



**This template is used for ARC Linkage Projects led by UNSW which are likely to produce intellectual property with commercial value.**

## ARC Linkage Projects Collaborative Research Agreement (Single University/NSI)

PARTIES									
<b>UNSW</b>	<b>The University of New South Wales</b> ABN 57 195 873 179, a body corporate established pursuant to the <i>University of New South Wales Act 1989</i> (NSW) of UNSW Sydney NSW 2052, Australia.								
<b>NSi</b>	<b>NewSouth Innovations Pty Ltd</b> ABN 25 000 263 025 of Rupert Myers Building, Gate 14, Barker Street, UNSW Sydney NSW 2052, Australia.								
<b>Partner Organisation(s)</b>	The party or parties with contact details specified in Schedule 1.								
DETAILS									
KEY DATES									
<b>Project Start Date</b> (clause 1)	On the date the last party signs this agreement.								
<b>Project Completion Date</b> (clause 1)	On submission of the final report to the ARC.								
PROJECT									
<b>Project</b> (clause 1)	ARC Grant Number:      «ARC_Ref» Project Title:            «Project_Title» Project Summary:        «Summary» ARC Funding: <table border="1" style="margin-left: 20px; border-collapse: collapse; width: 100%;"> <tr> <td style="width: 30%;">2016</td> <td style="width: 70%;">\$ «ARC_Y1»</td> </tr> <tr> <td>2017</td> <td>\$ «ARC_Y2»</td> </tr> <tr> <td>2018</td> <td>\$ «ARC_Y3»</td> </tr> <tr> <td>2019</td> <td>\$ «ARC_Y4»</td> </tr> </table>	2016	\$ «ARC_Y1»	2017	\$ «ARC_Y2»	2018	\$ «ARC_Y3»	2019	\$ «ARC_Y4»
2016	\$ «ARC_Y1»								
2017	\$ «ARC_Y2»								
2018	\$ «ARC_Y3»								
2019	\$ «ARC_Y4»								
<b>Ethics/biosafety approval required</b> (clause 1)	<input type="checkbox"/> YES <input type="checkbox"/> NO								
OPTION									
<b>Option Period</b> (clause 7)	Commences on the Project Start Date and ends 90 days following the Project Completion Date or the date this agreement is terminated, whichever occurs first.								
<b>Option Holder(s)</b> (clause 7)	[insert parties who will be granted an Option, this will usually be the Partner Organisation(s). If there is more than one Option Holder insert details of the Territory and Field in which the respective Options are granted.]								
<b>Field</b> (clause 7)	[Insert the field in which the Partner Organisation(s) operates its business]								

Territory (clause 7)	[Insert the countries in which the Partner Organisation(s) operates its business]
Option (clause 7)	<p>[Delete if not applicable] [Easy Access IP Licence]</p> <p><input type="checkbox"/> An option to enter into the Easy Access IP Licence in the form attached in Annexure C. The Option Holder may, during the Option Period, exercise the Option by notice in writing to NSi attaching a Statement of Intent in the form of Annexure C.1 (“Notice”). Within 21 days of the date of the Notice NSi will deliver an engrossed and executed Easy Access IP Licence.</p> <p><b>[Insert standard EAIP Licence Template in Annexure C and Guidelines for Statement of Intent in Annexure C.1]</b></p> <p>[Delete if not applicable] [Easy Access Research Licence]</p> <p><input type="checkbox"/> An option to enter into the Easy Access Research Licence in the form attached in Annexure C. The Option Holder may, during the Option Period, exercise the Option by notice in writing to NSi attaching the Statement of Intent in the form of Annexure C.1 (“Notice”). Within 21 days of the date of the Notice NSi will deliver an engrossed and executed Easy Access Research Licence.</p> <p><b>[Insert standard EAR Licence Template in Annexure C and Guidelines for Statement of Intent in Annexure C.1]</b></p> <p>[Delete if not applicable] [Reasonable commercial terms to be negotiated]</p> <p><input type="checkbox"/> An option to negotiate a commercial licence on reasonable commercial terms. The Option Holder may during the Option Period exercise the Option by notice in writing to NSi (“Notice”). Within 21 days of the date of the Notice both the Option Holder and NSi will make best efforts to commence a negotiation in good faith to agree a commercial licence on reasonable commercial terms. If the parties fail to reach agreement within 90 days of the date of the Notice either party may be referred to dispute resolution under the terms of clause 13.</p> <p>[Delete if not applicable] [Substantially the terms set out]</p> <p><input type="checkbox"/> An option to negotiate a commercial licence on substantially the terms set out in Annexure C and otherwise on reasonable commercial terms. The Option Holder may during the Option Period exercise the Option by notice in writing to NSi. (“Notice”) Within 21 days of the date of the Notice both the Option Holder and NSi will make best efforts to commence a negotiation in good faith to agree a commercial licence on substantially the terms set out in Annexure C. If the parties fail to reach agreement within 90 days of the date of the Notice either party may referred and resolve the matter under the terms of clause 9.</p> <p><b>[Insert key terms agreed in the IP Proposal in Annexure C]</b></p> <p>[Delete if not applicable] [Full Licence]</p> <p><input type="checkbox"/> An option to enter into a Commercial Licence in the form attached as Annexure C. The Option Holder may during the Option Period exercise the Option by notice in writing to NSi (“Notice”). Within 21 days of the date of the Notice both the Option Holder and NSi will make best efforts to commence a negotiation in good faith for a commercial licence in the form attached as Annexure C. If the parties fail to reach agreement within 90 days of the date of the Notice either party may referred and resolve the matter under the terms of clause 9</p> <p><b>[Insert full commercial licence in Annexure C]</b></p>

