

COLLABORATION AGREEMENT – AUSTRALIAN RESEARCH COUNCIL LINKAGE PROJECTS – LP24

PARTIES

[illegible]

PROJECT DETAILS

1. PROJECT TERMS

This Agreement sets out the terms for conducting the research project described in the attached Schedule. Our General Conditions are attached and also form part of this Agreement. If there are any inconsistencies between the parts of the Agreement, the order of priority is:

- the Project Details;
- the approved Special Conditions in the Schedule;
- the General Conditions;
- the Schedule.

Defined terms for the purposes of the agreement are set out in the Project Details and Schedule.

By signing below where indicated, each Party agrees to be bound by this Agreement.

2. PROJECT DESCRIPTION

[illegible]

PROJECT DETAILS

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3. COMMENCEMENT DATE AND TERM

| | |
|-------------------|---|
| Commencement Date | Date of the last Party's signature |
| Completion Date | X years after the Commencement Date subject to any extensions approved by the ARC |

EXECUTED AS AN AGREEMENT

| | |
|--|--|
| SIGNED FOR THE ADMINISTERING ORGANISATION BY ITS AUTHORISED REPRESENTATIVE: | |
| | |
| NAME: (in capitals) | |
| TITLE: | |
| DATE: | |

| | |
|---------------------|--|
| SIGNED FOR: | |
| | |
| NAME: (in capitals) | |
| TITLE: | |
| DATE: | |

| | |
|---------------------|--|
| SIGNED FOR: | |
| | |
| NAME: (in capitals) | |
| TITLE: | |
| DATE: | |

SCHEDULE

SCHEDULE – SCOPE OF WORK, BUDGET AND SPECIAL CONDITIONS

ITEM A: ADDITIONAL PROJECT DESCRIPTION (OPTIONAL)

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ITEM B: CONTRIBUTIONS

Table 1: Administering Organisation Contributions for the Project (GST exclusive) (“Contributions”)

| | Year 1 | Year 2 | Year 3 | Total |
|---------------------------------|--------|--------|--------|-------|
| Funding derived from ARC | | | | |
| Administering Organisation Cash | | | | |

Other Eligible Organisation:

Role in the Project

In accordance with the Proposal
(unless otherwise referred to here)

Contributions to the Project

| | Year 1 | Year 2 | Year 3 | Total |
|--------------|--------|--------|--------|-------|
| Cash | | | | |
| In-kind | | | | |
| Total | | | | |

Contact details for invoices:

| | |
|------------------|--|
| Finance Officer: | |
| Address: | |
| Phone number: | |
| Email: | |

SCHEDULE

Partner Organisation:

Role in the Project

In accordance with the Proposal

(unless otherwise referred to here)

Contributions to the Project

| | Year 1 | Year 2 | Year 3 | Total |
|--------------|--------|--------|--------|-------|
| Cash | | | | |
| In-kind | | | | |
| Total | | | | |

| | |
|------------------|--|
| Finance Officer: | |
| Address: | |
| Phone number: | |
| Email: | |

ARC FUNDING DISTRIBUTION

The ARC funding shall be distributed as outlined in the table below.

| Organisation | Funding Type | Year 1 | Year 2 | Year 3 |
|----------------------------|---------------|--------|--------|--------|
| Administering Organisation | Project funds | | | |
| Total | | | | |

*** Where the ARC has specified special conditions, ensure these appear separately in this table.**

PARTNER ORGANISATION FUNDING DISTRIBUTION

The Partner Organisation cash Contributions will be spent at the Administering Organisation unless otherwise specified in the table below:

| Partner Organisation | Distributed to | Year 1 | Year 2 | Year 3 | Total |
|----------------------|----------------|--------|--------|--------|-------|
| N/A | N/A | N/A | N/A | N/A | N/A |
| Total | | | | | |

- B.1 The cash component of each Participating Organisation's Project Contribution must be paid annually in advance for each year during the term of the Project and within thirty (30) days of receipt of a valid tax invoice issued by the Administering Organisation –

