

# **Remuneration Agreement**

between

**Copyright Agency Limited**

and

**Universities Australia**

and

**The Universities whose names and addresses  
appear in Annexure "A"**

**BAKER & MCKENZIE**

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## Remuneration Agreement

This Agreement is made on the

21st December 2007

Between

Copyright Agency Limited (ACN 001 228 799) of Level 15, 233 Castlereagh Street, Sydney, New South Wales

and

Universities Australia (ACN 008 502 930) of 1 Geils Court, Deakin, Australian Capital Territory.

and

The Universities whose names and addresses appear in Annexure "A".

### Recitals

- A. In 2002 the parties entered into an agreement to calculate and pay equitable remuneration for Licensed Copies and Licensed Communications. That agreement expires on 30 December 2007. This agreement extends the basis of that Agreement to include the years 2008 - 10.
- B. During this agreement studies to examine and report on the effectiveness of the current hardcopy monitoring system and the EUS will be jointly undertaken by the parties, with a view to improving the operation of each system.
- C. The parties wish to agree a simple and certain basis for the calculation and payment of equitable remuneration for Licensed Copies and Licensed Communications that are made by or on behalf of Monitored Universities and their Affiliated Institutions for the term of this agreement.
- D. The parties wish to agree on a Hardcopy System and Electronic Use System for the purposes of Sections 135ZW and 135ZWA of the Act.

## Operative provisions

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# 1. Definitions and Interpretation

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## 1.1 Definitions

Where commencing with a capital letter:

**"Act"** means the *Copyright Act 1968*;

**"Affiliated Institution"** means, in the case of each Monitored University, those bodies listed as its Affiliated Institutions in Annexure "B" together with any Educational Institution providing further and higher education which after the Commencement Date becomes affiliated with and controlled or administered by that University;

**"Agreed Rate"** means the overdraft rate for overdrafts of \$100,000 or more charged by CAL's bankers from time to time plus 1%, calculated on daily rests from the due date to the date of payment;

**"Communicate"** means communicate (as defined in s10 of the Act) to the public a copy of the whole or part of a Work, including a Copy, and Communication has a corresponding meaning;

**"Commencement Date"** means the date on which this Agreement is made, as set out at the head of this Agreement;

**"Continuing Education Students"** means students undertaking:

- (a) Open Learning Courses and those programs of study provided by any Monitored University or by Affiliated Institutions which are not Higher Education Courses; or
- (b) programs of study provided by Affiliated Institutions which do not lead to the granting of an academic award;

**"Contract Remuneration Period"** means the period commencing on 1 January 2008 and ending on 31 December 2010 or any later date provided for in clause 8.1, and **"Contract Remuneration Year"** means a calendar year during that period;

**"Copies"** means reproductions in a material form of the whole or a part of Works including reproductions of Works by electronic, magnetic or digital means or into electronic or digital formats, and Copying and Copied have corresponding meanings;

**"Earlier Agreement"** means any remuneration agreement between CAL, the Australian Vice Chancellors Committee and some or all of the Universities that are parties to this Agreement which was entered into prior to this Agreement.

**"Educational Institution"** means an educational institution as defined in section 10 of the Act;

**"Electronic Use System"** means the system described in Section Three of the document annexed and marked "C";

**"GST"** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the *A New Tax System (Goods and Services Tax) Act 1999*, or otherwise, on a supply;

**"Hardcopy System"** means the sampling system described in Section Two of the document annexed and marked "C";

**"Higher Education Courses"** means programs of study by any Monitored University, any of which are:

- (a) Award Courses, being programs of study provided by any Monitored University which lead to an academic award granted by that Monitored University or which qualify a student to enter a course at a higher level than a bachelor's degree;
- (b) Enabling Courses, being programs of study provided by any Monitored University which provides bridging or supplementary education for the purpose of enabling a person to undertake an Award Course at that Monitored University or at another Educational Institution;
- (c) Cross Institution Courses, being programs of study provided by any Monitored University undertaken by a student as part of an Award Course or an Enabling Course for which he or she is enrolled at another Educational Institution which is not an Affiliated Institution of the Monitored University; or

- (d) Non-Award Courses, being programs of study provided by any Monitored University which do not lead to an academic award granted by that Monitored University and which are units of study from an Award Course of that Monitored University, but not Open Learning Courses;

**"Index"** means the All Groups Consumer Price Index Number for the 8 capital cities published by the Australian Bureau of Statistics, or any price index substituted for it by the Australian Bureau of Statistics;

**"Insolvency Event"** means the happening of any of these events:

- (a) an application is made to a court for an order that the relevant party be wound up, declared bankrupt or that a provisional liquidator be appointed (unless the application is withdrawn, struck out or dismissed within 14 days of it being made);
- (b) a liquidator is appointed to the relevant party;
- (c) a resolution is passed or a decision taken to appoint an administrator to the relevant party or there is a controller appointed in respect of any of its assets;
- (d) except to reconstruct or amalgamate while solvent, the relevant party enters into, or resolves to enter into, an arrangement or composition with, or assignment for the benefit of, all of any of its creditors, or it, or anyone on its behalf, proposes a reorganisation, moratorium, deed of company arrangement or other administration involving any of them or the winding up or dissolution of that party;
- (e) the relevant party is, states that it is or is presumed under any applicable law to be, insolvent;
- (f) the relevant party becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
- (g) as a result of the operation of section 459F(1) of the Corporations Act, the relevant party is taken to have failed to comply with a statutory demand;
- (h) anything having a substantially similar effect to any of the events specified above happens to the relevant party under the law of any jurisdiction;