SPECIAL CONDITIONS	
	[Insert details of any special conditions to apply]
BACKGROUND	
	<p>(a) UNSW has been awarded a Linkage Projects grant by the Australian Research Council (ARC) to conduct the Project with the Partner Organisation(s).</p> <p>(b) NSi is wholly owned by UNSW and is the owner of the UNSW Background Intellectual Property to be utilised by the parties during the conduct of the Project or has an interest in the Project Intellectual Property. NSi is responsible for managing and for entering into agreements in relation to Commercialisation of UNSW's Intellectual Property.</p> <p>(c) The Partner Organisation(s) has agreed to make the Total Contributions to UNSW in connection with the Project.</p> <p>(d) The Parties agree to conduct the Project on the terms of this agreement.</p>
EXECUTED AS AN AGREEMENT	
<b>Signed for and on behalf of NewSouth Innovations Pty Ltd</b>	<b>Signed for and on behalf of the University of New South Wales</b>
_____ Signature of Authorised Officer	_____ Signature of Authorised Officer
_____ Print Name	_____ Print Name
_____ Position	_____ Position
_____ Date	_____ Date
The signatory warrants that they are authorised to execute this agreement on behalf of NewSouth Innovations Pty Ltd.	The signatory warrants that they are authorised to execute this agreement on behalf of the University of New South Wales.
<b>[Option 1 – Australian company with no authorised delegate]</b>	
Signed for an on behalf of [company name] [option 1 ~ ACN option 2 ~ ABN] [insert number] by authority of its directors, under section 127 of the Corporations Act 2001 (Cth)	
_____ Signature of director	_____ Signature of director/company secretary
_____ Name of director	_____ Name of director/company secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**[Option 2 – Australian company with no authorised delegate and only one director]**

Signed for an on behalf of [company name] [option 1 ~ ACN option 2 ~ ABN] [insert number] by authority of its sole director and sole company secretary, under section 127 of the *Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of sole director/company secretary

\_\_\_\_\_  
Name of sole director/company secretary

\_\_\_\_\_  
Date

**[Option 3 – Foreign company, or other entity (e.g. statutory authority, such as a university) – Please insert the appropriate signing clause under appropriate law.]**

**[insert]**

## GENERAL TERMS

### 1. The Project

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- 1.1 UNSW and the Partner Organisation(s) must:
- (a) start the Project on the Project Start Date; and
  - (b) use reasonable endeavours to complete the Project on or near the Project Completion Date or such other date as may be agreed by the parties and approved by the ARC (if required).
- 1.2 UNSW and the Partner Organisation(s) must carry out the Project:
- (a) in accordance with this agreement and the Application or if varied in accordance with the Funding Agreement then as set out in Schedule 2;
  - (b) using the Specified Personnel; and
  - (c) in compliance with all applicable standards, awards, laws and regulations.

- 1.3 The parties acknowledge that research work is of its nature uncertain and that particular outcomes or results from the Project cannot be guaranteed. No party will be liable to any other party for any loss or damage whether arising from that party's failure to perform work on time or within the estimated costs of the Project or otherwise provided that party has used its reasonable endeavours in all respects in carrying out the Project.
- 1.4 If the Project requires approval by UNSW's ethics and/or biosafety committees (or similar), UNSW must use reasonable endeavours to promptly obtain that approval. Before such approvals are obtained, UNSW is not required to commence the Project.
- 1.5 UNSW must maintain complete and accurate records regarding the conduct and conclusions of the Project.

