grants in favour of the Commonwealth of Australia a permanent, non-exclusive, irrevocable, royalty-free licence (including a right to sub license) to use, modify, communicate, reproduce, publish, and adapt the Material produced under this Agreement.

General

* 1. Prior to any Student commencing work on the Project, the Party at which the Student is enrolled must procure from that Student a fully executed deed of assignment of Project Intellectual Property to give effect to the provisions for ownership of Project Intellectual Property set out in this Agreement.
	2. Ownership of Project Intellectual Property does not affect a Student’s ownership of copyright in their Thesis.
1. Protection and Commercialisation of Project Intellectual Property

Protection

* 1. Each Party will promptly disclose to the other Parties, in writing, any Project Intellectual Property in sufficient detail to allow the Parties to assess whether and on what terms Intellectual Property protection should be sought for the Project Intellectual Property. Such disclosure will be maintained by the Parties in confidence as set out in **clause 9**.
	2. If the Parties determine that Intellectual Property protection should be sought for the Project Intellectual Property, they will enter into good faith negotiations to determine a strategy for the timely prosecution and maintenance of all Project Intellectual Property protection, which will address the allocation of costs relating to the maintenance and protection of the Project Intellectual Property among the Parties.
	3. All Parties will cooperate, where required, in relation to the preparation and prosecution of applications for protection of Project Intellectual Property and in relation to any legal proceedings concerning such Intellectual Property protection and applications for Intellectual Property protection.

Commercialisation

* 1. If the Parties decide to develop the Project Intellectual Property they will enter into good faith negotiations to determine a commercialisation strategy for the Project Intellectual Property (**Commercialisation Strategy**). The Commercialisation Strategy must include recognition of the contribution of each Party by way of a royalty or other appropriate form of remuneration which is fair and reasonable taking into consideration:
		1. each Party’s Contributions under this Agreement;
		2. in the case of the Administering Organisation, the Funding paid to it by the ARC under the Funding Agreement;
		3. other financial and technical contributions made by each Party to the development of the Project Intellectual Property;
		4. the expenses incurred by each Party in securing Intellectual Property protection of the Project Intellectual Property; and
		5. the costs incurred by each Party in relation to the commercial exploitation of the Project Intellectual Property.
	2. Where a Party's Background Intellectual Property is incorporated into or reasonably necessary for the use of the Project Intellectual Property, the owner of such Background Intellectual Property agrees to licence or procure a licence of that Background Intellectual Property on fair and reasonable terms, for the purpose of the Commercialisation Strategy.
1. Research Data and Materials

The Parties must, prior to the termination or expiration of this Agreement, reach agreement on the ownership, storage, management, access to and disposal of research data and Materials related to the Project. If the Parties fail to agree, the Administering Organisation will be responsible for determining such processes in accordance with the Code and its own policies and procedures.