**"Licensed Communications"** means Communications made by or on behalf of Monitored Universities or their Affiliated Institutions in reliance on the Statutory Licence, including Communications made for or in connection with TAFE Students or Continuing Education Students, and Licensed Communicating has a corresponding meaning;

**"Licensed Copies"** means Copies made by or on behalf of Monitored Universities or their Affiliated Institutions in reliance on the Statutory Licence, including Copies made for or in connection with TAFE Students or Continuing Education Students and Licensed Copying has a corresponding meaning;

**"Monitored Universities "** means those universities named in Annexure "A";

**"Monitoring Body"** means the body appointed by Universities Australia and CAL to conduct the Hardcopy System and the Electronic Use System;

**"Monitoring System"** means, collectively, the Hardcopy System and the Electronic Use System;

**"New Entity"** means:

- (a) in relation to Universities Australia: if there is an increase in the number of Universities after the Commencement Date, each additional University; and
- (b) in relation to a University:
  - (i) if after the Commencement Date the University merges, affiliates or amalgamates with, or incorporates a TAFE institution, that part of the University which was previously the TAFE institution;
  - (ii) if after the Commencement Date the University undertakes a reconstruction so that part of the University becomes a TAFE institution administered separately from the University, that TAFE institution; or
  - (iii) if after the Commencement Date there is a change in the Affiliated Institutions of the University from those bodies listed in Annexure "B", any new Affiliated Institutions.

**"Open Learning Courses"** means programs of study provided by any Monitored University through Open Universities Australia Pty Ltd ACN 053 431 888 as part of an open learning program;

**"Remuneration"** means any amount calculated under clause 4.1(a) and payable to CAL as equitable remuneration by a Monitored University in accordance with clause 5.1. ;

**"Remuneration Notices"** means the remuneration notices given by each of the Monitored Universities to CAL bearing the dates specified in Annexure "A";

**"Statutory Licence"** means the licence under Part VB of the Act;

**"Surveyed University"** means each:

- (a) Monitored University;
- (b) class, faculty, school or department of that Monitored University;
- (c) Affiliated Institution or other body Copying or Communicating for or on behalf of that Monitored University,

which is the subject of any survey undertaken for the purposes of the Monitoring System and conducted in accordance with the Monitoring System and this Agreement;

**"TAFE Students"** means students of those TAFEs which are from time to time administered by Monitored Universities. Those Monitored Universities which administer TAFEs at the date of this Agreement are identified by asterisks in Annexure "A";

**"Tribunal"** means the Copyright Tribunal; and

**"University"** means a higher education institution which is a member of Universities Australia on the Commencement Date or at any other time during the term of this Agreement and any new higher education institution which comes into existence by any means (including mergers, affiliations, amalgamations or incorporations) during the term of this Agreement;

**"Works"** means literary, dramatic, musical and artistic works within the meaning of the Act other than works included in sound recordings or cinematograph films.

Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

## **1.2 Presumptions of interpretation**

Unless the context otherwise requires, a word which denotes:

- (a) the singular denotes the plural and vice versa; and
- (b) a person includes an individual, a body corporate and a government.

Unless the context otherwise requires, a reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
- (b) any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced;
- (c) a group of persons includes any one or more of them;
- (d) a thing or amount is a reference to the whole and each part of it; and
- (e) "including" is to be interpreted as having the same meaning as if it read "including but without limitation".

## **1.3 Liability is several**

An agreement, warranty, representation or obligation which is expressed to bind or benefit two or more persons under this Agreement binds or benefits each of those persons severally. Neither Universities Australia nor any University will be jointly or severally liable for the performance by any other University or party of its obligations under this Agreement which will remain the responsibility of that other party alone.

## **1.4 Successors and assigns**

A person includes the trustee, executor, administrator, successor in title and permitted assign of that person. This clause must not be construed as permitting a party to assign any right under this Agreement other than in accordance with clause 11.1.

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## 2. Acknowledgments

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- 2.1 In entering into this Agreement the parties acknowledge that the circumstances in which Copies, Communications, Licensed Copies and Licensed Communications are made, the uses to which they are put, the value they provide, the scope and construction of the Statutory Licence and its relationship with fair dealing and other defences and exceptions under the Act are unresolved. Accordingly, this Agreement is made with the intention that it will have no application beyond the period while it is in force and that it should not be regarded by the Tribunal or a Court as indicative or evidence of what any of the provisions of a reasonable agreement or arrangement between the parties might be after that period or what value any particular Copies, Licensed Copies, Communications or Licensed Communications might have.
- 2.2 The parties acknowledge that the amount of \$23,550,000 referred to in clause 4.1(a) does not reflect any agreement as to amounts of Licensed Copying or Licensed Communicating that have been done in the past, or which might be done by Monitored Universities or Affiliated Institutions prior to or during the Contract Remuneration Period, or the value that particular Copies, Licensed Copies, Communications or Licensed Communications might have, but rather is an amount that the Monitored Universities are prepared to pay for Licensed Copies and Licensed Communications during the Contract Remuneration Period and that CAL is prepared to accept, notwithstanding their continuing differences as to the unresolved matters referred to in clause 2.1.
- 2.3 The parties acknowledge and agree that the Electronic Use System has been agreed solely for the purposes of this Agreement and with the intent that it will have no application beyond the period while this Agreement is in force. The parties agree that the Electronic Use System should not be regarded by the Tribunal as indicative or evidence of what the appropriate objectives, methodology, scope, processes or terms of an electronic use system agreed or determined for the purposes of the Act should be.
- 2.4 The Statutory Licence exists in respect of both the exclusive rights to reproduce and to communicate Works. The parties acknowledge and agree that Remuneration payable under this Agreement is not separately attributed as between these exclusive

rights, or in respect of the application of either right to any subject-matter, and that the arrangements set out in this Agreement are not intended to attribute or admit any particular value, whether absolute or relative, to each of those rights separately.