## **2. Funding Agreement obligations**

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- 2.1 The Partner Organisation(s) acknowledges that UNSW has entered into the Funding Agreement which imposes certain obligations on UNSW as the Administering Organisation. The Partner Organisation(s):
  - (a) acknowledges that it has read the Funding Agreement and agrees to abide by the terms of the Funding Agreement in its performance of the Project;
  - (b) agrees to do all things necessary to enable UNSW to comply with its obligations under the Funding Agreement; and
  - (c) must not do anything that may cause UNSW to breach its obligations, or prevent or impede UNSW from complying with its obligations, under the Funding Agreement.
- 2.2 As required under clauses 11.2(i) and 11.2(j) of the Funding Agreement, the Partner Organisation(s):
  - (a) warrants that its relationship with UNSW and the Specified Personnel complies with the Funding Rules; and
  - (b) indemnifies UNSW against all expenses, losses, damages and costs (on a full indemnity basis) that UNSW may sustain or incur as a result, whether directly or indirectly, of a breach of the warranty under clause 2.2(a).
- 2.3 All parties must ensure that the Funds are used in accordance with the Funding Agreement, including in relation to payment of the salaries of any Specified Personnel or the payment of stipends to any post-graduate research Students.
- 2.4 The parties acknowledge that, under the Funding Agreement, UNSW is required to notify the ARC immediately on becoming aware of any actual or potential conflict of interest:
  - (a) relating to any party involved in or associated with the Project; and
  - (b) that has the potential to influence, or appear to influence, the research and activities, publications and media reports or requests for funding related to the Project.
- 2.5 If there is any inconsistency between the following terms forming part of this agreement, the order of priority for the purposes of construction will be as follows (from highest to lowest):
  - (a) any terms of the Funding Agreement that the parties are obliged to comply with under the terms of this agreement;
  - (b) the Funding Rules; and
  - (c) any other term of this agreement.

### **3. General obligations**

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- 3.1 Each party must:
- (a) perform its Project Obligations;
  - (b) co-operate with each other party and provide all other assistance, Material, equipment, facilities, resources as may be reasonably necessary to perform the Project; and
  - (c) ensure that it and its employees and the employees of its subcontractors (if any) attending another party's premises comply with all relevant legislation and the other party's policies and practices regarding staffing, security and work health and safety practices. Compliance includes but is not limited to, obeying directions on official signs affixed at the other party's premises and any directions given by authorised employees or contractors of the other party.
- 3.2 The Partner Organisation(s) must not, without UNSW or NSi's prior written consent, make any representation to the effect that UNSW or NSi has evaluated, tested, recommended, approved or endorsed any product or service.
- 3.3 A party may only subcontract its obligations under this Agreement to a third party with the prior written consent of each other party. If each other party consents to a party subcontracting in accordance with this clause, the party who subcontracts:
- (a) remains primarily responsible for its obligations under this agreement; and
  - (b) must ensure that it enters into an agreement with such subcontractor on terms consistent with this agreement, the Funding Agreement and the Funding Rules, including without limitation in relation to Intellectual Property Rights, privacy, confidentiality and section 79 of the *Crimes Act 1914*.

### **4. Contributions**

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- 4.1 Each party must provide its Total Contribution to the Project.
- 4.2 Except as stated otherwise in the Application or Schedule 2, the Partner Organisation(s) must pay the Cash Contribution to UNSW:
- (a) in relation to the first instalment, promptly after the Project Start Date; and
  - (b) in relation to each subsequent instalment, on each anniversary of the Project Start Date,
- following receipt of a Tax Invoice from UNSW.
- 4.3 Unless specified otherwise, all monetary amounts expressed in this agreement are exclusive of GST.
- 4.4 The Partner Organisation(s) must pay to UNSW the amount specified in each Tax Invoice issued in accordance with clause 4.2 by the due date specified on the Tax Invoice or if no due date is specified, within 30 days after the Tax Invoice is issued.
- 4.5 If any supply under this agreement is a Taxable Supply, the party making the supply may, in addition to any payment for the supply, recover the amount of the GST applicable to the supply.
- 4.6 Any amount of GST payable for a supply will be payable at the same time as the payment for the supply to which it relates.

## **5. Project Management**

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- 5.1 As soon as reasonably practicable after the Project Start Date, the parties must establish a Management Committee comprising 2 nominees from UNSW and up to 2 nominees from each Partner Organisation.
- 5.2 A member of the Management Committee nominated by UNSW will chair the Management Committee.
- 5.3 The Management Committee will have general oversight of the conduct of the Project, including matters relating to the progress, direction and results of the Project and any disclosure of any Project Intellectual Property.
- 5.4 The Management Committee will promptly report to NSi any Project Intellectual Property developed during the Project. NSi will also be notified of meeting dates and be entitled to nominate a person to attend the Management Committee meetings as an observer. Any person invited to be an observer will not have a right to vote at any meeting of the Management Committee.
- 5.5 The following matters may be considered at the first meeting of the Management Committee:
- (a) frequency and format of meetings to discuss the progress of the Project;
  - (b) obligations to take and keep minutes of meetings;
  - (c) protocols for making decisions in relation to the conduct of the Project; and
  - (d) protocols for identifying, protecting and disclosing Project Intellectual Property.
- 5.6 The Management Committee may conduct its meetings by teleconference or videoconference. The Management Committee may make decisions and take action as required under this agreement to carry out the Project. The decision of a majority of the members of the Management Committee will be binding. In the event of an even number of votes, the chair will have the deciding vote.
- 5.7 To avoid doubt, the Management Committee does not have the power to make any decisions in relation to Intellectual Property Rights or vary this agreement including to vary:
- (a) the Total Contributions; or
  - (b) content or scope of the Project.

## **6. Assets**

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- 6.1 Except as stated otherwise in the Application, any Asset purchased wholly or partly with the Funds is owned by UNSW and must be dealt with in accordance with the Funding Agreement.
- 6.2 For the term of this agreement, each owner of Assets contributed to or acquired for the Project:
- (a) must make the Asset available for use by UNSW for the purpose of the Project, as reasonably required;
  - (b) must not sell, hire, charge, mortgage or otherwise encumber the Asset; and
  - (c) is responsible for insurance, maintenance and, if required, repair and replacement of the Asset and any other costs and liabilities associated with the Asset.

## 7. Intellectual Property

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- Refer to NSi IP Proposal.

## 8. Confidentiality and privacy

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- 8.1 Each party:
- (a) may use Confidential Information of each other party solely for the purposes of this agreement;
  - (b) except as permitted under clause 8.1(c), must keep confidential all Confidential Information of each other party; and
  - (c) may disclose Confidential Information of each other party only to employees, contractors and Students who:
    - (i) are aware and agree that the Confidential Information of each other party must be kept confidential; and
    - (ii) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by that other party.
- 8.2 If a party wants to disclose another party's Confidential Information to a person other than that other party, its employees, contractors or Students (**Third Person**), that party must require the Third Person to enter into a confidentiality agreement on substantially similar terms to those confidentiality requirements specified in clause 8.1.
- 8.3 Each party must comply with:
- (a) the reasonable directions of each other party in relation to the handling of any Personal Information that the party holds or has held; and
  - (b) the requirements of the Funding Agreement in relation to the handling of Personal Information, including any applicable obligations under the *Privacy Act 1988* (Cth) and related policies of the Commonwealth specified in the Funding Agreement.

## 9. Publications

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- 9.1 Each party is entitled to Publish the results of the Project provided that no Confidential Information owned by a non-publishing party is disclosed. The publishing party must give notice of any proposed Publication to each other party at least 30 days before the proposed publication date.
- 9.2 Acting reasonably, each non-publishing party may, within that 30 day period do any one or more of the following:
- (a) provide comments on the proposed Publication to the publishing party, which that party must consider but is not obliged to follow;
  - (b) require the publishing party to delay Publication for no more than 90 days to allow the non-publishing party to file patent applications or take other measures to preserve its proprietary rights; or
  - (c) require the publishing party to remove specified Confidential Information from the Publication.



- 9.3 If the publishing party has not received any comments from the non-publishing party (or parties) on the proposed Publication within 30 days of giving notice under clause 9.1 the publishing party may make the Publication.
- 9.4 The parties must ensure that all Publications acknowledge in a prominent place the contribution and support of the ARC for the Project as required by the ARC.
- 9.5 The parties must comply with the ARC Open Access policy (available at: [www.arc.gov.au](http://www.arc.gov.au)), including the requirement that any Publications arising from a Project be deposited into an open access institutional repository within twelve months of the date of Publication.

## 10. Students

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- 10.1 The Partner Organisation(s) acknowledges that UNSW has obligations under its governing statutes to ensure that Students are able to complete the requirements of their candidature and that this obligation extends to submitting a 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. Nothing in this agreement affects the operation of UNSW's relevant statutes, regulations or policies or creates any obligations contrary to those statutes, regulations or policies.

## 11. Indemnity, warranties and limitations on liability

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- 11.1 Each Partner Organisation (**Indemnifying Party**) indemnifies UNSW and NSi (each an **Indemnified Party**), its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person, where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the Indemnifying Party, its employees, agents or subcontractors in connection with this agreement.
- 11.2 The Indemnifying Party's liability under clause **Error! Reference source not found.** will be reduced proportionally to the extent that any act or omission of the Indemnified Party or its employees or agents contributed to the loss or liability.

## 12. Insurance

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- 12.1 Each party must take out, maintain and keep current, at its own cost:
- (a) workers compensation insurance in accordance with applicable law and awards;
  - (b) public liability insurance appropriate to the party's activities for an amount not less than \$10 million; and
  - (c) 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 the party.
- 12.2 On request, a party must provide evidence to the other parties of the terms and currency of all insurance policies required under this agreement.
- 12.3 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.

