

THIS AGREEMENT is made between **MACQUARIE UNIVERSITY**, a statutory corporation established pursuant to the *Macquarie University Act 1989*, of Talavera Road, North Ryde, NSW 2109, ABN 90 952 801 237 (the **University**) of the one part, and [] of [], ABN [] (the **Partner Organisation**) of the other part. The University and the Partner Organisation are collectively known as the "Parties" for the purpose of this Agreement.

Recitals

- A The University and the Partner Organisation applied for and were granted by the Australia Research Council (the **ARC**), a linkage-project grant for 2007–2009 (the **Grant**) in respect of the project: "[Title of Project]" and more particularly described in the Proposal (as defined hereinafter) (the **Project**).
- B It is a condition of the Grant that the University and the Partner Organisation enter into a written agreement providing for specified matters including the role and contribution of the Partner Organisation in the Project, arrangements for any postgraduate research student engaged upon the Project and Intellectual Property (as defined hereinafter).

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

Definitions and Interpretation

- 1.1 Throughout this Agreement, unless the context requires otherwise:

"Agreement" means this agreement or any amendment thereof agreed to in writing by the Parties;

"Background Intellectual Property" means Intellectual Property in existence at the date of this Agreement which a Party owns or is licensed to use;

"Conditions" means the terms and conditions of the Funding Agreement;

"Confidential Information" means any and all information belonging to a Party, whether existing prior to the commencement of the Project, or created in the course of the Project, which is disclosed by one Party to the other and includes all technical, proprietary and operational information, drawings, techniques, processes, know-how and other commercially valuable information of any kind. Confidential Information shall be indicated as such at the time of disclosure;

"Funding Agreement" means the agreement between the University and the Commonwealth of Australia awarding the Grant in respect of the Project;

"Funding Rules" means the Linkage Projects Funding Rules for funding commencing in 2007 and includes the Instructions to Applicants that form part of the Funding Rules;

"Intellectual Property" includes all copyright, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, Confidential Information and circuit layouts and all other rights of intellectual property resulting from intellectual activity in the industrial, scientific, literary or artistic fields recognised in domestic law anywhere in the world;

"Partner Organisation Contribution" means the financial and technical assistance described in Clause 4 of this Agreement and also includes any additional support provided by the Partner Organisation in the course of the Project;

"Proposal" means the proposal for the Grant submitted to the ARC in 2006, a copy of which is attached at Schedule 1 to this Agreement;

"Project Intellectual Property" means Intellectual Property arising from or developed in the course of the Project by the employees or, in the case of the University, enrolled students, of either Party.

"Student" means (if applicable) an individual enrolled as a candidate for a postgraduate research degree at the University who is supported under the Grant.

- 1.2 (a) words denoting the singular include the plural and vice versa;

(b) words denoting natural persons include corporations and vice versa;

- (c) words denoting any gender include all genders;
- (d) headings are for convenience only and do not affect interpretation;
- (e) reference to any Party to this Agreement or any other relevant agreement or document includes that Party's successors and permitted assigns;
- (f) reference to any document or agreement is deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any legislation or to any provision of any legislation include any modification or re-enactment of such legislation or any legislative provisions substituted for, and all legislation and statutory instruments issued under, such legislation;
- (h) all schedules to this Agreement form part of this Agreement; and
- (i) all monetary amounts referred to in this Agreement shall be deemed to be in Australian currency, unless otherwise specified.

Term of the Project

- 2. This Agreement shall commence on **[1 January 2007]** (the **Commencement Date**) and shall continue for three years, subject only to the termination clauses of this Agreement.

Conduct of the Project

- 3. Both Parties shall carry out the Project diligently and competently in accordance with the Proposal, the Funding Agreement and generally accepted professional scientific and ethical principles. Both Parties agree to use their best endeavours to collaborate and work together to further develop and, where appropriate commercially exploit the Project.

Role of the Partner Organisation in the Project, Conditions of Grant

- 4.1 The Partner Organisation agrees to support the Project as follows:
 - a) Project design and planning;
 - b) financial contributions (as specified in the Proposal) to the Project, as follows;

<u>Calendar Year</u>	<u>Cash</u>	<u>In-kind</u>	<u>Total</u>
2007			
2008			
2009			
Total 3yr Contribution			

Each annual cash contribution to be paid to the University as specified but in any case no later than 30 June each year.

- 4.2 The Partner Organisation agrees to comply with the Conditions, where applicable, as if references to the "Administering Organisation" in the Conditions were references to the Partner Organisation, and to use its best endeavours to assist the University in complying with the Conditions.
- 4.3 The Partner Organisation will comply with any reasonable request by the Administering Organisation to provide information necessary to allow the Administering Organisation to comply with reporting and financial management requirements under the Funding Agreement.