- 2.5 CAL acknowledges that where a Monitored University provides information regarding the numbers of students to whom it was intended that a Licensed Copy should be made available online, the provision of such numbers is at the request of CAL and is not an admission by the Monitored University concerned that the number of students specified actually did access the material, nor that the mere fact that a student accessed material is in any way relevant to the calculation of equitable remuneration. CAL further acknowledges that in agreeing to provide information about Copies and Communications of "Course Packs" for the purpose of the Electronic Use System neither Universities Australia nor Monitored Universities admit that such Copies or Communications have a higher value than any other Copies or Communications.

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### **3. Remuneration Notices**

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- 3.1 Each of the Monitored Universities agrees that in consideration of its rights and benefits under this Agreement it will not exercise any right to revoke any of its Remuneration Notices with effect before the earlier of 31 December 2010 or the date of any earlier termination of this Agreement with respect to that Monitored University.

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### **4. Remuneration and Licensed Copying and Licensed Communications**

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- 4.1 (a) The aggregate amount of Remuneration payable to CAL by all Monitored Universities for all Licensed Copies and Licensed Communications for each calendar year during the Contract Remuneration Period will be calculated using the following formula:

A x B

Where:

A = \$23,550,000

B = Current CPI ÷ CPI December quarter 2007

Where:

"Current CPI" means the Index last published by the Australian Bureau of Statistics before 1 January in the calendar year concerned;

"CPI December quarter 2007" means the December quarter 2007 Index published by the Australian Bureau of Statistics.

- (b) If a New Entity comes into existence then either Universities Australia or CAL may by notice in writing served upon the other request that the amount of \$23,550,000 referred to in paragraph 4.1(a) ("**Amount**"), be adjusted. If the parties cannot agree the appropriate adjustment within 2 months of the said notice being given then this Agreement will not apply to the New Entity. Where any New Entity is not a separate legal entity but is part of a University, this Agreement will not apply with respect to Copying and Communication by or on behalf of those students and staff for which the New Entity is responsible but, notwithstanding this paragraph, will continue to apply to the balance of the University.
- (c) In the event that this Agreement should terminate or expire for any reason prior to 31 December in any year during the Contract Remuneration Period, the amount of Remuneration payable by all Monitored Universities with respect to that calendar year will be pro rated to account for that part of the year during which this Agreement was in effect.
- (d) Universities Australia shall determine the proportion of Remuneration payable by each Monitored University to CAL during the Contract Remuneration Period in accordance with the terms of an agreement between Universities Australia and the Monitored Universities. CAL accordingly undertakes to invoice Monitored Universities, and each Monitored University undertakes to pay CAL, the amounts determined by Universities Australia from time to time in accordance with the provisions of Clause 5.1 below.

- 4.2 (a) CAL agrees that it will not conduct or attempt to conduct, or be directly or indirectly involved in, any pilot study of any Licensed Copying or Licensed Communicating at a University without the prior written consent of Universities Australia.
- (b) Subject to clause 7.6, CAL agrees that it will not bring, or in any way encourage others in respect of any action, claim, demand or proceeding (whether before, during or after the Contract Remuneration Period) against Universities Australia or any Monitored University (or its Affiliated Institutions) with respect to any Copying in hardcopy form or analog form by or on behalf of that Monitored University (or its Affiliated Institutions) which is:
- (i) done at any time during the Contract Remuneration Period that the Monitored University is a party to this Agreement; and
  - (ii) is not marked as Licensed Copying so as to comply with the requirements of sub-section 135ZX(3) of the Act;

if that Monitored University could have relied on the Statutory Licence with respect to that Copying if it had marked it in the manner required by sub-section 135ZX(3). For the avoidance of doubt, and by way of one example only, if Copies in hardcopy or analog form are made by or on behalf of a Monitored University during the Contract Remuneration Period (and while it is a party to this Agreement) in purported reliance upon either a fair dealing, insubstantial portion or similar exception or exemption under the Act, or in purported reliance upon a permission or licence from the relevant copyright owner, and CAL or any member of CAL disputes the availability or application of the relevant exception, exemption or permission or licence, then CAL will not bring any action, claim, demand or proceeding to the extent that the Copying could have been done in reliance upon the Statutory Licence. This paragraph 4.2(b) will not apply if the relevant Monitored University is a Surveyed University at the time of the Copying unless it has complied with the Monitoring System requirements with respect to that Copying.

- (c) Subject to paragraph 4.2(d), CAL agrees that if it becomes aware of any Copy in electronic form or any Communication by or on behalf of a Monitored University (or its Affiliated Institution) which:
- (i) is done at any time during the term of this Agreement; and
  - (ii) does not contain a notice so as to comply with s 135ZXA(a) of the Act;

then provided that that Monitored University could have relied on the Statutory Licence with respect to that Copy or Communication if it had complied with s 135ZXA(a) of the Act, CAL will not bring any action, claim, demand or proceeding (whether before, during or after the Contract Remuneration Period) for the payment of money (whether sounding in damages or otherwise) against Universities Australia or any Monitored University (or its Affiliated Institutions) with respect to that Copy or Communication, and that its only remedy as against the Monitored University is to require the Monitored University to comply with s 135ZXA(a) in respect of the Copy or Communication. Universities Australia agrees that if it receives written notice of any such non-compliance it will use its reasonable best efforts to procure future compliance by the relevant Monitored University. This paragraph 4.2(c) will not apply if the relevant Monitored University is a surveyed University at the time of the Copy or Communication unless it has complied with the Monitoring System in respect of that Copy or Communication.