1. Privacy
	1. The Parties will comply with the requirements of the Privacy Act 1988 (Cth) and all applicable privacy legislation, in the performance of this Agreement.
	2. Without limiting the scope of **clause 14.1**, if a Party is required to collect or create Personal Information in the performance of this Agreement it will
		1. only use that Personal Information for purposes directly related to the performance of this Agreement or with the consent of the individual who is the subject of the Personal Information;
		2. protect that Personal Information from misuse, loss, and unauthorised access, modification and disclosure;
		3. not disclose that Personal Information to any other person except to the extent required to enable performance of this Agreement, where the individual has given express consent, or where required by law;
		4. keep Personal Information it holds secure and immediately notify the Administering Organisation if it becomes aware of an actual, threatened or alleged breach of any obligation concerning security, use and disclosure of Personal Information (**Breach**);
		5. take such action and cooperate fully with the other Parties
			1. to mitigate the consequences of a Breach,
			2. to investigate the Breach, and
			3. to enable compliance by each Party with applicable mandatory data breach notification requirements.
	3. In this **clause 14**, **Personal Information** means information or an opinion (including information or an opinion forming part of a database), in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
2. Insurance
	1. Each Party will effect and maintain the following insurances for the duration of this Agreement:
		1. public liability insurance cover of not less than $20 million for any one event;
		2. professional indemnity insurance cover of not less than $10 million for any one event;
		3. workers' compensation insurance as required under applicable workers' compensation legislation for its employees; and
		4. any other appropriate and sufficient insurance to cover the activities of the Party in connection with the Project.
	2. Each Party will provide, when requested by another Party, evidence of the insurances effected under **clause 15.1**.
	3. The effecting of insurance as required under this clause will not in any way limit the obligations or responsibilities of the Parties under this Agreement.
	4. The Parties agree to accept alternative forms of insurance from those specified in **clause 15.1** which, while not precisely making reference to the categories described in that clause, offer equivalent protection.
3. Termination
	1. The Administering Organisation may terminate this Agreement immediately if the Commonwealth terminates the Funding Agreement or terminates the Funding provided under the Funding Agreement.
	2. The Administering Organisation may terminate the involvement of a Party under this Agreement at any time on written notice to that Party if that Party:
		1. defaults by failing to perform any substantial obligation on its part and fails to remedy that default within 14 days of being notified by the Administering Organisation;
		2. is subject to any form of insolvency, external administration or winding up; or
		3. is affected by a Force Majeure Event which has continued for more than three months.
	3. Where a Party is unable to perform its obligations under this Agreement for reasons beyond its control that Party may withdraw from the Project on giving three months’ notice in writing to the Administering Organisation. That Party must perform all obligations under this Agreement up to the effective date of withdrawal and its involvement under this Agreement will be terminated as at the effective date of withdrawal.
	4. If this Agreement is terminated with respect to a Party under **clause** **16.2** or **16.3** the remaining Parties must discuss whether continuation of the Project is viable or whether the Project and this Agreement should be terminated. Where it is agreed that the Project is to proceed, the Parties must, subject to ARC approval of the new arrangements, do all things necessary to amend the Agreement to reflect the new arrangements. Where Deakin determines that the Project cannot proceed, the Administering Organisation may terminate this Agreement by notice in writing to the other Parties.
	5. Notwithstanding the provisions of **clause 16.4**, the Parties agree that if this Agreement is terminated with respect to a Collaborating Organisation under **clause** **16.2** or **16.3**, the Administering Organisation may find a replacement Collaborating Organisation as permitted by the Funding Agreement and approved by the ARC.
	6. If this Agreement is terminated with respect to a Party under **clause 16.2(a)** or **clause 16.2(b)**, that Party’s licence to Project Intellectual Property will terminate with immediate effect.
	7. If this Agreement is terminated with respect to a Party under **clause** **16.2(c)** or **clause** **16.3**:
		1. that Party will not acquire any rights to Project Intellectual Property developed after the effective date of termination or withdrawal;
		2. where the Party has made cash Contributions in advance, the Administering Organisation will refund within 90 days of the effective date of termination or withdrawal, any portion of those Contributions which are unexpended or uncommitted; and
		3. where the Party’s cash Contributions have not been paid in advance the Party must pay to the Administering Organisation within 90 days of the effective date of termination or withdrawal such expenses of the Project as have been incurred or committed before the effective date of termination or withdrawal including such reasonable costs incurred by the Administering Organisation which are directly attributable to the termination or withdrawal.
	8. If this Agreement is terminated, the Administering Organisation or Other Eligible Organisation at which a Student is enrolled may continue the Project or any part of it and have access to each other Party’s Background Intellectual Property and Confidential Information to the extent necessary to enable any Student to complete their thesis.
	9. Termination of this Agreement for any reason will not affect a Party's accrued rights or remedies.
	10. Termination of this Agreement will not affect the rights and obligations of the Parties accrued prior to the effective date of termination of this Agreement.
	11. The operation of **clauses 9** to **14**, **16.6** to **16.10** and **18** and any other clauses which by their nature survive, will survive the termination or expiry of this Agreement.
4. Dispute Resolution
	1. In the event that there is a dispute between the Parties concerning this Agreement or the conduct of the Project, the Parties must undertake the procedure in this **clause 17** before commencing any legal proceedings.
	2. A Party alleging a dispute must give the other Parties notice in writing setting out all details of the dispute.
	3. The Parties must appoint senior officers to meet in good faith to attempt to resolve the dispute by negotiation within ten days after the date on which the notice is received.
	4. In the case of a dispute arising other than with respect to valuation of contributions under **clause 12.4**, where a dispute is not resolved under **clause 17.3**, the dispute must be referred to the Australian Dispute Centre (**ADC**) for mediation in accordance with its rules. If the dispute is not resolved within 60 days after referral to the ADC, then a Party may commence legal proceedings.
	5. If the Parties are unable to agree upon the valuation of contributions contemplated by **clause 12.4**, and the dispute is not resolved under **clause 17.3**, the issue will be finally determined by an expert determination undertaken at the shared expense of the Parties by:
		1. a suitable and neutral expert, experienced in the relevant field, agreed on by the Parties; or
		2. if the Parties are unable to agree, a suitable and neutral expert, experienced in the relevant field, appointed by the President for the time being of the Licensing Executives Society (Australia and New Zealand).
	6. A determination made by an expert appointed under **clause 17.5** will be binding on all Parties.
	7. Nothing in this **clause 17** restricts or limits the right of a Party to obtain interlocutory relief or to immediately terminate this Agreement, where this Agreement provides such a right.
	8. Despite the existence of a dispute the Parties must continue to perform their obligations under this Agreement.
5. Use of Name and Logo

Deakin and each Other Eligible Organisation may publish the name of each of the Parties, the title and duration of the Project and the value of this Agreement on their websites and in their reports of research activity. In all other respects, a Party may not use the name or logo or any variation of the name or logo of any other Party in any publicity, advertising or news release without the prior written approval of that Party.