SCHEDULE

- (a) in relation to the first cash component of the Participating Organisation's Contribution, on the Commencement Date; and
 - (b) in relation to any subsequent cash component of the Participating Organisation's Contribution, on each anniversary of the Commencement Date, subject to Item B3.
- B.2 If applicable, Participating Organisation to whom funds are distributed will be paid the annual amount set out in the ARC Funding Distribution table and/or Partner Organisation Funding Distribution table within thirty (30) days of receipt by the Administering Organisation of a valid tax invoice (for attention of Administering Organisation's contact for finances), subject always to the Administering Organisation receiving funding in relation to the Project from the ARC and, if relevant, cash Contributions from Participating Organisations.
- B.3 The Administering Organisation may agree in writing with a Partner Organisation that the cash component of that Partner Organisation's Contribution be paid semi-annually or quarterly provided there is in the opinion of the Lead CI no detriment to the conduct of the Project.

ITEM C: REPORTING

- C.1 Each Party must maintain reasonable, up to date and accurate records regarding the conduct and conclusions of its part of the Project, and, where relevant, its respective Project Contributions and expenditure of funds.
- C.2 The Participating Organisations must provide the Administering Organisation with details as requested from time to time to enable the Administering Organisation to complete and submit the reports required by the Funding Conditions.

SCHEDULE

ITEM D: CONTACTS FOR NOTICES and ACQUITTALS

| | |
|-----------------------------|-----------------------------|
| Administering Organisation | Notice contact details: |
| Other Eligible organisation | Notice contact details: |
| | Acquittals contact details: |
| Partner organisation | Notice contact details: |
| | |

ITEM E: SPECIAL CONDITIONS (if any)

[SUBJECT TO ADMINISTERING ORGANISATION REVIEW]

| # | Subject | Detail |
|---|---------|--------|
| | | |
| | | |
| | | |
| | | |

GENERAL CONDITIONS

1. DEFINITIONS

- (a) **Contributions** means a Party's contribution to the research and includes both cash and in-kind contributions.
- (b) **Confidential Information** means all information (including information which is commercially sensitive, patentable or otherwise protectable or commercially exploitable) which is:
 - (i) provided by a Party for the purposes of this Agreement or the Project, and marked "confidential" or noted as confidential at the time of it being provided; but
 - (ii) does not include information that:
 - 1. at the time of disclosure is already in the public domain or subsequently becomes part of the public domain;
 - 2. is already known by the receiving Party prior to receipt of the information from the disclosing Party as evidenced by its own internal written records;
 - 3. is received by the receiving Party from an independent third Party who is lawfully in possession of the information and has authority to disclose the information;
 - 4. has been independently developed by the receiving Party without accessing the Confidential Information of the disclosing Party.
- (c) **Intellectual Property** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than Moral Rights under the Copyright Act 1968).
- (d) **Pre-Existing Intellectual Property** means all Intellectual Property already owned or licensed to a Party prior to the Project and which is provided by that Party for the purposes of the Project
- (e) **Project Intellectual Property** means all Intellectual Property arising from, or created in the course of carrying out the Project;

2. RESEARCH TERMS

- (a) The Parties will commence the Project on the Commencement Date or as soon as reasonably possible thereafter and will complete the Project by the Completion Date or as soon as practicable thereafter.
- (b) The Parties will carry out the Project in the manner set out in the Schedule.
- (c) All work comprised in the Project shall be performed with due skill and diligence by or under the supervision of the Specified Personnel.
- (d) Each Party will:
 - (i) comply with the requirements and related Commonwealth policies as set out in the Grant Agreement with respect to the protection of personal information, and immediately notify the other Parties if it becomes aware of a breach of its obligations under this subclause 2(d)(i); and
 - (ii) comply with its obligations in relation to notification of research integrity matters in accordance with the ARC Research Integrity and Research Misconduct Policy and the investigation and management of breaches of the Australian Code for the Responsible Conduct of Research (2018).

3. DUTIES AND RESPONSIBILITIES

- (a) The Parties shall co-operate with each other to enable the proper performance of the Project.
- (b) The Parties acknowledge the Funding Principles.
- (c) The Parties agree to observe all conditions of the Grant Agreement to the full extent to which those conditions are applicable and appropriate to each Party, and commitments made by the Party in the Project's funding application (Annexure 3).
- (d) The Parties acknowledge that it is a condition of the Grant Agreement that the Participating Organisations make their Contributions and the progress of the Project is dependent upon the timing, quality and quantity of their Contributions which are material.
- (e) Each Party agrees that its involvement in this Project would not generate or represent a conflict of interest as defined in the Grant Agreement, or if such conflict did arise, that it will be managed in accordance with the Grant Agreement.

4. CONTRIBUTIONS

- (a) The Parties will provide the Project Contributions in the manner set out in the Schedule.
- (b) Amounts quoted are exclusive of GST and any taxes which will be charged at the rates ruling at the time of supply if applicable.
- (c) Payments shall be made upon presentation of tax invoices.
- (d) Each Participating Organisation will keep true and accurate records of all matters connected with their Contributions and will retain such records for a period of seven (7) years after the expiration or termination of this Agreement.
- (e) Each Participating Organisation agrees to cooperate with the Administering Organisation as necessary in the preparation of progress or final reports required to be submitted to the ARC the Grant Agreement and will provide the information required for such reports in time to meet the reporting requirements set out in the Grant Agreement.
- (f) The Administering Organisation, through the Lead Chief Investigator, will provide each Participating Organisation with a copy of each progress or final report provided to the ARC.
- (g) A Participating Organisation must, if requested by the Administering Organisation, permit the records and books referred to in sub-clause (d) to be examined and copies or extracts to be taken by the Administering Organisation for the purpose of verifying those records and books and must supply such other information as may be reasonably necessary or proper to enable Contributions to be ascertained and verified.

5. INTELLECTUAL PROPERTY RIGHTS

- (a) Ownership of Pre-existing Intellectual Property supplied for use in the Project by a Party will remain with that Party. Each Party grants to the other(s) a royalty free, non-exclusive, irrevocable, non-transferrable licence to use its pre-existing Intellectual Property solely for the purpose of performing the Project and not for commercialisation without the express consent of the owner.
- (b) Unless otherwise specified in the Schedule:
 - (i) Project Intellectual Property will vest in the Administering Organisation;
 - (ii) The Administering Organisation provides each Party with a royalty-free, non-exclusive, perpetual license to the Project Intellectual Property for its non-commercial internal business use (which in the case of a Party which is a university, includes research and education), publications and for the purposes of performing the Project, in accordance with clause 7; and
 - (iii) Each Party agrees to keep the other Parties confidentially informed concerning the development of the Project Intellectual Property. In particular, each Party (Developing Party) must advise the other Party

GENERAL CONDITIONS

immediately if the Developing Party has produced or created Project Intellectual Property that does or may have a commercial application. To the extent that any Intellectual Property referred to in clause 5(b)(i) is capable of commercialisation, a commercialisation strategy will be agreed in good faith by the Parties with the intention that commercialisation revenue shares between the Parties will reflect their Contributions to that Intellectual Property.

6. STUDENTS

- (a) The Parties agree that any students involved in the Project must comply with clause 5 and 7 and that:
 - (i) Project Intellectual Property developed by the student is owned in accordance with clause 5, provided that the student will own the copyright in his or her thesis; and
 - (ii) the only restrictions on publishing a student's thesis will be those reasonably necessary to protect Confidential Information or the Project Intellectual Property (which in any case must be no longer than six (6) months after completion of the Project).
- (b) The Parties further agree:
 - (i) Any Party that is a university must enter into an agreement with any students from their institution involved in the Project which binds the student to comply with clauses 5 and 7 of this Agreement, or must have another binding agreement in place with the student to ensure that they comply with clauses 5 and 7 of this agreement; and
 - (ii) they each must not inhibit the right of a student to have his or her thesis examined, and that this obligation extends to submitting the student's thesis for examination and depositing in the library a copy of the student's completed thesis or work submitted for a higher degree, but an examiner may be required to sign a confidentiality agreement to protect Confidential Information.
- (c) The Parties agree that where students are doing work on the premises of another Party, those Parties will use their best endeavours to ensure that the student complies in all respects with the host institution's regulations, requirements, codes or instructions including those relating to health safety and security.

7. PUBLICATION AND CONFIDENTIALITY

- (a) As a matter of basic academic policy, the parties which are universities retain the right to publish in their discretion material relating to the conduct and conclusions of the Project, including the Project Intellectual Property, and students retain the right to publish their thesis.
- (b) Prior to publishing any such material the university (including any student) wishing to publish (**Publishing Party**) will provide a copy of all proposed publication material, together with details of how, when and to whom it is proposed to be published, for the approval of the other parties at least 30 days prior to the proposed submission date for publication (**Approval Period**). This approval must only be withheld in accordance with the following provisions of this clause.
- (c) If, during the Approval Period, a Party reasonably requests that the material not be published or submitted for publication in the form provided, the Publishing Party will:
 - (i) where a Party requests that the material be amended to remove any of their Confidential Information, use all reasonable efforts to amend the proposed publication material to remove all such Confidential Information in

which case the requesting Party will be deemed to have approved publication or submission of the amended material by the Publishing Party (or where such removal is not feasible or practical, the Parties will work together in good faith to endeavour to limit such amendments to the mutual satisfaction of both Parties); and

- (ii) if requested, delay publication of the material or submission of the material for publication for a period not exceeding 3 months to allow appropriate registration of any registrable Intellectual Property.
- (d) If a Party withholds approval or requests changes under this clause it must provide reasons. A Party will be deemed to have approved the publication or submission of material under this clause if the Party does not communicate to the Publishing Party its decision regarding approval of the publication, with reasons if applicable, within the Approval Period.
- (e) Despite any other provision of this agreement the Parties agree that a student participating in the Project may include material relating to the conduct and conclusion of the Project in a thesis authored by the student, which will be made publicly available in accordance with the relevant university's statutes and regulations. In the event a student thesis contains another Party's Confidential Information, the other relevant Party agrees that the student may submit such thesis on the basis that any such Confidential Information is included in an appendix to the thesis which is restricted from public access for a reasonable period of time agreed by the other relevant Party but not exceeding 12 months, and that such course of action will be in full satisfaction of any obligations of confidentiality under this agreement in respect of such Confidential Information.
- (f) Unless otherwise specified in the Schedule:
 - (i) The Parties hereby undertake to consider all information (whether oral or written) provided by another Party as confidential, provided that such information is specified at the time to be confidential.
 - (ii) Any publication proposed by a Party shall not include confidential information or any other Party name without the relevant Party's consent.
 - (iii) Subject to clause 7(g), any publication or presentation will acknowledge the Contributions and support of all the Parties and the ARC.
- (g) Each Party acknowledges that it will comply with the Australian Privacy Principles with respect to any personal and/or health information collected or used during the Project.
- (h) A publication or presentation will acknowledge the Contributions and support of all the Parties. The ARC's Contribution and support of the Project shall be acknowledged in a prominent place and an appropriate form acceptable to the ARC when, at any time during or after completion of a Project, a Party publishes, produces or is involved in promotional material, such as books, articles, television or radio programs, electronic media, newsletters or other literary or artistic works, which relate to the Project.
- (i) The Parties acknowledge that in accordance with the ARC Open Access Policy (available at www.arc.gov.au) the ARC requires that Research Outputs arising from ARC funded research (which includes any publications arising from a Linkage Project) be deposited into an openly accessible institutional repository within a twelve (12) month period after the date of publication. Where a Party cannot meet this requirement, reasons must be provided to the Administering Organisation.

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8. INABILITY TO PERFORM AND LIABILITY

- (a) No Party will be responsible for the consequences of failure to perform its obligations under this Agreement if this failure results from events beyond its reasonable control and it has notified full particulars to the other Parties.
- (b) The liability of any Party to another in respect of its negligent acts or omissions in performing the Project shall be limited to the cost of re-performing the Project or the sum of its Contribution, whichever is the lesser.
- (c) No Party shall have liability for any other loss or damage including (without limitation) loss of revenue, loss of profits, loss of use, and loss of contracts.
- (d) No statements or representations made or information supplied by a Party shall form part of this Agreement unless specifically incorporated.
- (e) No Party makes representations or warranties regarding the outcomes of the Project including merchantability or fitness for a particular purpose or that use of those outcomes will not infringe any intellectual property rights or other rights of any person.