- (d) Notwithstanding paragraph 4.2(c) above, if there is any Communication by or on behalf of a Monitored University (or its Affiliated Institution) which is done at any time during the term of this Agreement and which does not contain a notice so as to comply with a s135ZXA(a) of the Act then the Monitored University cannot assert or claim any rights or benefit under this Agreement in response to any infringement or other claim, demand or action by a third party in respect of that Communication (or any Copy the subject of that Communication) unless:

- (i) the Communication was of such a type as would have been recorded by the Monitored University under the Electronic Use System if it had been a Surveyed University at the time of the Communication; and
- (ii) it had in place at that time a system to secure compliance with the notice requirements of s135ZXA(a) with respect to all Communications for which it could rely on the Statutory Licence, and the failure of the relevant Communication to contain such a notice was the result of an individual error, inadvertence or failure to comply with the system.

Monitored Universities further acknowledge and agree that they have no indemnity or other right against CAL under this Agreement in respect of any damages, costs or other liability suffered or incurred by them in respect of any such third party claim.

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## **5. Payment of Remuneration**

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- 5.1 Universities Australia shall notify CAL by no later than 31 December in each Contract Remuneration Year of the proportion of Remuneration payable by each Monitored University in respect of the following Contract Remuneration Year. (For 2008 Universities Australia will notify CAL by 31 December 2007 of the proportion of Remuneration payable by each Monitored University). The proportion of Remuneration payable by each Monitored University with respect to each Contract Remuneration Year shall be invoiced by CAL, and payable by the Monitored University, in four equal quarterly instalments. Invoices shall be sent by CAL to each Monitored University on or after 1 January, 1 April, 1 July and 1 October in each Contract Remuneration Year and shall be payable by each of them within 28 days of receipt. A copy of the invoices will also be provided to the Universities Australia at the same time.
- 5.2 A Monitored University will pay CAL interest on any money due and payable by it and outstanding under this Agreement at the Agreed Rate, which will accrue daily from the due date to and including the date of payment.

- 5.3 Remuneration calculated under paragraph 4.1(a) and payable under clause 5.1, is, subject to paragraph 4.1(b), full remuneration for all Licensed Copies and Licensed Communications made by or on behalf of a Monitored University and its Affiliated Institutions, including those made in connection with TAFE Students and Continuing Education Students, with respect to the Contract Remuneration Period while it is a party to this Agreement.

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## **6. Notices to and by Universities**

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- 6.1 CAL acknowledges and agrees that each of the Monitored Universities has authorised Universities Australia to receive all notices issued or given by CAL under this Agreement and that any notice issued or given by CAL to a Monitored University which is not addressed to Universities Australia on behalf of that Monitored University, and sent to Universities Australia's address, will not be effectively given or issued to that Monitored University for the purposes of this Agreement.
- 6.2 Any Monitored University giving any notice to CAL under this Agreement must on the same day give Universities Australia a copy of that notice.
- 6.3 If a notice is given under this Agreement (other than a notice given under clause 8.1) and any period is specified with respect to the operation or effect of that notice then the party giving that notice may withdraw that notice by writing to all other parties at any time during that period in which case the notice will be treated as though it had never been given.

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## **7. Future actions**

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- 7.1 Subject to clauses 7.3, 7.6 and 9.6(e), CAL agrees not to bring any action, claim, demand or proceeding, nor to make any application to the Tribunal or to any court, nor to seek any further order in any current proceedings, nor directly or indirectly encourage any such action, claim, demand, proceeding or application by any third person:

- (a) against any Monitored University or its Affiliated Institutions arising from or in connection with any Licensed Copies or Licensed Communications made by or on behalf of that University or Affiliated Institution at any time during the term of this Agreement; or
- (b) against any Monitored University or Affiliated Institution arising from or in connection with Copying or Communicating in the context of any unresolved matter referred to in Clause 2.1 during the term of this Agreement (including any action, claim or demand for the payment of money, whether sounding in damages or otherwise); or
- (c) seeking any amendment of any system comprised in the Monitoring System referred to in clause 9;
- (d) seeking any equitable (including injunctive or declaratory) relief against any Monitored University or Affiliated Institution arising from or in connection with any of the unresolved matters referred to in Clause 2.1 during the term of this Agreement; or
- (e) seeking relief in respect of any claim arising under any notice given or purported to have been given under Section 135ZY of the Act prior to the Commencement Date.

7.2 Subject to clause 7.3 and clause 9.6(e), Universities Australia and the Monitored Universities each agrees not to bring any action, claim, demand or proceeding, nor to make any application to the Tribunal or to any court, nor to seek any further order in any current proceedings, nor directly or indirectly to assist in or encourage the bringing of any such action, claim, demand, proceeding or application by any third person:

- (a) seeking any amendment to any system comprised in the Monitoring System referred to in clause 9; or
- (b) regarding the recording of any information or the provision of any information, records or notices in terms of any system comprised in the Monitoring System referred to in clause 9, whether before or during the term of this Agreement.

- 7.3 Without limiting the provision of clauses 7.1 or 7.4, each of the parties remains free to pursue future Tribunal, court or other proceedings in respect of any right and remedy it may have arising from any breach by another party of any provision of this Agreement.
- 7.4 Each of Universities Australia, CAL and the Monitored Universities agrees that it will not, whether during or after the Contract Remuneration Period, make any application to the Tribunal or to any court, or seek any order in any current proceedings, to the extent that those applications or orders have the object or likely effect of adding to, reducing or varying any amount payable under this Agreement with respect to Licensed Copying or Licensed Communication.
- 7.5 Subject to clauses 7.3 and 7.6, CAL agrees that it will not directly or indirectly encourage the bringing of any claim, action, demand or proceeding by any other party, whether for copyright infringement, breach of contract or otherwise, and whether brought during or after the term of this Agreement, which might result in the payment of damages or any other amount in addition to Remuneration, calculated under clause 4 and payable under clause 5, being payable by any Monitored University or its Affiliated Institutions with respect to Licensed Copies or Licensed Communications made or communicated by that University or its Affiliated Institutions, including those made in connection with TAFE Students and Continuing Education Students, while it is a party to this Agreement.
- 7.6 The provisions of clauses 4.2, 7.1 and 7.5 shall not prevent CAL from assisting any member of CAL who brings any action, claim, demand, or proceeding or makes any application contemplated in those clauses by providing them with information if, and only to the extent that, CAL is obliged to do so in terms of its constitution or agreements with members.

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## **8. Term, default and termination**

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- 8.1 This Agreement commences on the Commencement Date and will continue until at least 31 December 2010, unless terminated earlier by any party in accordance with the remaining provisions of this clause 8. If neither Universities Australia nor CAL gives at least 6 months written notice to the other, expiring on 31 December 2010,

that it wishes this Agreement to terminate on and from that date then it will be automatically renewed for subsequent calendar years unless and until either of them gives at least 6 months written notice to the other, expiring on 31 December in any year after 2010, that it wishes to terminate the agreement with effect from that date. Each Monitored University whose Remuneration Notices remain in force and effect after 31 December 2010 will remain a party to this Agreement, to the extent that this Agreement remains in force, unless and until it exercises its right to revoke its Remuneration Notices and that revocation becomes effective.

8.2 CAL may terminate this Agreement by notice in writing with respect to any Monitored University if:

- (a) that Monitored University fails to pay any amount due and payable to CAL under this Agreement and fails to rectify that breach within 7 days of receiving written notice requiring it to do so, or breaches this Agreement in any other material respect and fails to rectify that breach within 28 days.;
- (b) that University ceases to be an Educational Institution; or
- (c) an Insolvency Event occurs in respect of the Monitored University;

and with respect to Universities Australia and all Monitored Universities if:

- (d) CAL is not the only collecting society declared under the Act as a collecting society for the purposes of any statutory licence which is at any time during the Contract Remuneration Period provided for in the Act in connection with the making, communication or use of Copies or Communications for educational purposes; or
- (e) the Act is amended to incorporate any new statutory licensing regime with respect to the copying or communication by Monitored Universities of Works being a statutory licensing regime for which CAL is not the only collecting society declared under the Act.

8.3 Any Monitored University may terminate this Agreement, with respect to that Monitored University, by notice in writing if:

- (a) CAL breaches this Agreement in a material respect and fails to rectify that breach within 28 days of receiving written notice requiring it to do so;  
or
- (b) an Insolvency Event occurs with respect to CAL.

8.4 Universities Australia may terminate this Agreement by notice in writing if:

- (a) CAL breaches this Agreement in a material respect and fails to rectify that breach within 28 days of receiving written notice requiring to do so;
- (b) an Insolvency Event occurs with respect to CAL; or
- (c) it has been terminated by or with respect to all Monitored Universities; or
- (d) CAL is not the only collecting society declared under the Act as a collecting society for the purposes of any statutory licence which is at any time during the Contract Remuneration Period provided for in the Act in connection with the making, communication or use of Copies or Communications for educational purposes; or
- (e) the Act is amended to incorporate any new statutory licensing regime with respect to the copying or communication by Monitored Universities of Works being a statutory licensing regime for which CAL is not the only collecting society declared under the Act.

8.5 Termination or expiration of this Agreement under this clause is without prejudice to any other rights or remedies contained in this Agreement or provided by law or equity, including any right of any party to recover damages for breach of this Agreement, or to enforce any obligation arising under this Agreement accrued at the date of termination or expiration.

8.6 If this Agreement is terminated with respect to any one Monitored University by that Monitored University, but not by Universities Australia or CAL, then the parties agree that it shall continue in full force and effect with respect to all other Monitored Universities unless expressly terminated by or with respect to them in accordance with its terms.

- 8.7 A Monitored University which during the Contract Remuneration Period ceases to be a member of Universities Australia shall, notwithstanding that fact, continue to be a party to this Agreement and shall continue to comply with all of its obligations in accordance with the terms hereof.