1. Contact Personnel

All communication in connection with the administration of the Project shall be directed to the Parties using the contact details set out in **Item 7** of **Schedule 1**.

1. Notices
	1. A notice, demand or consent (**Notice**) given to a Party under this Agreement is only effective if it is in writing and sent in one of the following ways:
		1. delivered or sent by prepaid post to that Party at its address and marked to the attention of the officer set out in **Item 7** of **Schedule 1** (if any);
		2. faxed to that Party at its fax number and marked to the attention of the officer set out in **Item 7** of **Schedule 1** (if any); or
		3. except for Notices sent under **clause 16**, by electronic message to the email address set out in **Item 7** of **Schedule 1**.
	2. Subject to **clause 20.3** a Notice given for any purpose under this Agreement is taken to be received:
		1. if hand delivered, on delivery;
		2. if sent by prepaid post, seven (or in the case of a Notice sent to another country, ten) business days after the date of posting;
		3. if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the Notice; or
		4. if sent by electronic message, when the sender receives an automated message confirming delivery, or eight hours after the message has been sent, unless the sender has received an automated message that the electronic message was not delivered or the sender knows or should reasonably know that there is a network failure which may have resulted in non-delivery.
	3. If any Notice is given on a day that is not a business day or after 5.00 pm on a business day, in the place of business of the receiving Party, it is to be treated as having been given at the beginning of the next business day.
	4. If a Party gives the other Parties three business days’ notice of a change of its address or fax number or email address, a Notice is only effective if it is given to that Party at the latest address, fax number or email address.
2. Relationship of Parties
	1. This Agreement does not create any relationship between the Parties in the nature of a partnership, principal and agent, joint venture or fiduciary.
	2. Each Party agrees that its employees, students, officers, volunteers and agents will not by virtue of this Agreement be deemed to be those of any other Party and must not represent themselves as such.
	3. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or joint and several.
3. Force Majeure
	1. In this clause **Force Majeure Event** means any cause beyond the reasonable control of a Party that prevents that Party from carrying out its obligations under this Agreement, including events arising from an act of God, act of war, act of terrorism, act of civil war or riot, fire, flood, natural disaster, industrial action, or epidemic.
	2. Except for payment of money due, a Party is not liable for any failure to perform an obligation under this Agreement to the extent that the failure is due to a Force Majeure Event provided that a Party relying on this clause takes prompt and reasonable steps to overcome those causes.
4. Miscellaneous

Entire Agreement

* 1. This Agreement constitutes the entire agreement between the Parties as to its subject matter. It supersedes all prior understandings or agreements between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party in connection with that subject matter.

Variation

* 1. This Agreement may only be altered or varied in writing signed by each of the Parties.

Waiver

* 1. A waiver of any right under this Agreement must be in writing signed by the Party granting it. A waiver is only effective in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach or an implied waiver of that obligation on any other occasion.
	2. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement does not amount to a waiver.

Assignments and Transfers

* 1. A Party must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Parties.

Severability

* 1. Part or all of any clause of this Agreement that is illegal or unenforceable in any jurisdiction will be severed in the relevant jurisdiction and the remaining provisions of this Agreement will continue in force. The legality or enforceability of the provision in any other jurisdiction will not be affected.

Costs

* 1. Except as otherwise set out in this Agreement, the Parties must pay their own costs and expenses in relation to preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

Execution of Separate Documents

* 1. This Agreement is properly executed when:
		1. each Party executes and dates this document; or
		2. if the Parties execute separate but identical documents, when those separately executed documents are exchanged between the Parties, including by mail, facsimile transmission or electronically.
	2. If this Agreement is executed in counterparts, the date of this Agreement is the date on which it is signed by the last Party.

Governing Law and Jurisdiction

* 1. This Agreement is governed by the laws of the State of Victoria. The Parties submit to the exclusive jurisdiction of the courts of Victoria and any courts that may hear appeals from those courts about any proceedings in connection with this Agreement.

**Execution and Date**

Executed as an agreement.

Date:

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of **Deakin University** by its duly authorised officer in the presence of: Signature of witness Name of witness (please print) |  |  Signature of authorised officer Name of authorised officer (please print) Office heldDate:  |

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of [***insert name of Partner Organisation***] by its duly authorised officer in the presence of: Signature of witness Name of witness (please print) |  |  Signature of authorised officer Name of authorised officer (please print) Office heldDate:  |

|  |  |  |
| --- | --- | --- |
| **Signed** for and on behalf of [***insert name of Collaborating Organisation***] by its duly authorised officer in the presence of: Signature of witness Name of witness (please print) |  |  Signature of authorised officer Name of authorised officer (please print) Office heldDate:  |

1.

|  |
| --- |
| **Item 1 – Collaborating Organisations** |
| Partner Organisations | Name: [\*]ABN: [\*]Address: [\*] |
| Name: [\*]ABN: [\*]Address: [\*] |
| Name: [\*]ABN: [\*]Address: [\*] |
| Other Eligible Organisations | Name: [\*]ABN: [\*]Address: [\*] |
| Name: [\*]ABN: [\*]Address: [\*] |
| Name: [\*]ABN: [\*]Address: [\*] |
| Other Organisations | Name: [\*]ABN: [\*]Address: [\*] |

|  |
| --- |
| **Item 2 – Project Title**  |
|  | [***insert title***] |

|  |
| --- |
| **Item 3 – Linkage Grant Number** |
|  | [***insert LP number***] |

|  |
| --- |
| **Item 4 – Completion Date** |
|  | [\*] years from the Commencement Date or the date on which the final Report is due, whichever is the later. |

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| --- |
| **Item 5 – Specified Personnel**  |
|  | [***name***]Project Leader |
|  | [***name***] |
|  | [***name***] |

|  |
| --- |
| **Item 6 – Venue** |
|  | [***Insert as in application or specify venue***] |

|  |
| --- |
| **Item 7 – Contract Details** |
| Deakin | Dr Tracey McInerneySenior Grants OfficerDeakin ResearchDeakin UniversityLocked Bag 20001Geelong VIC 3220 AUSTRALIATel: +61 3 522 71320 Email: research-contracts@deakin.edu.au |
| [***name***] | [***details***] |

|  |
| --- |
| **Item 8 –Special Conditions**  |
|  | [***insert***] |

**Schedule 2**

**Contributions and Payment Provisions**

All amounts in this Schedule are shown exclusive of GST.

**Table 1: ARC Funding Awarded**

*[Tracey to insert screenshot from RMS]*

**Table 2: Administrating Organisation Contributions to the Project**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
| Cash Contributions |  |  |  |  |  |  |
| In-Kind Contributions |  |  |  |  |  |  |

**Table 3: Collaborating Organisation Contributions to the Project**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Collaborating Organisation | Contribution Type | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
|  | Cash |  |  |  |  |  |  |
|  | In-Kind |  |  |  |  |  |  |
|  |
|  | Cash |  |  |  |  |  |  |
|  | In-Kind |  |  |  |  |  |  |
|  |
|  | Cash |  |  |  |  |  |  |
|  | In-Kind |  |  |  |  |  |  |
|  |

A Collaborating Organisation must pay its cash Contribution set out in Table 3 annually in advance for each year during the Term. The Administering Organisation will issue a tax invoice and the Collaborating Organisation will make payment within 30 days of the date of the tax invoice.

A Collaborating Organisation’s first cash Contribution is payable on the Commencement Date and subsequent payments are payable on each anniversary of the Commencement Date.

A Collaborating Organisation requiring payment pursuant to a Purchase Order must provide its form of Purchase Order to the Administering Organisation on Execution of this Agreement.

**Table 4: Distribution of ARC Funding and Collaborating Organisation (CO) Cash Contributions**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Recipient |  | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|  |  | ARC | CO | ARC | CO | ARC | CO | ARC | CO | ARC | CO |
| Deakin |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |  |  |  |  |  |

The Administering Organisation will pay the Recipient the annual amount set out in Table 4 within 30 days of receipt of a tax invoice issued by the Recipient; subject always to receipt by the Administering Organisation of ARC Funding and Collaborating Organisation Cash Contributions. The Recipient will invoice the Administering Organisation for the first annual amount payable to it on execution of this Agreement and for the second and subsequent annual amounts payable to it on the anniversary of execution.

**Table 5: Contacts for Invoicing**

|  |  |
| --- | --- |
| Administering Organisation | Finance ManagerResearch Grants and ContractsResearch Services DivisionGeelong Waurn Ponds Campus Locked Bag 20000Geelong, Victoria 3220Ph: +61 3 5227 2673 Email: dr-finance@deakin.edu.au |
|  |
| Collaborating Organisations | [***insert details***] |
|  |  |
|  |  |
|  |  |

**Schedule 3**

**Intellectual Property Provisions**

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| --- |
| **Ownership of Project Intellectual Property**  |
|  |  |

|  |
| --- |
| **Licensing of Project Intellectual Property**  |
|  |  |

**Schedule 4**

**Register of Background Intellectual Property Provided to the Project**

|  |  |
| --- | --- |
| **Organisation** | **Description of Background IP** |
| Deakin |  |
| [\*] |  |
| [\*] |  |

**Annexures**

**Annexure A - Funding Agreement** and **Annexure B – Proposal** follow.