## 13. Dispute resolution

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- 13.1 No party may start arbitration, tribunal or court proceedings (except proceedings seeking interlocutory relief in a court of competent and applicable jurisdiction) in respect of a Dispute unless it has first complied with this clause.
- 13.2 Each party will use its best endeavours to co-operatively resolve a Dispute.

- 13.3 A party claiming that a Dispute has arisen must notify the other parties in writing. The Dispute must then be referred immediately to the Vice-Chancellor (or delegate) of UNSW, the CEO of NSi and General Manager or equivalent of the Partner Organisation(s) for resolution.
- 13.4 If the Dispute is not resolved within three days of such referral, the Dispute will be referred to a panel (**Panel**) for resolution. Each party to the Dispute must nominate a senior representative for the Panel within three days of the referral to the Panel in accordance with this clause.
- 13.5 If a Dispute is referred to the Panel in accordance with clause 13.4, the Panel will meet to resolve the Dispute unless the Panel agrees to resolve the Dispute without need for a meeting.
- 13.6 The Panel may determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel will be final and binding on the parties and will be provided in writing to the parties.
- 13.7 If the Panel does not resolve the Dispute within ten days after the Dispute being referred to the Panel, then the Dispute must be referred to mediation in accordance with clauses 13.8 to 13.10.
- 13.8 The mediator may be appointed either by agreement or failing such agreement within five days after expiry of the period set out in clause 13.7, by reference to the President of the Law Society of New South Wales who will nominate a mediator.
- 13.9 The parties agree that:
- (a) each party will bear their respective costs of the mediation save that the mediator's fee, fees for mediation rooms and costs of shared equipment facilities and services of the mediation will be shared equally;
  - (b) the venue for the mediation will be agreed between the parties or, failing such agreement, will be nominated by the mediator;
  - (c) each party may be legally represented if they so wish; and
  - (d) the mediation will be conducted without prejudice and complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation.
- 13.10 If the Dispute or difference has not been resolved or mediated within 90 days after receipt of the notice specified in clause 13.3, a party may terminate the dispute resolution process by giving written notice to the other parties.
- 13.11 Prior to the resolution of a Dispute, each party must continue to perform its obligations under this agreement.

## **14. Term and Termination**

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- 14.1 This agreement commences on the Project Start Date and expires three (3) months after the Project Completion Date unless the agreement is terminated earlier in accordance with this clause 14.
- 14.2 UNSW may terminate this agreement with immediate effect by giving written notice to the other parties if:
- (a) the ARC ceases to provide all or any part of the Funds to UNSW; or
  - (b) the Funding Agreement is terminated for any reason.

- 14.3 If:
- (a) a party breaches any material term of this agreement not capable of remedy;
  - (b) a party breaches any material term of this agreement capable of remedy and fails to remedy the breach within 30 days after receiving written notice requiring it to do so; or
  - (c) any event of insolvency occurs in relation to the Partner Organisation(s) (whether or not notified), including any step to appoint a receiver, administrator, trustee in bankruptcy or liquidator,

then:

- (d) the other party or parties may terminate this agreement in writing; or
- (e) the other party or parties may terminate the defaulting or insolvent party's involvement in the Project and continue to perform the Project, provided that that party's removal from the Project is conducted in accordance with the Funding Agreement.

## **15. Consequences of termination**

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15.1 On termination:

- (a) UNSW will be entitled to cease expenditure of Funding on the Project and be entitled to payment of costs and expenses that have been incurred or committed for the Project as at the effective date of termination which will not exceed the amount equivalent to the Total Contribution of each Partner Organisation for the year in which termination occurs;
- (b) if requested by a party (**Requesting Party**), the other parties must return to the Requesting Party all:
  - (i) Background Intellectual Property of the Requesting Party in the other party's possession or control; and
  - (ii) Confidential Information of the Requesting Party in material form (including those parts of all notes or records of the other party containing Confidential Information of the Requesting Party) in the other party's possession or control; and
  - (iii) Property in their possession belonging to another party, and
- (c) if a party terminates this agreement under clause 14.3, the defaulting party must pay UNSW any reasonable costs incurred by the other party or parties directly attributable to the termination of this agreement.

15.2 Clauses 1.3, 2.2, 3.2, 6 - 13 (inclusive) and 15 and all clauses required to give them effect survive the expiration or termination of this agreement.

## **16. Notices**

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16.1 A party giving notice or notifying under this agreement must do so in writing:

- (a) directed to the recipient's address specified in the Schedule 1 as altered by any written notice; and
- (b) hand delivered or sent by prepaid post or emailed to that address.

16.2 A notice given in accordance with this clause is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 days after the date of posting; or
- (c) if sent by email, when the email has entered the recipient's mail server.

## **17. Force Majeure Event**

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- 17.1 If a party (**First Party**) is partially or wholly precluded from complying with its obligations under this agreement by Force Majeure Event affecting the First Party, then the First Party's obligation to perform in accordance with this agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 17.2 As soon as possible after a Force Majeure Event arises, the First Party must, if it has not already done so, notify the other parties of the:
- (a) Force Majeure Event;
  - (b) extent to which the First Party is unable to perform its obligations under this agreement; and
  - (c) likely duration of the First Party's inability to perform.
- 17.3 If the Force Majeure Event affecting the First Party is likely to or does continue for 60 days or more, the other parties may terminate this agreement within immediate or later effect by giving the First Party written notice.

## **18. No waiver**

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- 18.1 A party's agreement to waive a right or entitlement under this agreement is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.
- 18.2 Waiver by a party of anything that another party must do under this agreement is not a waiver of any other right or entitlement under this agreement.
- 18.3 A failure or delay in exercising a right arising from a breach of this agreement is not a waiver of that right.

## **19. General**

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- 19.1 This agreement may only be varied in writing by all the parties.
- 19.2 A party must not assign its rights or obligations under this agreement without the prior written consent of the other parties except that UNSW may assign its rights and obligations under this agreement to NSi by written notice to the other parties.
- 19.3 This agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous agreement of the parties, or any other communication or representation made, in relation to its subject matter.
- 19.4 If a provision of this agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this agreement. All other provisions of this agreement remain in full force and effect.
- 19.5 Nothing in this agreement creates a relationship of employer and employee, principal and agent, or partnership between the parties. A party has no authority to act for any other party or to create or assume a responsibility for an obligation of any other party.
- 19.6 A party may execute this agreement by signing a counterpart. All counterparts constitute one document when taken together. A signed copy of this agreement made by photocopy,

facsimile or PDF Adobe format will be considered an original and execution of this agreement will have occurred when each party holds such copy signed by the other party or parties to this agreement.

19.7 Each party must:

- (a) do or cause to be done all acts and things necessary or desirable to give effect to; and
- (b) refrain from doing all acts and things that could hinder performance by any party of, this agreement.

19.8 This agreement is governed by and must be construed in accordance with the laws of New South Wales. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts that have jurisdiction to hear appeals from them; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

## 20. Definitions and Interpretation

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20.1 In this agreement:

**Administering Organisation** has the meaning provided in the Funding Agreement;

**Application** means the application for Funding, submitted by the parties to, and accepted by, the ARC, a copy of which is at Annexure A;

**ARC** means the Commonwealth of Australia as represented by the Australian Research Council;

**Asset** means an item of real or personal property but does not include Intellectual Property Rights;

**Background Intellectual Property** means Intellectual Property Rights owned by or licensed to a party as at the Project Start Date, or acquired or developed by a party during the course of the Project independently of the Project, which that party has the right to license to third parties and which are necessary for the performance of the Project including those specified in Schedule 2 or as subsequently notified in writing by the parties;

**Cash Contribution** means the cash component of the Total Contribution;

**Commercialise**, in relation to Project Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, or to license Project Intellectual Property to any third party to do any of those things and **Commercialisation** has a corresponding meaning;

**Confidential Information** means all know-how, financial information and other commercially valuable information in whatever form including unpatented inventions, trade secrets, formulae, graphs, drawings, designs, biological materials, samples, devices, models and other materials of whatever description which a party claims is confidential to itself and over which it has full control and includes all other such information that may be in the possession of a party's employees or management. Information is not confidential if:

- (a) it is or becomes part of the public domain unless it came into the public domain by a breach of confidentiality;

- (b) it is obtained lawfully from a third party without any breach of confidentiality;
- (c) it is already known by the recipient party (as shown by its written record) before the date of disclosure to it;
- (d) it is independently developed by an employee of the recipient party who has no knowledge of the disclosure under this agreement;
- (e) required to be disclosed by a court, rule or governmental law or regulation, or the rules of any stock exchange, provided that the party making the disclosure provides prompt written notice to the other party of any such requirement; or
- (f) it is required to be disclosed pursuant to this agreement.

**Details** means the matters set out in the table on the front page(s) of this agreement;

**Dispute** means a dispute arising out of or relating to this agreement including a dispute about the breach, termination, validity, or subject matter of this agreement, or a claim in equity or in tort relating to the performance or non-performance of this agreement, but not including a dispute arising in connection with the Option;

**Field** means the field described in the Details;

**Force Majeure Event** affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this agreement, including:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes, embargo and power, water or other utility shortage;

**Funding Agreement** means the agreement between the ARC and the Administering Organisation, a copy of which is at Annexure B;

**Funding Rules** means the applicable ARC Linkage Projects Funding Rules accessible on the ARC website;

**Funds, Funding or ARC Funding** means the amounts payable by the ARC to the Administering Organisation specified in the Details under the Funding Agreement for the purpose of carrying out the Project;

**GST** has the same meaning as in the GST Law;

**GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time;

**In-kind Contribution** means the in-kind component of the Total Contribution;

**Intellectual Property Rights** means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity, including copyright, discoveries, inventions, innovations, technical information and data, prototypes, processes, specifications, know-how, patent rights, registered and unregistered trade marks, design rights, circuit layouts, plant varieties, the right to have confidential information kept confidential and all rights and interests of a like nature, together with any and all documentation and other material relating to such rights and interests;

**Management Committee** means the management committee for the Project established under clause 5;

**Material** means all materials in any form including all data, information, records, documents, databases and software (including source code and object code), other works and material and the subject matter of any category of Intellectual Property Rights;

**NSi** means NewSouth Innovations Pty Limited (ABN 25 000 263 025) a wholly owned subsidiary of UNSW responsible for managing and for entering into agreements in relation to Commercialisation of UNSW's Intellectual Property;

**Option** means the option granted to the Option Holders under clause 7;

**Option Holder** means a Partner Organisation holding the Option as specified in the Details;

**Option Period** means the period, specified in the Details, within which the Option Holder must exercise the Option;

**Panel** has the meaning in clause 13.4;

**Patent Costs** means fees, costs and expenses (including patent attorney and legal fees and expenses and government charges) incurred or pre-estimated whether before or after the Project Start Date, in the obtaining of grants of patents or other formal Intellectual Property Rights forming part of the Project Intellectual Property and maintaining the same, and includes all expenses incurred in making and prosecuting patent applications and dealing with any opposition to any application for such registrations, any challenge to the validity of any such registrations, and action taken in relation to infringement of those patents or such other Intellectual Property Rights;

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**Publication** means to publish by way of a paper, article, manuscript, report, poster, internet posting, presentation slides, abstract, video, outline, instruction material or other disclosure of Project Intellectual Property, in printed, electronic, oral or other form and **Publish** has a corresponding meaning;

**Project** means the research project and activities described in the Details including the creation of Project Intellectual Property, completed in accordance with this agreement;

**Project Completion Date** means the scheduled completion date for the Project specified in the Details;

**Project Intellectual Property** means all Intellectual Property Rights created or developed as part of performing the Project, but does not include Intellectual Property Rights in Background Intellectual Property;

**Project Obligations** of a party means that party's obligations in relation to the Project as specified in Schedule 2;

**Project Start Date** means the start date for the Project specified in the Details;

**Specified Personnel** means those personnel specified in the Funding Agreement to perform the Project or as replaced in accordance with the Funding Agreement;

**Student** means a student who is enrolled at UNSW and involved in the Project;

**Tax Invoice** has the same meaning as in the GST Law;

**Taxable Supply** has the same meaning as in the GST Law; and

**Territory** means the territory described in the Details;

**Total Contribution** of a party means the aggregate of the Cash Contribution and in-kind contribution to the Project specified in the Application, or if varied in accordance with the Funding Agreement, then as set out in Schedule 2.

20.2 Unless that context otherwise requires:

- (a) a word which denotes the singular denotes the plural and vice versa;
- (b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (c) a reference to any legislation includes that legislation as amended, re-enacted consolidated or substituted;
- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) any use of the verb 'includes', or of words such as 'for example' or 'such as', do not limit anything else that is included in general speech; and
- (f) a reference to a thing or amount is a reference to the whole and each part of it.

20.3 This agreement may not be construed adversely to a party just because that party prepared it.

20.4 If there is any inconsistency between the terms and conditions of this agreement and the provisions of a schedule or annexure to this agreement, the terms and conditions of the agreement will prevail as between those terms and the provisions of the schedule will prevail as between the schedule and the annexure.



## Schedule 1 – Party Details

<b>The University of New South Wales / Administering Organisation</b>	
UNSW	The University of New South Wales ABN 57 1295 873 179, a body corporate established pursuant to the <i>University of New South Wales Act 1989</i> (NSW) of UNSW Sydney NSW 2052, Australia
Notices	Attention: Director, Grants Management Office Address: The University of New South Wales UNSW Sydney NSW 2052 Australia Email: <a href="mailto:mygrants.gmo@unsw.edu.au">mygrants.gmo@unsw.edu.au</a> Phone: (02) 9385 7230

<b>NewSouth Innovations Pty Ltd</b>	
NSi	NewSouth Innovations Pty Ltd ABN 25 000 263 025 of Rupert Myers Building, Gate 14, Barker Street, UNSW Sydney NSW 2052, Australia
Notices	Attention: Chief Executive Officer Address: Level 2, Rupert Myers Building The University of New South Wales UNSW Sydney NSW 2052 Australia Email: <a href="mailto:contracts.manager@nsinnovations.com.au">contracts.manager@nsinnovations.com.au</a> Phone: (02) 9385 5008

### Partner Organisation(s)

<b>«Industry1»</b>	ABN [insert], of [insert address]
Notices	Attention: [insert] Address: [insert] Email: [insert] Phone: [insert]

<b>«Industry2»</b>	ABN [insert], of [insert address]
Notices	Attention: [insert] Address: [insert] Email: [insert] Phone: [insert]

## Schedule 2 – Obligations, Contributions and Budget

### UNSW

Project Obligations		
Role	As set out in the Application.	
Specified Personnel	«Title1» «FirstName1» «Surname1» [insert details and role for other named personnel] (Chief Investigator(s)) and other personnel appointed and notified to the other parties.	
UNSW Background Intellectual Property	[insert details of UNSW Background Intellectual Property relevant to the Project. If left blank, then "none specified".]	
Total Contributions		
In-kind Contribution	In-kind Contribution to be supplied in accordance with the Application or as varied by the parties following mutual agreement and approval by the ARC (if required)	
	Year 1	\$ [insert]
	Year 2	\$ [insert]
	Year 3	\$ [insert]

### NSi

Project Obligations	
Role	N/A
Specified Personnel	N/A
NSi Background Intellectual Property	[insert details of NSi Background Intellectual Property relevant to the Project. If left blank, then "none specified".]

### Partner Organisation(s)

«Industry1»

Project Obligations		
Role	As set out in the Application.	
Specified Personnel	[insert name(s)] (Partner Investigator(s)) and other personnel appointed and notified to other parties.	
Partner Organisation Background Intellectual Property	[insert details of Partner Organisation Background Intellectual Property relevant to the Project. If left blank, then "none specified".]	
Total Contributions		
Cash Contribution	Invoices for the Cash Contribution will be raised in accordance with clause 4.2.	
	Year 1	\$ «Ind1_cash_Y1»
	Year 2	\$ «Ind1_cash_Y2»
	Year 3	\$ «Ind1_cash_Y3»

In-kind Contribution	In-kind Contribution to be supplied in accordance with the Application or as varied by the parties following mutual agreement and approval by the ARC (if required)	
	Year 1	\$ «Ind1_InKind_Y1»
	Year 2	\$ «Ind1_InKind_Y2»
	Year 3	\$ «Ind1_InKind_Y3»

**«Industry2»**

<b>Project Obligations</b>		
Role	As set out in the Application.	
Specified Personnel	[insert name(s)] (Partner Investigator(s)) and other personnel appointed and notified to other parties.	
Partner Organisation Background Intellectual Property	[insert details of Partner Organisation Background Intellectual Property relevant to the Project. If left blank, then "none specified".]	
<b>Total Contributions</b>		
Cash Contribution	Invoices for the Cash Contribution will be raised in accordance with clause 4.2.	
	Year 1	\$ «Ind2_cash_Y1»
	Year 2	\$ «Ind2_cash_Y2»
	Year 3	\$ «Ind2_cash_Y3»
In-kind Contribution	In-kind Contribution to be supplied in accordance with the Application or as varied by the parties following mutual agreement and approval by the ARC (if required)	
	Year 1	\$ «Ind2_InKind_Y1»
	Year 2	\$ «Ind2_InKind_Y2»
	Year 3	\$ «Ind2_InKind_Y3»

**Annexure A – Application and ARC award letter**

SAMPLE

## Annexure B – ARC Funding Agreement

A copy of the ARC Funding Agreement for projects commencing in [insert year] is available at <http://www.arc.gov.au/funding-agreement>

SAMPLE

## **Annexure C – Easy Access IP Licence**

[The most current exclusive or exclusive in a field EAIP Template amended as a Schedule]

**[Delete if it not applicable].**

## **Annexure C – Easy Access Research Licence**

[Insert copy of the most Easy Access Free IP Licence Template.]

**[Delete if it not applicable].**

## **Annexure C – Easy Access Research – IP Terms**

[Insert IP terms from the agreed IP Proposal.]

**[Delete if it not applicable].**

## **Annexure C – Easy Access Research – Full Licence**

[Insert copy of agreed Commercial Licence].

**[Delete if it not applicable].**

## **Annexure C.1– Statement of Intent**

[Statement of Intent Guidelines amended as a Schedule]

**[Delete if it not applicable].**