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## **9. Monitoring System**

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- 9.1 The Monitoring System determined by agreement between the parties in accordance with Sections 135ZW and 135ZWA of the Act is the Hardcopy System, together with the Electronic Use System.
- 9.2 Subject to any agreement pursuant to clause 9.7, no party may vary the manner in which any Hardcopy System or Electronic Use System in force at any time during the term of this Agreement is conducted or otherwise interfere with those systems without the agreement of CAL and Universities Australia.
- 9.3 Subject to clause 9.6, the parties will during the term of this agreement jointly undertake two studies conducted by an independent organisation(s) to examine and report on each of the Hardcopy System and the Electronic Use System.
- 9.4 Subject to clause 9.6, the scoping for and the terms of reference of the studies referred to in clause 9.3, and the selection and the appointment of the independent organisation will be jointly undertaken by CAL and Universities Australia.
- 9.5 Subject to clause 9.7, CAL and Universities Australia must use their best endeavours to examine and review the findings of those studies referred to in clause 9.3, and to agree what amendments, if any, to make to the Monitoring System as a result of the studies. In the event that CAL and Universities Australia are unable to reach agreement on this question the procedure in Clause 9.7 will be followed”.
- 9.6 CAL and Universities Australia must each use their best endeavours to reach agreement on the matters set out at clauses 9.3 and 9.4. In the event that CAL and Universities Australia are unable to reach agreement on any matter relevant to one or both of the studies referred to in clause 9.3, including, without limitation, the scoping of the studies, the terms of reference or the selection and appointment of the independent body, the parties agree that:

- (a) CAL will set out in writing a detailed outline of its proposed study or studies (the CAL Proposal) including without limitation scoping, terms of reference and the proposed independent body;
- (b) Universities Australia will consider the CAL Proposal in good faith and will, within 28 days of receiving the CAL Proposal, set out in writing a detailed response to the CAL Proposal (the Universities Australia Response) including any amendments which Universities Australia would require before giving its approval to the CAL Proposal;
- (c) CAL will consider the Universities Australia Response in good faith;
- (d) if CAL accepts the Universities Australia Response, the parties will jointly instruct the agreed independent body to carry out the study or studies in accordance with the Universities Australia Response;
- (e) if CAL rejects the Universities Australia response, either CAL or Universities Australia will be free to apply to the Copyright Tribunal to make an order regarding the scoping of the studies, the terms of the studies, the terms of reference or the selection and appointment of the independent body. For the purpose of section 135ZWAA of the Act, the parties agree and accept that determination of the scoping for the studies, the terms of reference and selection and appointment of the independent body are necessary and convenient matters to facilitate future compliance by a University and CAL with Division 5 of Part VB of the Act

9.7 If at any time after the Commencement Date Universities Australia or CAL wishes to amend the Monitoring System (for example, to alter the monitoring contemplated by the Electronic Use System beyond copying and communications at central facilities of Monitored Universities to include departments at those universities) then it must give written notice to the other party setting out its proposed amendments and the reasons for its proposal. The proposal must be consistent with the design of the Monitoring System and the requirements of the Act. Universities Australia and CAL must use their best endeavours to examine and review such changes and negotiate and agree what amendments (if any) to make to the Monitoring System in response to the request. If Universities Australia and CAL

fail to agree a position within 2 months of any such request then the party who proposed the amendments may seek the recommendations of the Monitoring Body concerning the amendments proposed by it in its written notice. Universities Australia and CAL must negotiate in good faith and use their best endeavours to reach agreement on amendments (if any) to the Monitoring System within two months of receiving the Monitoring Body's recommendations.

- 9.8 With reference to the Monitoring System, the parties record and agree that as the parties have expressly agreed the Remuneration payable for the term of this Agreement, the Monitoring System is intended to be used to obtain information regarding Licensed Copying and Licensed Communication for the purpose of facilitating the distribution of payments by CAL to copyright owners.
- 9.9 Each of the parties undertakes and warrants that it will comply with its obligations under the Monitoring System including any amendments made pursuant to clause 9.7.

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## **10. Obligations of Universities Australia and Monitored Universities**

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- 10.1 If it receives written notice from CAL that it has become aware that a Communication by or on behalf of a Monitored University does not comply with sub-section 135ZXA(a) of the Act, Universities Australia must use its reasonable best efforts to procure future compliance by the relevant Monitored University and the Monitored University concerned must comply.
- 10.2 Without limitation, if a Monitored University is selected pursuant to the Monitoring System to take part in the Monitoring System it will comply with the obligations specified in the Monitoring System.
- 10.3 If a Monitored University fails to comply with its obligations under clause 10.2, the Monitoring Body may require that University to further participate in the Monitoring System in any manner determined by the Monitoring Body or, at the discretion of the Monitoring Body, to pay the costs of Universities Australia and CAL in replacing that Monitored University with another University.

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## **11. Miscellaneous**

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### **11.1 Assignment**

CAL and each Monitored University may only assign a right under this Agreement with the prior written consent of the other parties. Universities Australia may only assign a right under this Agreement with the prior written consent of all Monitored Universities and CAL.

### **11.2 Entire agreement**

This Agreement embodies the entire understanding and Agreement between the parties as to the subject matter of this Agreement.

All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement.

### **11.3 Earlier Agreement**

Nothing in this Agreement is intended to limit or otherwise affect any obligation in any Earlier Agreement which is expressed in that Earlier Agreement as being a continuing obligation or which is an obligation which would otherwise have effect beyond the term of that Earlier Agreement.

### **11.4 GST**

The parties acknowledge that the calculation of Remuneration in clause 4 does not include GST. To the extent that any supply for which such Remuneration is payable is a taxable supply, the Remuneration may be increased by an amount determined by CAL, not exceeding the amount of the monies multiplied by the rate at which GST is imposed in respect of CAL. CAL must issue a Tax Invoice to each Monitored University receiving a supply to which this clause applies.

### **11.5 Governing law and jurisdiction**

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 Tribunal and the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

## **11.6 Amendments to the Act**

- (a) The parties agree that if, as a result of any amendments to the Act, the Monitored Universities are required to give further remuneration notices, or undertake further or new obligations, in order to receive the benefit of the existing, new or amended statutory licences (the "altered licences") under the Act to copy or communicate any Works, or to take advantage of any other right of copyright with respect to Works which becomes the subject of the altered licences, for educational purposes then:
  - (i) subject to paragraph (b) below, any undertaking by the Monitored Universities (whether contained in those remuneration notices or the Act as amended or otherwise) to pay equitable remuneration with respect to the exercise of those altered licences will be taken to have been complied with in full during the term of this Agreement if the amounts calculated under clause 4.1 and payable under clause 5.1 are paid; and
  - (ii) they will discuss in good faith what further information, notices or records need to be provided or kept with respect to the exercise of those altered licences by a Monitored University which is surveyed as part of the Monitoring System in an effort to agree appropriate modifications to the Monitoring System. Failing agreement a Monitored University which is surveyed will provide such information, notices and records during the survey as the Act (as amended) would require of any University which wished to exercise the same altered licences but was not a Monitored University except that, if the Act (as

amended) leaves such matters to be agreed by the Monitored University with CAL or, in default of agreement, to be decided by the Tribunal, then CAL or the relevant Monitored University may apply to the Tribunal to determine an appropriate Monitoring System or appropriate additions and/or modifications to the Monitoring System and to the records guidelines, protocols, undertakings and other documents comprised or referred to in the Monitoring System.

## **11.7 Surviving Provisions**

Clauses 2.1, 2.2, 2.3, 2.4, 2.5, 4.2(b) and 7 will survive any expiry or termination of this Agreement.

## **11.8 Notice of Affiliated Institutions**

In December in each Contract Remuneration Year each Monitored University will give Universities Australia notice specifying any change to its Affiliated Institutions as at the date of the notice. Universities Australia will give CAL notice of any such changes on or before 31 January of the following Contract Remuneration Year.

Executed as an agreement.

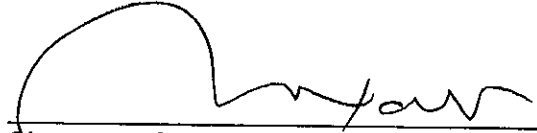
Signed for and on behalf of )  
Copyright Agency Limited )  
by its duly authorised representative )  
in the presence of: )



Signature of witness

Ross McLean

Name of witness (please print)



Signature of authorised representative

Jane Alexander

Name of authorised representative  
(please print)

Signed for and on behalf of )  
Universities Australia )  
by its duly authorised representative )  
in the presence of: )



Signature of witness

Ross McLean

Name of witness (please print)

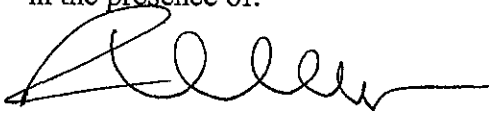


Signature of authorised representative

Glenn Withers

Name of authorised representative  
(please print)

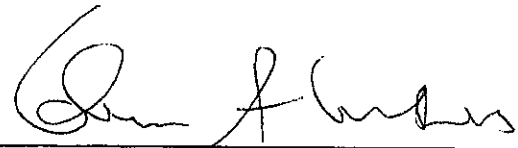
Signed for and on behalf of each of the )  
Monitored Universities )  
by its duly authorised representative )  
in the presence of: )



Signature of witness

Ross McLean

Name of witness (please print)



Signature of authorised representative

Glenn Withers

Name of authorised representative (please  
print)

## Annexure "A"

### Monitored Universities and Remuneration Notices

	University	Date of Notice	
		Sampling	Electronic Use
1	The University of Adelaide	20 . 02 . 2001	20 . 02 . 2001
2	The Australian National University	19 . 02 . 2001	19 . 02 . 2001
3	Australian Catholic University	21 . 02 . 2001	21 . 02 . 2001
4	University of Ballarat*	14 . 02 . 2001	14 . 02 . 2001
5	Bond University	26 . 02 . 2001	26 . 02 . 2001
6	University of Canberra	20 . 02 . 2001	20 . 02 . 2001
7	Central Queensland University	23 . 02 . 2001	23 . 02 . 2001
8	Charles Sturt University	15 . 02 . 2001	15 . 02 . 2001
9	Curtin University of Technology*	16 . 02 . 2001	16 . 02 . 2001
10	Deakin University	19 . 02 . 2001	19 . 02 . 2001
11	Edith Cowan University*	21 . 02 . 2001	21 . 02 . 2001
12	The Flinders University	19 . 02 . 2001	19 . 02 . 2001
13	Griffith University	23 . 02 . 2001	23 . 02 . 2001
14	James Cook University	20 . 02 . 2001	20 . 02 . 2001
15	LaTrobe University	26 . 02 . 2001	26 . 02 . 2001
16	Macquarie University	26 . 02 . 2001	26 . 02 . 2001
17	The University of Melbourne*	22 . 02 . 2001	22 . 02 . 2001
18	Monash University	23 . 02 . 2001	23 . 02 . 2001
19	Murdoch University	19 . 02 . 2001	19 . 02 . 2001
20	The University of New England	15 . 02 . 2001	15 . 02 . 2001
21	University of New South Wales	13 . 02 . 2001	13 . 02 . 2001
22	The University of Newcastle	27 . 02 . 2001	27 . 02 . 2001
23	Charles Darwin University*	22 . 02 . 2001	22 . 02 . 2001
24	The University of Queensland	22 . 02 . 2001	22 . 02 . 2001
25	Queensland University of Technology	13 . 02 . 2001	13 . 02 . 2001
26	Royal Melbourne Institute of Technology*	26 . 02 . 2001	26 . 02 . 2001
27	Southern Cross University	13 . 02 . 2001	13 . 02 . 2001
28	Swinburne University of Technology*	14 . 11 . 2001	26 . 02 . 2001
29	The University of Sydney	23 . 02 . 2001	23 . 02 . 2001
30	University of Tasmania	23 . 02 . 2001	23 . 02 . 2001
31	University of South Australia	21 . 02 . 2001	21 . 02 . 2001
32	University of the Sunshine Coast	26 . 02 . 2001	26 . 02 . 2001
33	University of Technology, Sydney	22 . 02 . 2001	22 . 02 . 2001
34	Victoria University*	23 . 02 . 2001	23 . 02 . 2001
35	The University of Western Australia	23 . 02 . 2001	23 . 02 . 2001
36	University of Western Sydney	23 . 02 . 2001	23 . 02 . 2001
37	University of Wollongong	19 . 02 . 2001	23 . 02 . 2001

\* denotes universities which administer TAFEs

## Annexure "B"

### Affiliated Institutions for each Monitored University

UNIVERSITY	AFFILIATED INSTITUTIONS
The University of Adelaide	ARI Pty Ltd
Australian Catholic University	None
University of Ballarat	The School of Mines and Industries Ballarat Ltd Inskill Ltd
Bond University	Campus Operations Pty Ltd Lashkar Pty Ltd Bond University Services Pty Ltd Bond University Staff Services Pty Ltd University of Canberra College Pty Ltd
University of Canberra	
Central Queensland University	WaterEd Australia Pty Ltd C Management Services Pty Ltd CDU Foundation
Charles Darwin University	
Charles Sturt University	Charles Sturt Services Ltd Mitchell Services Ltd Olive Street Services Ltd Rivservices Ltd
Curtin University	None
Deakin University	Unilink Ltd Callista Software Services Pty Ltd CANOPI Networks Pty Ltd VCAMM Limited.
Edith Cowan University	ECURL Pty Ltd
Flinders University	Flinders Consulting Pty Ltd Flinders Technologies Pty. Ltd Flinders Bioremediation Pty Ltd Flinders Reproductive Medicine Pty Ltd Natiional Institute of Labour Studies Inc NILS Foundation
James Cook University	MICRRH
Macquarie University	ARC Centre of Excellence for Coral Reef Studies CMBF Ltd Macquarie Research Ltd
Murdoch University	Macquarie Graduate School of Management Pty Ltd Cryptogen Pty ltd University Ivestment Company Pty Ltd Murdoch Investments Company Pty Ltd MurdochLINK Pty Ltd Murdoch Retirement Services Ltd MS Biotechnology Pty Ltd Murdoch Ventures Pty Ltd Murdoch ILO Pty Ltd Diva Solutions Pty Ltd Lib Pty Ltd
The University of Newcastle	University of Newcastle Research Associates Ltd The GraduateSchool.com Pty Ltd

**UNIVERSITY****AFFILIATED INSTITUTIONS**

<b>UNIVERSITY</b>	<b>AFFILIATED INSTITUTIONS</b>
	NUSport Limited
<b>The University of New England</b>	UNE Partnerships UNESA UNE Postgraduates Association Animal Genetics Breeding Unit
<b>The University of Queensland</b>	UniQuest Group Uniquet Pty Ltd IMBcom Pty Ltd
<b>Royal Melbourne Institute of Tech.</b>	RMIT Training Pty Ltd Meltech Services Ltd RMIT International Pty Ltd RDDT Pty Ltd RMIT International University Vietnam Limited RMIT Vietnam Holdings Pty Ltd Spatial Vision Innovations Pty Ltd
<b>Southern Cross University</b>	Norsearch Ltd
<b>University of South Australia</b>	ITEK University of South Australia Foundation Inc
<b>The University of Sydney</b>	The Museum of Contemporary Art Ltd The University of Sydney Union Wentworth Annexe Ltd Rural Australia Foundation Ltd Centre for Agricultural Risk Management Pty Ltd
<b>University of Tasmania</b>	None
<b>University of Technology, Sydney</b>	Insearch Ltd AccessUTS Pty Limited
<b>Victoria University of Technology</b>	Victoria University Enterprises Pty Ltd Victoria University of Technology Foundation Ltd Advanced Powder Technology Pty Ltd
<b>The University of Western Australia</b>	WA New Materials Technology Centre Pty Ltd (known as WANMATC Pty Ltd) Vitrostone Ltd Paradigm Diagnostics Ltd Integral Leadership Centre Ltd (previously GSM Executive Programs Ltd) Media Farm Pty Ltd (previously Centre for Water Research Pty Ltd) Alzhyme Pty Ltd Canola Breeders Western Australia Pty Ltd Pestat Limited Inner Vision Biometrics Pty Ltd Sanctuary Systems Pty Ltd Ausmodel Pty Ltd
<b>University of Western Sydney</b>	University of Western Sydney Foundation Ltd Cadre Pty Ltd Sydney West International College Pty Ltd UWS Conference & Residential Colleges Ltd Whitlam Institute Sydney Graduate School of Management (SGSM) