	<h1 style="text-align: center;">ARC Linkage-Projects (One University) Agreement</h1>
<h2 style="text-align: center;">Parties</h2>	
<b>University</b>	The <b>University of Sydney</b> , a body corporate under the University of Sydney Act 1989 (ABN 15 211 513 464) as described more fully in Part A of Schedule 1.
<b>Partner Organisation</b>	The parties described in Part B of Schedule 1.
<h2 style="text-align: center;">Date</h2>	
<b>Effective Date</b>	The effective date of this agreement is:
<h2 style="text-align: center;">Details</h2>	
<b>Research</b> (clause 1.1)	[Copy brief summary of research to be undertaken from the Linkage Application, including name of project] as described in the Research Plan in Schedule 2. <b>[Ensure up to date Research Plan is attached in Schedule 2.]</b>
<b>Research Period</b> (clause 1.1)	Period during which the Research will be undertaken: From: [insert date] To: [insert date]
<b>Term</b>	This agreement commences on the Effective Date and terminates at the completion of any negotiations under any Option.
<b>Research Purpose</b> (clause 1.1)	[Insert description of intended purpose of the Research including any Reports which will be provided to the Partner Organisation as set out in Schedule 1. The Research Purpose should reflect the objectives, activities and outcomes specified in the Linkage Application.]
<b>Specified Personnel and Students</b> (clauses 4 and 8)	<p>The Project Leader and the following persons:</p> <p>[Insert specified personnel (including the party they are employed by) and students that will work on the Research, including any Chief Investigators/APDI Fellows/Linkage Industry Fellows/Partner Investigators (other than the Project Leader) as applicable]</p> <p>«Title» «FirstName» «Surname» of «FirstName» and any replacement of such personnel as appointed from time to time in accordance with sub-clause 4.2(a).</p> <p>Student involvement (delete inapplicable choice): <b>YES/NO</b></p> <p>If no, clause 8 (Students) is of no effect.</p> <p>Student(s), comprising the following individuals enrolled at the University during the Research Period and any replacement of such individuals selected by the University in accordance with sub-clause 4.2(b): <b>[Insert names]</b></p> <p><b>[If no students will be involved, delete the last paragraph.]</b></p>
<b>Project Leader</b> (clause 4.3)	<p>[Note the Project Leader should be the Chief Investigator or APDI Fellow designated to lead and co-ordinate the Research at all times during the Term, and has direct responsibility for the strategic decisions and communication of results for the Research. Note that the first named Chief Investigator or APDI Fellow noted on the Funding Proposal for an ARC</p>

	<p><b>Linkage Project is usually the Project Leader for the Research.]</b></p> <p><b>[Insert name of initial Project Leader]</b> and includes any replacement of the Project Leader as appointed from time to time.</p>												
<p><b>Budget</b> (Schedule 1)</p>	<p><b>[Insert the total budget for the Research (being the sum of all ARC and Individual Contributions to be made over the Research Period), including infrastructure charges identified in the budget which have been approved by the Commonwealth. Ensure these amounts match up with the amounts in the Schedule.]</b></p> <table border="1"> <thead> <tr> <th>Type</th> <th>Amount (\$)</th> </tr> </thead> <tbody> <tr> <td>ARC Funding</td> <td></td> </tr> <tr> <td>Partner Organisation Financial Contribution</td> <td></td> </tr> <tr> <td>Partner Organisation In-kind Contribution</td> <td></td> </tr> <tr> <td>University Contribution</td> <td></td> </tr> <tr> <td><b>Total Budget</b></td> <td></td> </tr> </tbody> </table>	Type	Amount (\$)	ARC Funding		Partner Organisation Financial Contribution		Partner Organisation In-kind Contribution		University Contribution		<b>Total Budget</b>	
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Partner Organisation Financial Contribution													
Partner Organisation In-kind Contribution													
University Contribution													
<b>Total Budget</b>													
<p><b>Option Holders</b> (clause 6.2)</p>	<p><b>[Insert Parties who are to be granted the Option to acquire a licence of Registrable IPRs (assume all Partner Organisations will take Option unless otherwise negotiated). Each Option Holder should be a Party to this agreement. If there is more than one Option Holder insert details of the jurisdiction and field of use in which the respective Options are granted.]</b></p>												
<p><b>Option Period</b> (clause 6.2)</p>	<p>In relation to any Registrable IPRs reported to the Option Holder under clause 6.1 the later of:</p> <p>(a) the Research Period; or</p> <p>(b) 3 months from the date on which the Registrable IPRs are reported to the Option Holder.</p>												
<p><b>Ethics/Biosafety approval required</b> (clause 1.3)</p>	<p><b>YES/NO</b> (delete inapplicable choice)</p> <p>All approvals required by: <b>[If Yes, insert the latest date by which approval must be obtained. If No, insert "Not Applicable".]</b></p>												
<p><b>Special Terms</b></p>													
<p>This agreement is subject to the following special terms:</p> <p><b>[Insert any terms specific to the research or the arrangement, eg. IPRs. If no special terms, insert "Not Applicable".]</b></p>													
<p><b>Note:</b> All capitalised terms in column 1 of the party details and the Details above have the meaning given in column 2. <b>EXECUTED</b> as an agreement.</p>													
<p><b>SIGNED</b> for and on behalf of <b>THE UNIVERSITY OF SYDNEY</b> by its duly authorised representative:</p>													