Publication

- 5.1 Publication by the University of any of the results of research undertaken in the course of the Project shall occur only if a copy of the proposed publication is first provided to the Partner Organisation with a request to publish and the prior written consent of the Partner Organisation is obtained, which consent shall not be unreasonably withheld or delayed. Any publication shall make due acknowledgment of the role of the ARC, the Partner Organisation and the University in the Project.
- 5.2 Reasonable steps will be taken to protect Project Intellectual Property, including without limitation, steps to ensure that patent or other protection may be obtained while any associated thesis is in preparation and before any disclosure. Such steps shall not, however, involve delay in the submission of the thesis nor the excision of material from the thesis that represents an essential or significant part of the Student's work, nor the prevention of the assessment of the thesis under the University's usual procedures.
- 5.3 If applicable, public access to the thesis may be restricted for a limited period (not exceeding 12 months) to enable the Parties to arrange for protection of any commercial Intellectual Property arising from the results of the Project.
- 5.4 Notwithstanding clause 5.1 and 5.2, where a provisional patent application has been filed in connection with any Project Intellectual Property, no relevant Project Intellectual Property may be published without the Partner Organisation's consent until after the PCT publication date of such provisional patent application.

Confidentiality

- 6.1 The Parties undertake:
 - a) to treat as confidential and keep secret all Confidential Information which has been or may be disclosed or which is created or discovered in the course of the Project and to use the Confidential Information only for the purposes of the Project;
 - b) not to copy or reduce to writing any part of the Confidential Information except as may be reasonably necessary for the purposes of the Project and that any such copies or reduction are the property of the Party which made available that part of the Confidential Information;
 - c) where a there is involvement in the Project by a Student, the University shall ensure that this Participating Student is, where necessary, aware of and subject to a separate Confidentiality agreement with regards to the Project.
- 6.2 The obligation of Confidentiality does not extend to information which:
 - a) was already well known in the public domain or becomes so at a future date without the fault of the recipient or parties to whom the information was disclosed, directly or indirectly, by the recipient,
 - b) was a matter of written record in the files of the recipient prior to disclosure to the recipient,
 - c) was received by the recipient from a third person under circumstances permitting its disclosure by the recipient,
 - d) was independently developed by the recipient, or
 - e) becomes known to the recipient from a source other than the disclosing party without breach of a similar agreement by the outside source.
- 6.3 Upon termination or expiry of this Agreement a Party, its employees or agents, in possession of any Confidential Information (including all documents and materials and copies thereof) owned by the other Party shall return the Confidential Information promptly to its owner.
- 6.4 The terms of this clause shall survive the termination or expiration of this Agreement for a period of five (5) years.

Intellectual Property and Copyright

- 7.1 The Parties shall inform each other promptly in writing of:
- (a) any Project Intellectual Property, and
 - (b) any commercial information not included in sub-clause a) and not in the public domain arising in the course of carrying out the Project.
- 7.2 Any Background Intellectual Property shall remain the property of that relevant Party. Where use of Background Intellectual Property is necessary for the conduct of the Project, each Party grants to the other a non-exclusive, royalty-free licence to use its Background Intellectual Property solely for the conduct of the Project.
- 7.3 Each Party warrants that the use of any Background Intellectual Property will not infringe the Intellectual Property rights of any third Party.
- 7.4 The Parties agree that any Project Intellectual Property shall vest in the University.
- 7.5 Provided that this Agreement is not terminated pursuant to clause 8.2, the University grants the Partner Organisation the option to obtain an exclusive royalty-bearing licence to use or otherwise exploit Project Intellectual Property subject to terms and conditions determined in accordance with clause 7.6 and this clause 7.5. Said option shall subsist with respect to each item of Project Intellectual Property for a period of six (6) months after said item has been disclosed in writing by the University to the Partner Organisation and may be exercised within this period by the Partner Organisation delivering written notice of same to the University. Said licence shall be upon commercial arms'-length terms to be negotiated between the Parties including, among other matters, the following:
- a) the payment and the mechanism for calculation of a royalty payable to the University in respect of revenue received by the Partner Organisation which will reflect the relative financial and material contributions to the Project by the Parties;
 - b) the reservation to the University of a perpetual right to use the Project Intellectual Property and the products arising therefrom for the purpose of internal, non-commercial research and development and teaching purposes.
- 7.6 Where the Partner Organisation exercises its option pursuant to clause 7.5, the Parties shall negotiate in good faith to determine the specific terms and conditions on which the license shall be granted by the University to the Partner Organisation. If the Parties are unable to agree upon such specific terms and conditions within a period of six (6) months after the date when the Partner Organisation exercised its option, either Party shall have the right to have the terms and conditions which are still in issue determined by an arbitrator. Said arbitrator shall be required to determine such outstanding terms and conditions in accordance with generally accepted industry standards.
- 7.7 Neither Party makes or has made any warranties regarding the Project Intellectual Property. All such warranties including those of merchantability or fitness for a particular purpose are excluded to the maximum extent allowed by the law.
- 7.8 Subject to clause 8.2, this clause will survive the termination of this Agreement.