9. INSURANCE AND INDEMNITY

- (a) Each Party must take out, maintain and keep current, at its own cost:
 - (i) workers compensation insurance in accordance with applicable law and awards;
 - (ii) public liability insurance appropriate to the Party's activities for an amount not less than \$20 million; and
 - (iii) professional indemnity insurance for an amount not less than \$5 million in respect of a claim for breach of professional duty whether incurred in contract, tort or otherwise or by reason of any act or omission of a Party.
- (b) On request, a Party must provide evidence to the other Parties of currency of all insurance policies required under this Agreement.
- (c) A Party may act as its own insurer but only to the extent that it will be able to adequately meet its obligations under this Agreement.
- (d) Subject to the limitations of liability of clause 8, each Party to this Agreement (the 'Indemnifying Party') indemnifies and will keep indemnified each other Party (the 'Indemnified Party') against all damages, losses (excluding special, incidental or consequential losses), costs, expenses and liabilities claimed, suffered or incurred by the Indemnified Party as a consequence of:
 - (i) any breach of this Agreement by the Indemnifying Party including its representatives; or
 - (ii) the negligent act or omission of the Indemnifying Party including by its representatives.
- (e) The Indemnifying Party's liability to indemnify the Indemnified Party under clause 9(d) will be reduced to the extent that any negligent act or omission or breach of this Agreement by the Indemnified Party including by its representatives contributed to the damages, losses, costs, expenses and liabilities suffered or incurred.

10. TERMINATION AND NOTICE

- (a) Upon written notice the Administering Organisation may terminate this agreement if the Grant Agreement is terminated.
- (b) The Administering Organisation will immediately notify the other Parties in such event of clause 10(a), and all Parties will meet in good faith to discuss available options.
- (c) Any notice or other communication required to be given under this Agreement will be in writing to the email or physical addresses set out in Item D of the Schedule.

- (d) Clauses 2(c), 5, 7, 8, 9 and 10 survive termination of this Agreement.
- (e) If a Participating Organisation materially breaches this agreement or becomes insolvent, the Administering Organisation (acting for itself and the other parties) may, by written notice to that Party terminate that Party's involvement in the Project and recover all damages, losses, costs and expenses suffered by the Administering Organisation and the other parties as a result of the default. Termination will be effective on the day of the receipt of such notice of termination.

11. OWNERSHIP OF ASSETS

Unless otherwise approved by the ARC, the ownership of any asset purchased wholly or partly with the ARC funds vests in the Administering Organisation unless otherwise specified in the Proposal or the Schedule.

12. GENERAL

- (a) Unless otherwise defined, capitalised terms have the meanings in the Grant Agreement, Project Details, Schedule and these General Conditions.
- (b) This Agreement shall be governed by the laws of the state in which the Administering Organisation resides and the Parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.
- (c) If any dispute or difference arises in connection with this agreement, then the Parties shall negotiate in good faith using their best endeavours to resolve the dispute or difference. In the event that the dispute cannot be resolved in the first instance, the Parties agree to refer the dispute to, in the case of each Party, the signatories of this Agreement or their nominees.
- (d) This Agreement, together with the Project Details, the Schedule and the Annexures, constitutes the entire agreement between the Parties. Special Conditions included in the Schedule apply as if included in this Agreement and shall prevail over the General Conditions to the extent of any inconsistency.
- (e) Any invalid part of this Agreement will not affect the validity of the remaining parts of the Agreement.
- (f) This Agreement may be varied, amended or extended only by the written agreement of the Parties.
- (g) Only waivers in writing and signed by the Party against whom the waiver is claimed will be valid.
- (h) No Party will, without the prior written consent of the other Party, transfer, assign or novate any rights or obligations under this Agreement.
- (i) A Party may only subcontract any part of its performance of the Project with the prior written consent of the other Parties, which shall not be unreasonably withheld.
- (j) This Agreement may be signed in any number of electronic counterparts which when taken together constitute one document.

ANNEXURES

1. **GRANT AGREEMENT**
2. **FUNDING CONDITIONS**
3. **FUNDING APPLICATION**