.....  
Signature

.....  
Printed Name

Position : Director (or delegate)  
Sydnovate

.....  
Date

**In the presence of:**

.....  
Signature

.....  
Printed Name

**SIGNED** for and on behalf of **[INSERT NAME OF PARTY]** by its duly authorised representative:

.....  
Signature

.....  
Printed Name

.....  
Position

.....  
Date

**In the presence of:**

.....  
Signature

.....  
Printed Name

.....  
Signature

.....  
Printed Name

.....  
Position

.....  
Date

**In the presence of:**

.....  
Signature

.....  
Printed Name

**SIGNED** for and on behalf of **[INSERT NAME OF PARTY]** by its duly authorised representative:

..... Signature	..... Signature
..... Printed Name	..... Printed Name
..... Position	..... Position
..... Date	..... Date
<b>In the presence of:</b>	<b>In the presence of:</b>
..... Signature	..... Signature
..... Printed Name	..... Printed Name

**SIGNED** for and on behalf of **[INSERT NAME OF PARTY]** by its duly authorised representative:

..... Signature	..... Signature
..... Printed Name	..... Printed Name
..... Position	..... Position
..... Date	..... Date
<b>In the presence of:</b>	<b>In the presence of:</b>
..... Signature	..... Signature
..... Printed Name	..... Printed Name

**Note:** By executing this agreement each signatory represents that he or she is authorised to sign on behalf of their entity. The effective date of this agreement will be the Effective Date specified in the Details or if no Effective Date is specified in the Details the date on which the agreement has been executed by ALL the parties.

# General Terms

## 1 Research

### 1.1 Undertake Research

The University will conduct the Research in accordance with the terms of this agreement and will use reasonable endeavours to carry out the Research within the Research Period and with a view to achieving the Research Purpose.

### 1.2 Uncertainty of Research

The parties agree that due to the inherently uncertain nature of research, the actual outcomes and results of the Research cannot be assured. The University will not be liable to the Partner Organisations for any loss or damage arising by reason of its failure to perform work on time or within estimated costs or at all, provided that it has used its reasonable endeavours in all respects in carrying out the Research.

### 1.3 Ethics/Biosafety Approval

If the Research requires approval by the University's Ethics and/or Biosafety Committees (or equivalent), the University will use reasonable endeavours to obtain that approval. In the meantime, the University's obligations in this agreement are suspended.

### 1.4 General obligations

Each party agrees to:

- (a) use reasonable endeavours to comply with its Individual Project Obligations, the details of which are set out in Schedule 1;
- (b) provide its respective Individual Contributions in accordance with Schedule 1;
- (c) provide any other related assistance, information, data, equipment, facilities, resources or materials as may be reasonably required to satisfactorily perform the Research;
- (d) notify each other party of any unusual risks or dangers in the In-kind Contributions or Background IPRs they provide to the Research of which the party's Specified Personnel are aware; and
- (e) comply with all safety, security and other procedures notified to it by any other party while on any other party's site.

### 1.5 Records

The University will maintain reasonable, up to date and accurate records regarding the conduct and conclusions of the Research and its respective Individual Contributions.

## 1.6 Sub-contracting

The University may sub-contract the performance of any part of the Research which is stipulated in the Research Plan in Schedule 2 and otherwise only with the prior written consent of the Partner Organisations, such consent not to be unreasonably withheld.

## 2 Obligations of Partner Organisations

### 2.1 Funding Agreement obligations

- (a) Each Partner Organisation acknowledges that the University has entered into the Funding Agreement as the Administering Organisation, which imposes certain obligations on the University, as the Administering Organisation, regarding use of the Commonwealth Funding and the conduct of the Research. The Partner Organisations acknowledge that they have reviewed the Funding Agreement and agree to assist the University as Administering Organisation to comply with the Funding Agreement and to use their best endeavours not to do anything that causes the University to breach its obligations under the Funding Agreement.
- (b) Without limiting the general obligations under sub-clause 2.1(a) above, each Partner Organisation will:
  - (i) if applicable, ensure that any Commonwealth Funding is used in accordance with the Funding Agreement;
  - (ii) provide to the University confirmation of their Financial and In-kind Contributions to the Research for the previous calendar year by 28 February each year during the Term and promptly provide any other information and assistance reasonably required by the University to enable it to meet the Funding Agreement requirements on reporting and financial management of the Research, including reasonable access to records and premises if required for the purpose of the Commonwealth of Australia conducting reviews of the Research under the Funding Agreement;
  - (iii) disclose to the University any conflict of interest as defined in the Funding Agreement and take such steps as the University may reasonably require to resolve or

- otherwise deal with any conflict of interest;
- (iv) comply with the requirements in the Funding Agreement with respect to the protection of personal information, including any applicable obligations under the *Privacy Act 1988* (Cwlth) and related Commonwealth policies as set out in the Funding Agreement, and immediately notify the University if it becomes aware of a breach of its obligations under this sub-clause 2.1(b)(iv);
  - (v) comply with all applicable laws and Commonwealth policies with respect to the Research, including any laws relating to workplace relations, equal opportunity, occupational health and safety and other laws and policies as set out in the Funding Agreement; and
  - (vi) if applicable, ensure that its Specified Personnel conduct the Research in a diligent and competent manner and in accordance with the Funding Agreement.

The obligations in sub-clauses 2.1(a) and (b) operate as agreements between the parties, enforceable against each other, not by the Commonwealth of Australia.

## 2.2 No Solicitation

The Partner Organisations agree that they will not solicit for the purposes of employment the Specified Personnel of another party during the Term of this agreement and for 6 months following expiry of the Term.

## 2.3 Relationships

- (a) Each Partner Organisation agrees that its relationship with the University and all Specified Personnel is in accordance with the ARC's *Linkage Projects Funding Rules*.
- (b) Each Partner Organisation indemnifies the University for any loss, liability or expense incurred or suffered by the University as a result of any breach of the Funding Agreement caused by the University's reliance on the assurance given by the Partner Organisation in sub-clause 2.3(a) above.

# 3 Contributions

## 3.1 Payment of Financial Contributions

Financial Contributions will be paid annually in advance, with the first payment due 7 days after the date of this agreement. The University will invoice

the Partner Organisations their respective Financial Contributions in the manner specified in Schedule 1. The invoice will be in the form of a tax invoice. Any amount in Financial Contribution which is not paid within 30 days of the invoice date will attract interest applied at the Bank Bill Swap Reference Rate for 90 days as published in the Australian Financial Review on the day interest is claimed.

## 3.2 Receipt of Financial Contributions

The University will apply Financial Contributions to carry out the Research in the manner contemplated by this agreement. For the avoidance of doubt, the University's obligation to apply funds to carry out the Research is subject to the University being in receipt of the Commonwealth Funding.

## 3.3 GST

If a supply under this agreement is subject to GST and GST has not been accounted for in determining the consideration payable for the supply, the supplying party may recover from the receiving party an amount on account of GST. That amount is:

- (a) equal to the value of the supply calculated in accordance with GST law multiplied by the prevailing GST rate; and
- (b) payable at the same time as the recipient is required to pay for the related supply.

## 3.4 In-kind Contributions

If GST is payable on any In-kind Contribution by a party:

- (a) a recipient created tax invoice ("RCTI") will be issued to that party for the GST inclusive value of the In-kind Contribution within 28 days of the supply being made;
- (b) the party responsible for issuing the RCTI warrants that it complies with the necessary legal requirements for issue of RCTIs; and
- (c) the party making the In-kind Contribution agrees not to issue an invoice for its In-kind Contributions.

# 4 Personnel

## 4.1 Specified Personnel

The parties agree to contribute their respective Specified Personnel to conduct the Research.

## 4.2 Unavailability

- (a) If for any reason any Specified Personnel of a party (other than a participating Student) become unavailable, that party will use reasonable endeavours to secure a replacement acceptable to the other parties and will ensure that any such replacement complies with any specific obligations under the Funding Agreement. If the relevant party is not able to secure replacement Specified Personnel in

accordance with this clause and this renders it unable to perform its obligations under this agreement this will constitute a Force Majeure Event.

- (b) If Students are involved in the Research and for any reason a Student becomes unavailable or, in the opinion of the University fails to make satisfactory academic progress, the University will use reasonable endeavours to secure a suitable replacement. If no suitable replacement is available within 30 days, the University may opt to continue carrying out the Research without participation of the Student and this will not constitute a variation of its Individual Contributions.

### 4.3 Project Leader

The Project Leader will have the authority to review and direct the performance of the Research in accordance with the Research Plan in Schedule 2 and with a view to achieving the Research Purpose, including the authority to:

- (a) monitor the provision by each party of its respective Individual Contributions against the Budget and as set out in Schedule 1; and
- (b) monitor the maintenance of records by the University under clause 1.5 (Records).

## 5 Assets

### 5.1 Ownership

Each Partner Organisation agrees that any Asset that is purchased wholly or partly with Commonwealth Funding will be owned by either the Commonwealth of Australia or the University and dealt with according to the Funding Agreement.

### 5.2 Obligations of owner

For the term of this agreement, the owner of Assets contributed to or acquired for the Research:

- (a) must make the Assets available for use by the University for the purpose of the Research as and when reasonably required;
- (b) must not sell, hire, charge, mortgage, pledge or otherwise encumber the Assets in a way that would render it unavailable for the purpose of the Research; and
- (c) is responsible for insurance, maintenance and, if required, repair and replacement of the Assets and any other costs and liabilities associated with the Asset.

## 6 Intellectual Property Rights

### 6.1 Project IPRs

The University claims ownership of all right, title, and interest in and to all IPRs developed by employees of the University and other researchers

who use the University's facilities to conduct research.

All right, title and interest in the Project IPRs will be owned by the University and, to the extent necessary, each of the other parties to the Project hereby assigns any right, title or interest it may have now or in the future have in those IPRs to the University.

The University will provide the Option Holders with a written, confidential disclosure of any Registrable IPRs which are reported to Sydnovate within 12 months of completion of the Research for the purpose of allowing the Option Holders to consider the Option under clause 6.2 (Option to license).

### 6.2 Option to license

Subject to the Option Holders not being in breach of any provision of this agreement, the University grants to the Option Holders the exclusive option during the Option Period to acquire an exclusive licence to exploit the Registrable IPRs on fair and commercial terms to be negotiated and agreed but at least consistent with the Minimum Licence Terms ("Option"). If the negotiating parties are unable to agree the terms of such a licence within 90 days from the Option being exercised, the negotiations with respect to that licence may be terminated by either party to the negotiation in which case the relevant Option Holder's Option will immediately expire. For the avoidance of doubt, where there is more than one Option Holder and the University is unable to agree the terms of a licence with each Option Holder within 90 days, the University may grant an Option to one Option Holder only. Within 7 days of expiry of any Option, the relevant Option Holder must return to the University all Research Confidential Information.

### 6.3 Minimum Licence Terms

The Minimum Licence Terms include the following terms:

- (a) commercial consideration for the licence will be paid to the University;
- (b) all registration and maintenance costs relating to the Registrable IPRs will be paid by the licensee and the licensee will reimburse the University for any portion of patent costs relating to the Registrable IPRs incurred prior to the date the licence is granted, which have not already been paid by the licensee;
- (c) any permitted licence of Registrable IPRs will be subject to a free licence back to the University to use Registrable IPRs for research, teaching or publication purposes;
- (d) rights must not be sub-licensed without the University's prior approval and any sub-licence granted must be on terms no less restrictive than the terms of the licence agreement with the University;

- (e) full indemnity to the University covering the licensee's use and exploitation of the Registrable IPRs; and
- (f) terms consistent with clauses 6.4 (Registrable IPRs) and 8.3 (Student IPRs).