Termination

- 8.1 Either Party may terminate this Agreement by giving written notice to the other Party on the following events:
- a) immediately on the bankruptcy liquidation or insolvency or change in ownership of the other Party which could reasonably be expected to affect the capacity of that Party to perform its obligations under this Agreement; or
 - b) failure by the other Party to perform its obligations under this Agreement within 30 days of receiving written notice from the other Party specifying the default and requiring that default be remedied; or
 - c) termination of the Project pursuant to the Funding Agreement.
- 8.2 The Partner Organisation may terminate this Agreement on any anniversary of the Commencement Date by giving the University 90 days notice. Where the Partner Organisation so

terminates this Agreement, the Partner Organisation will forego all rights, including but not restricted to the right of any ownership in Project Intellectual Property, under this Agreement.

8.3 Save for in relation to clause 8.2, termination of this Agreement for whatever cause is without prejudice to any rights or obligations that have accrued and are owing prior to such termination.

8.4 This clause will survive the termination of this Agreement.

Goods and Services Tax

9.1 For the purposes of this Clause the following expressions shall have the following meanings:

- a) "GST" means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law.
- b) "GST Law" means *A New Tax System (Goods and Services Tax) Act 1999* (as amended) and all related ancillary legislation which provides for a broad based consumption tax on the supply of Goods and Services which becomes operative in respect of the provisions of this Agreement.

9.2 If this Agreement or any supply under or in respect of this Agreement becomes subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Agreement, the Parties agree that the amount payable for any supply under or in respect of this Agreement by any Party shall be adjusted by the amount of the GST.

9.3 Each Party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other Party/ies to claim or verify any input in tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.

9.4 As required by any applicable legislation, where identifiable cost savings are realised by virtue of the enactment of the GST Law, those cost savings will be reflected in the calculations of the consideration under this Agreement.

Warranty and Indemnity

10.1 The Partner Organisation hereby warrants, represents and covenants to and with the Administering Organisation that its relationship with the Administering Organisation and all persons named as the Chief Investigator for the Project is in accordance with the Funding Rules.

10.2 The Partner Organisation indemnifies and holds harmless the Administering Organisation from against all loss, damages, costs or expenses (including reasonable legal costs and expenses on a solicitor/own client basis), in respect of all claims, demands, actions, proceedings or prosecutions which may be brought, commenced or prosecuted against the Administering Organisation as a result of the Partner's Organisation's breach of clause 10.1 above.

10.3 Except as expressly stated herein and to the full extent lawful neither Party has any liability to the other in respect of its participation in the Project. Where a Party's liability cannot be excluded it is limited to remaking its contributions to and re-participating in the Project or, at its election, paying the cost of the same.

10.4 This clause will survive the termination of this Agreement.

Formal Provisions

11.1 Each Party agrees that it is not, and agrees not to claim or imply that it is, a partner or agent of the other Party or otherwise able to bind or represent the other Party.

11.2 A waiver by either Party of any breach or of a failure to comply with any provision of this Agreement by the other Party is of no effect unless it is in writing.

11.3 In the case of a dispute arising under this Agreement (the **Dispute**) a party to the contract must not commence any court or arbitration proceedings unless the Parties to the Dispute have complied with the following paragraphs of this clause except where a Party seeks urgent interlocutory relief.

- (a) a Party to this contract claiming that a Dispute has arisen out of or in relation to this contract must give written notice (the **Notice**) to the other party to this contract specifying the nature of the Dispute;
- (b) if the Parties do not agree within seven (7) days of receipt of the Notice (or such further period as agreed in writing by them) as to:
 - (i) the dispute resolution technique (eg expert determination) and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; and
 - (iii) the selection and compensation of the independent person required for such technique,

the Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

- 11.4 If any clause or any part of this Agreement or the Proposal shall for any reason be adjudged by a court or other legal authority of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Agreement, the terms of which shall remain in full force and effect.
- 11.5 This Agreement together with all documents referred to herein constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements in regard thereto.
- 11.6 This Agreement shall not be capable of being varied in its terms by any oral agreement or representation or otherwise than by an instrument in writing subsequent hereto executed by both parties or by their duly authorised representatives.
- 11.7 The Parties are severally liable for their respective obligations under this Agreement.
- 11.8 This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be original and all of which shall constitute one and the same agreement.
- 11.9 This Agreement shall be governed by and construed in accordance with the laws in force in the State of New South Wales and the Parties by their execution submit to the jurisdiction of the Courts of that State.

Notices

- 12.1 Any notice or other communication under this Agreement shall be given in writing and delivered by hand, sent by pre-paid post or facsimile transmission.
- 12.2 The address for any such notices is as follows:

the University: Deputy Vice-Chancellor (Research)
Macquarie University
NSW 2109

Telephone: (02) 9850 8645
Facsimile: (02) 9850 8799

Attention: Professor J A Piper

Partner Organisation:

Telephone:

Facsimile:

Attention:

EXECUTED on the days and dates written below.

SIGNED for and on behalf of

SIGNED for and on behalf of

the University

the Partner Organisation

Signature:

Signature:

Name:

Name:

Capacity:

Capacity:

Date:

Date:

SCHEDULE 1

THE PROPOSAL