#### 6.4 Registrable IPRs

- (a) In the event that Registrable IPRs arise from the Research, the University, after consulting with the Option Holder/s, will be responsible for determining what, if any, registration applications will be made and will, subject to sub-clause 6.4(b), be responsible for such registration and maintenance. The parties agree to use reasonable endeavours not to engage in any act or omission which will prejudice the grant of patent or similar rights in Registrable IPRs.
- (b) To maintain their Option the Option Holder/s must pay all costs of registration and maintenance of any Registrable IPRs. Where there is more than one Option Holder, payment of registration and maintenance costs of any Registrable IPRs will be shared equally between the Option Holders. If at any time an Option Holder elects not to continue to pay patent costs that party's Option will immediately terminate and the remaining Option Holder/s will then be responsible for the payment of all patent costs. In the event that, following a licence to the Registrable IPRs being granted, the University is reimbursed by the licensee for any patent costs which were previously paid by an Option Holder who did not become a licensee, the University will reimburse the relevant Option Holder.

#### 6.5 Commercialisation

The parties agree that during the term of any Option any commercialisation of any Registrable IPRs other than through the exercise of the Option under clause 6.2 (Option to license) will be dealt with by agreement between the University and the relevant Option Holder/s.

#### 6.6 Background IPRs

Ownership of each party's Background IPRs remains with the contributing party. Each party covenants not to sue or take any other action against another party to this agreement in relation to the use of its Background IPRs by any other party to this agreement for the sole purpose of undertaking the Research with a view to achieving the Research Purpose under this agreement.

#### 6.7 Moral rights

Each party acknowledges that the Specified Personnel, employees, Students and any other

representatives involved in the Research will, if they are authors of material comprised in the Project IPRs in which copyright subsists, have moral rights in those copyright materials.

## 7 Confidentiality and publication

### 7.1 Limited use and disclosure

Each party must:

- (a) maintain the secrecy of each other party's Confidential Information;
- (b) not use any other party's Confidential Information except as required to perform its obligations under this agreement or other than as permitted under the IPRs arrangements in, or agreements entered under, clause 6 (Intellectual Property Rights);
- (c) not disclose any other party's Confidential Information, or in the case of the Partner Organisations, the Research Confidential Information to any other person other than employees or advisers who need to know it in order to perform that party's obligations under this agreement ("Representatives") or other than as permitted under the IPRs arrangements in, or agreements entered under, clause 6 (Intellectual Property Rights); and
- (d) use reasonable endeavours to ensure that its Representatives comply with sub-clauses 7.1(a), (b) and (c).

### 7.2 Required by law

Each party may disclose the Research Confidential Information and any other party's Confidential Information if required by law but, if possible, it must inform the other parties first and use reasonable endeavours to limit the terms of that disclosure as reasonably requested.

### 7.3 Publication rights

The fundamental objective of the University is to conduct research activities for the purpose of generating new knowledge and promoting the dissemination of research results for the public good. In order to attract the Commonwealth Funding for the Research the University has made certain representations to the Commonwealth of Australia that the outcome of the Research will benefit the public. The Partner Organisations will provide all reasonable cooperation to the University in meeting this objective.

As a matter of basic academic policy, the University retains the right to publish in its discretion material relating to the conduct and conclusions of the Research, including the Project IPRs and Students retain the right to publish their thesis. Prior to publishing any such material the University (including any Student) will:

- (a) 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 Partner Organisations at least 30 days prior to the proposed submission date for publication (“**Approval Period**”), such approval only to be withheld in accordance with sub-clause 7.3(b); and
- (b) if, during the Approval Period, a Partner Organisation reasonably requests that the material not be published or submitted for publication in the form provided, the University will:
- (i) where a Partner Organisation 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; and
  - (ii) if requested, delay publication of the material or submission of the material for publication for a period not exceeding 30 days to allow appropriate registration of any Registrable IPRs.

If a Partner Organisation withholds approval or requests changes under this clause it must provide reasons. A Partner Organisation will be deemed to have approved the publication or submission of material under this clause if the Partner Organisation does not communicate to the University its decision regarding approval of the publication, with reasons if applicable, within the Approval Period.

#### **7.4 Submission to repositories**

The Partner Organisations acknowledge that the University has undertaken under the Funding Agreement to ensure that certain data, specimens or samples which are outcomes of the Research are lodged with an appropriate subject and/or institutional repository. Notwithstanding any other provision of this agreement, the Partner Organisations consent to the University disclosing such outcomes.

#### **7.5 Association approval**

No party will use any other party’s name or the name of any other party’s employee, including any Specified Personnel, or refer to the Research, in any public manner whatsoever including in any capital raising, business, advertising or other promotional material without the written permission of the

relevant other party, which may be granted subject to conditions.

#### **7.6 ARC acknowledgment**

Where any Partner Organisation with the consent of the University under clause 7.5 (Association approval) publishes any material or makes any public announcement relating to the Research, the Partner Organisation must include an acknowledgment in a prominent place of the support of the ARC for the Research.

## **8 Students**

### **8.1 Student involvement**

Each Partner Organisation agrees that one or more of the Specified Personnel may be Students. The University agrees to ensure that its Students who participate in the Research are supervised by appropriate staff and subject to any of its internal policies applicable to Students.

### **8.2 Ownership of Student thesis copyright**

The parties agree that ownership of the copyright in any thesis approved in advance by the University and authored by a Student who participates in the Research remains with that Student.

### **8.3 Student IPRs**

Before a Student carries out any part of the Research, the University will ensure that the Student has:

- (a) assigned any of their rights in the Project IPRs (other than copyright in their thesis) to the University;
- (b) granted a royalty free, unrestricted perpetual licence (including a right to sub-license) to the University to use the copyright in their thesis as it deems fit; and
- (c) agreed to comply with the process in clause 7.3 (Publication rights) prior to publishing any thesis including material relating to the conduct and conclusions of the Research.

### **8.4 Confidentiality**

If required, the University agrees to ensure that each of its Students participating in the Research and any external examiner appointed to review a thesis of such a Student have signed a confidentiality agreement with the University complying with clause 7 (Confidentiality and Publication) before they are granted access to any Partner Organisation’s Confidential Information relating to the Research.

### **8.5 Content of Student thesis**

Notwithstanding any other provision of this agreement the parties agree that a Student participating in the Research may include material relating to the conduct and conclusion of the Research in a thesis authored by the Student, which

will be made publicly available in accordance with the University's statutes and regulations.

## 9 Warranties and liability

### 9.1 Due care and skill

The University warrants that it will carry out its Individual Project Obligations with due care and skill and in a professional manner.

### 9.2 Implied warranties

Except as stated in clause 9.1 (Due care and skill) and subject to clause 9.3 (Statutory terms), the University excludes all implied terms, representations and warranties whether statutory or otherwise, relating to the subject matter of this agreement.

### 9.3 Statutory terms

Where any statute implies in this agreement any term, and that statute voids or prohibits provisions under a contract which exclude or modify the operation of such term, such term is deemed to be included in this agreement. However, the University's liability for breach of such term will be, if permitted by law, limited (at the University's option) to resupply of the relevant Research or the payment of the cost of resupplying the relevant Research.

### 9.4 Liability limit

Subject to clause 9.3 (Statutory terms), the total liability of the University to each Partner Organisation for loss or damage of any kind, however caused, due to the University's negligence, breach of contract, breach of any law, in equity, under indemnities or otherwise, arising from or in any way related to this agreement or the Research is limited to the amount equivalent to the total of that Partner Organisation's Financial Contributions.

### 9.5 Consequential loss

Subject to clause 9.3 (Statutory terms), a party will not be liable to any other party for consequential or incidental damages, or loss of profits, revenue, goodwill or opportunities in contract, tort, under any statute or otherwise (including negligence) arising from or in any way related to this agreement or the Research.

### 9.6 Contributory negligence

Each party's liability under this agreement is reduced to the extent that any damages, liability, loss or costs arise from or are attributable to, any negligent act or omission of the other party or its officers, employees, agents or contractors.

### 9.7 Indemnity

Subject to clause 9.3 (Statutory terms), 9.5 (Consequential loss) and 9.6 (Contributory

negligence), each Partner Organisation indemnifies (the "**Indemnifying Party**") and agrees to keep indemnified the University and its respective directors, officers, employees, agents and Students (and an "**Indemnified Party**") against all liability, loss, costs, damages or expense (including legal costs and expenses):

- (a) incurred or suffered by an Indemnified Party as a result of:
  - (i) a breach by the Indemnifying Party of this agreement; or
  - (ii) negligence, wilful misconduct, negligent act or omission, wilful act or failure to act, or unlawful act or omission on the part of the Indemnifying Party in connection with this agreement; or
- (b) which the Indemnified Party is liable to pay to the Commonwealth of Australia under the Funding Agreement to the extent that the liability to pay arose as a result of the acts or omissions of the Indemnifying Party.

References to the Indemnifying Party in sub-clauses 9.7(a)(i) & 9.7(a)(ii) and 9.7(b) above include its directors, officers, employees or agents participating in the Research.

## 10 Termination and expulsion

### 10.1 Termination by mutual agreement

This agreement may be terminated at any time by written agreement of all the parties.

### 10.2 Termination or expulsion of Defaulting Party

In addition to clause 13.8 (Force Majeure), where a party ("**Defaulting Party**"):

- (a) breaches a term of this agreement and fails to remedy the breach within 30 days after receiving notice requiring them to do so;
- (b) has entered into any form of insolvency, liquidation or external administration, whether voluntary or involuntary, formal or otherwise; or
- (c) fails to provide any of its Individual Contributions in accordance with Schedule 1 and does not provide the relevant Individual Contribution within 14 days after receiving notice requiring them to do so;

any of the other parties may terminate this agreement with immediate effect by notice to the parties or the other parties may jointly expel the Defaulting Party from participating in this agreement provided the termination or expulsion is undertaken in accordance with the Funding Agreement.

### 10.3 Termination of Funding Agreement

The University may immediately terminate this agreement by written notice to the other parties on termination of the Funding Agreement or if the ARC ceases to provide all or any part of the Commonwealth Funding to the University.

### 10.4 Consequences of termination

On termination of this agreement for any reason, each party will:

- (a) return all property in their possession belonging to the other parties, including Confidential Information and Research Confidential Information;
- (b) pay all their respective Financial Contributions owing at termination within 14 days of termination; and
- (c) immediately cease expenditure of any Commonwealth Funding and account to the University with respect to any unspent Commonwealth Funding it holds.

### 10.5 Rights of Defaulting Party

On expulsion of a Defaulting Party from participating in this agreement for any reason, the Defaulting Party will:

- (a) if they are a Partner Organisation, cease to have any rights to the Project IPRs under this agreement;
- (b) if they are an Option Holder, cease to have any Option under clause 6.2 (Option to license);
- (c) return all property in their possession belonging to any other party, including Confidential Information and Research Confidential Information; and
- (d) pay all their respective Financial Contributions owing at expulsion within 14 days of expulsion.

### 10.6 Variation on expulsion

Subject to the obligations under the Funding Agreement, if a party is expelled from participating in this agreement under clause 10.2 (Termination or expulsion of Defaulting Party) or clause 13.8 (Force Majeure), the remaining parties will promptly meet and agree any changes to the terms of this agreement and will enter into a variation agreement to effect any such change.

### 10.7 No prejudice

Expulsion of a party from participation in this agreement or termination of this agreement is without prejudice to the rights of the parties to obtain damages for any breach of this agreement.

### 10.8 Survival

Clauses 2.1 (Funding Agreement obligations), 6 (Intellectual Property Rights), 7 (Confidentiality and Publication), 8 (Students), 9 (Warranties and liability), 10.4 (Consequences of termination), 10.5 (Rights of Defaulting Party), 10.6 (Variation on expulsion) and 11 (Disputes) survive the expulsion of a party from participation in this agreement or the termination of this agreement for any reason.

## 11 Disputes

Any dispute relating to this agreement (“**Dispute**”) must, prior to a party initiating litigation (other than for equitable or interlocutory relief), be dealt with as follows:

- (a) the affected party will notify the other parties with details of the Dispute (“**Dispute Notice**”) and, within 7 days of receiving the Dispute Notice, the parties will negotiate and attempt to resolve the Dispute;
- (b) if unresolved within 30 days of the Dispute Notice, the Project Officers of each relevant party, or another nominated member of senior management (the “**Nominated Person**”) will negotiate and attempt to resolve the dispute;
- (c) if unresolved within 30 days of the commencement of the negotiations between the Nominated Persons, any of the affected parties may refer the Dispute to mediation;
- (d) if the parties cannot agree on a mediator within a further 14 days, the Dispute will be referred by the parties to the President, Australian Commercial Disputes Centre, Sydney to nominate a suitably qualified mediator and the parties will accept that nomination;
- (e) the parties will cooperate to enable the mediator to mediate the Dispute within 30 days of the mediator’s appointment; and
- (f) the fees of the mediator will be paid by the parties in equal proportions.

## 12 Communication

### 12.1 Requirements for valid notice

Any notice or other formal communication under this agreement:

- (a) must be in writing and signed by the Project Officer of the sender or an authorised representative of them;
- (b) must be marked to the attention of the recipient’s Project Officer and be delivered to the recipient by hand, pre-paid post or fax at the address or number shown in Schedule 1 (or as last notified); and

- (c) will be effective once received, and will be deemed to be received, if posted in Australia, on the seventh day or, if faxed, at the time shown on the transmission report for the complete message being sent.

## 12.2 Authorised persons

The parties agree that any notice or other formal communications which do not comply with clause 12.1 (Requirements for valid notice) will be of no effect. Each party agrees that it will not rely on representations or promises made by any other persons associated with a party, including the Specified Personnel, other than those made by that party's Project Officer or an authorised representative of them and agrees that representations and promises made by any other person do not bind that other party.

## 13 General

### 13.1 Terms and entire agreement

This agreement consists of these General Terms, the Details, the Special Terms and any annexures or schedules expressly incorporated and it constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### 13.2 Inconsistency

If there is an inconsistency between a provision of the Special Terms, these General Terms, the Details and a schedule (including any attachments), then the first-mentioned terms prevail.

### 13.3 No representations or warranties

Each party acknowledges that in entering into this agreement they have not relied on any representations or warranties about its subject matter except as expressly provided by this agreement.

### 13.4 Variation and waiver

A provision of this agreement or a right created under it may not be waived or varied except in writing, signed by all the parties. A failure or delay in exercise of a right arising from a breach of this agreement does not constitute a waiver of that right.

### 13.5 Further assurances

Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to the Funding Agreement and this agreement, including assisting to facilitate any application to register IPRs, confirming any rights granted in relation to the IPRs, and assisting with any GST requirements.

### 13.6 No exclusivity

Subject to the parties at all times observing their respective obligations under this agreement, each

party acknowledges that the parties are not carrying out the Research on an exclusive basis and this agreement will not preclude any of the parties engaging in activities similar to or in competition with the Research or its subject matter.

### 13.7 No agency or partnership

Nothing contained or implied in this agreement is intended to create a partnership between any of the parties or, except as otherwise provided in this agreement, establish any of the parties as an agent or representative of any other party or of the Commonwealth of Australia. Except as otherwise provided in this agreement, no party has any authority to bind any other party, or to act for, or to incur any obligation or assume any responsibility on behalf of, any other party in any way.

### 13.8 Force Majeure

No party is liable for any breach of its obligations under this agreement to the extent that the breach resulted from a Force Majeure Event provided that it:

- (a) promptly notifies the other parties (with appropriate details); and
- (b) takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.

Subject to the obligations under the Funding Agreement, if a Force Majeure Event continues for more than 30 days or continues beyond the Research Period, any of the other parties may terminate this agreement with immediate effect by notice to the parties or the other parties may jointly expel the party the subject of the Force Majeure Event from participating in the Research in accordance with clause 10.2 (Termination or expulsion of Defaulting Party).

### 13.9 Remedies cumulative

Except as otherwise provided in this agreement, the rights, powers and remedies provided in this agreement are in addition to and not exclusive of the rights, powers and remedies given by law independently of this agreement.

### 13.10 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of a party under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

### 13.11 Governing law

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

### 13.12 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### 13.13 General interpretation

Unless the contrary intention appears, in this agreement:

- (a) references to statutes, regulations, policies, rules or code include references to those statutes, regulations, policies, rules or codes as amended, updated or replaced from time to time and as applicable to the ARC Linkage-Projects program funding round under which the Research will be conducted;
- (b) references to the singular includes the plural and vice versa;
- (c) references to person or individuals include a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (d) the words “include” and “including” are not used as, nor are they to be interpreted as, words of limitation;
- (e) headings are for convenience only and do not affect interpretation;
- (f) reference to a party means a party to this agreement and includes the party’s executors, administrators, successors and permitted assigns;
- (g) references to dollars is to Australian dollars, unless otherwise stated;
- (h) a provision of this agreement will not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement;
- (i) if an act must be done on a specified day which is not a business day, it must be done instead on the next business day; and
- (j) where consent or approval is to be provided under the terms of this agreement, that consent or approval must not be withheld unreasonably.

## 14 Definitions

The following words have these meanings in this agreement:

**Administering Organisation** means the University, in its role as the party to which the Commonwealth of Australia provides the Commonwealth Funding and who is responsible for any such Commonwealth Funding and the conduct of the Research under the Funding Agreement.

**ARC** means the Australian Research Council as established under the *Australian Research Council Act 2001*.

**Asset** means an item of real or personal property but does not include IPRs.

**Background IPRs** means all IPRs developed outside the Research whether before or after the Effective Date of this agreement which are owned by a party and are contributed to the Research by that party for the purpose of carrying out the Research.

**Commonwealth Funding** means funds provided by the Commonwealth of Australia to the Administering Organisation under the Funding Agreement for the purposes of the Research.

**Confidential Information** of a party means the terms of this agreement and the terms of any document, agreement or other notice between the parties relating to this agreement and all information or data that is disclosed by or obtained from that party for the purposes of this agreement or the Research before, on or after the Effective Date of this agreement relating to the operations, business, research and technology of the disclosing party excluding information which is:

- (a) publicly available or subsequently becomes publicly available other than in a breach of this agreement;
- (b) lawfully known to the other party on a non-confidential basis before being disclosed by the party that owned the confidential information;
- (c) rightly acquired from a third party who is not in breach of an agreement to keep such information confidential; or
- (d) developed independently by a party.

**Financial Contribution** means the financial contributions set out in Schedule 1.

**Force Majeure Event** means any event which is outside the reasonable control of the affected party and could not have been prevented by that party taking all reasonable steps.

**Funding Agreement** means an agreement between the Commonwealth of Australia and the University governing the award of funds to the University under the ARC Linkage-Projects program for Linkage-Projects to commence in [insert relevant year and round of funding], a copy of which may be found at [http://www.arc.gov.au/ncgp/lp/lp\\_fundingagreement.htm](http://www.arc.gov.au/ncgp/lp/lp_fundingagreement.htm) within the ARC’s website.

**Individual Contributions** means the respective individual contributions of each party set out in Schedule 1.

**Individual Project Obligations** means the respective individual project obligations of each party set out in Schedule 1.

**In-kind Contributions** means the in-kind contributions set out in Schedule 1.

**IPRs** means all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

**Minimum Licence Terms** means the terms set out in clause 6.3 (Minimum Licence Terms).

**Project IPRs** means any IPRs which are created in carrying out the Research and which relate to the Research Purpose.

**Registrable IPRs** means Project IPRs which are capable of being registered.

**Reports** means the reports set out in Schedule 1.

**Research Confidential Information** means any confidential information created in carrying out the Research and which relates to the Research Purpose, including any Reports and any written disclosure of any Project IPRs which is provided to the Partner Organisations by the University, including pursuant to clause 6.1 (Project IPRs).

**Student** means a person enrolled as a student with the University under the rules and policies of the University.

SAMPLE

## Schedule 1 - Project and party details

<b>Funding Proposal title</b>	[insert title from award notice as approved by ARC.]
<b>ARC Reference Number</b>	[insert]
<b>Duration of the ARC Linkage grant</b>	[insert funding period. Note this will not necessarily correspond with the Research Period.]

### Part A: University

**Note:** All capitalised terms in column 1 of the following tables have the meaning given in column 2.

<b>The University/Administering Organisation</b>																
<b>The University of Sydney</b>	A body corporate under the University of Sydney Act 1989, ABN: 15 211 513 464, c/o Sydnovate, Level 5, SIT Building (J12), University of Sydney, NSW 2006															
<b>Project Officer</b>	Attention: Director, Sydnovate Telephone: (02) 9351 4000 Email: <a href="mailto:sydnovate@usyd.edu.au">sydnovate@usyd.edu.au</a> Fax: (02) 9351 3636															
<b>Individual Project Obligations</b>																
<b>Project Role</b>	[Insert general description of role the University is to undertake as part of the Research.]															
<b>Reports</b>	An annual written progress report and a final written project report on project completion as required under the Funding Agreement will be provided to the Partner Organisations upon request. [Insert any other reports the party will be required to provide to the Partner Organisation, include when required and manner of delivery.]															
<b>Other project obligations</b>	[Insert as relevant. If no further obligations, insert "Nil".]															
<b>Individual Contributions</b>																
<b>In-kind Contributions</b>	In-kind Contributions over the Research Period in the nature of [insert general description of nature of contributions] to be provided as follows: [If University will not provide in-kind contributions, insert "Not applicable".]															
	<table border="1"> <thead> <tr> <th></th> <th><b>Contribution</b></th> <th><b>When will be provided</b></th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td><b>Total</b></td> <td></td> <td></td> </tr> </tbody> </table>		<b>Contribution</b>	<b>When will be provided</b>										<b>Total</b>		
	<b>Contribution</b>	<b>When will be provided</b>														
<b>Total</b>																

## Part B: Partner Organisations

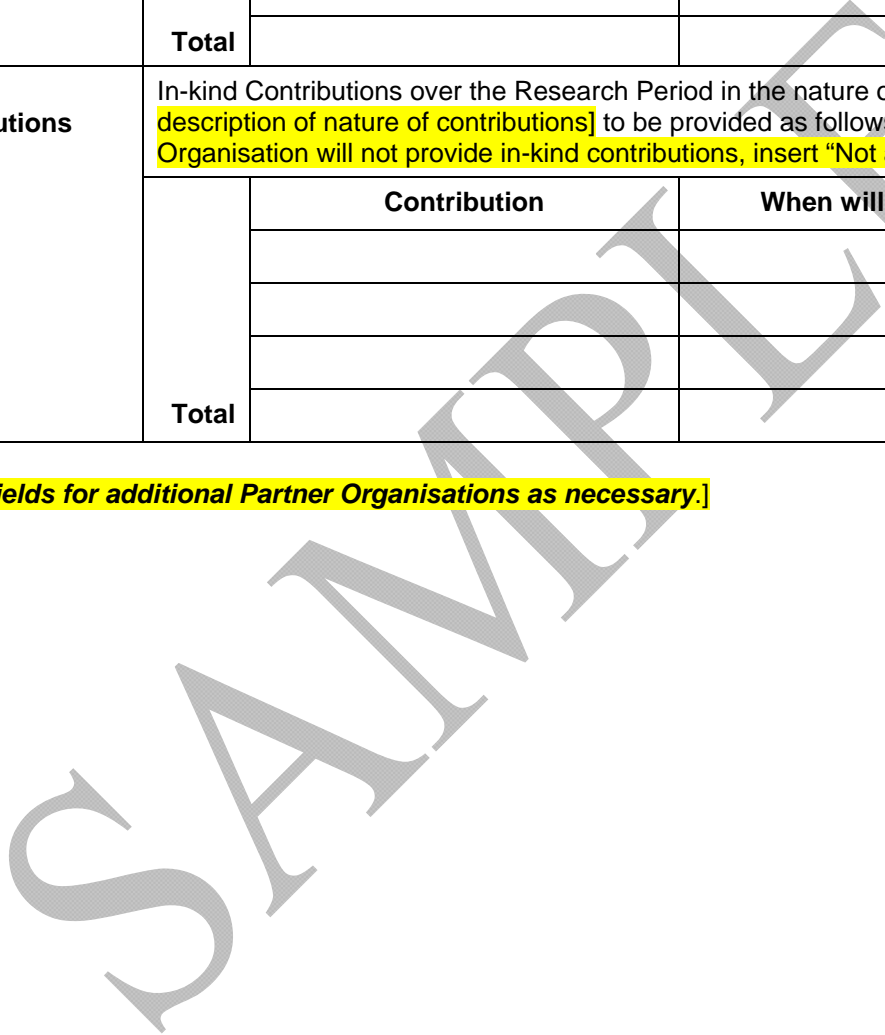
**Note:** All capitalised terms in column 1 of the following tables have the meaning given in column 2.

<b>[Insert Partner Organisation name]</b>	<b>[Insert full entity name, ABN, address.]</b>	
Project Officer	Attention: <b>[insert name]</b>	Telephone: <b>[insert]</b>
	Email: <b>[insert]</b>	Fax: <b>[insert]</b>
<b>Individual Project Obligations</b>		
<b>Project Role</b>	<b>[Insert general description of role the Partner Organisation is to undertake as part of the Research i.e. contribution of any Background IP or any other contributions required. If no participation in Research other than to provide financial contributions, insert "Nil".]</b>	
<b>Individual Contributions</b>		
<b>Financial Contributions</b>	<b>Financial Contributions over the Research Period to the value of \$ [insert total contribution amount] payable as follows: [If Partner Organisation will not provide financial contributions, insert "Not applicable".]</b>	
		<b>Amount</b>
		<b>Payment terms (eg invoicing requirements, payment period)</b>
	<b>Total</b>	
<b>In-kind Contributions</b>	<b>In-kind Contributions over the Research Period in the nature of [insert general description of nature of contributions] to be provided as follows: [If Partner Organisation will not provide In-kind Contributions, insert "Not applicable".]</b>	
		<b>Contribution</b>
		<b>When will be provided</b>
	<b>Total</b>	

<b>[Insert Partner Organisation name]</b>	<b>[Insert full entity name, ABN, address.]</b>	
Project Officer	Attention: <b>[insert name]</b>	Telephone: <b>[insert]</b>
	Email: <b>[insert]</b>	Fax: <b>[insert]</b>
<b>Individual Project Obligations</b>		
<b>Project Role</b>	<b>[Insert general description of role the Partner Organisation is to undertake as part of the Research as described in the Linkage application i.e. contribution of any Background IP or any other contributions required.]</b>	

Individual Contributions		
<b>Financial Contributions</b>	Financial Contributions over the Research Period to the value of \$[insert total contribution amount] payable as follows: [If Partner Organisation will not provide financial contributions, insert "Not applicable".]	
		<b>Amount</b>
	<b>Total</b>	
<b>In-kind Contributions</b>	In-kind Contributions over the Research Period in the nature of [insert general description of nature of contributions] to be provided as follows: [If Partner Organisation will not provide in-kind contributions, insert "Not applicable".]	
		<b>Contribution</b>
		<b>When will be provided</b>
	<b>Total</b>	

**[Insert fields for additional Partner Organisations as necessary.]**



## Schedule 2 - Research Plan

***[Insert detailed Research Plan describing the nature of the Research to be undertaken and any other relevant details including any Research work which is to be sub-contracted. This may be the Research Plan that was outlined in the Linkage projects application but should include any amendments to the project which have been made since that time for example in circumstances where the amount of the funding provided by the ARC is less than the amount applied for.]***

SAMPLE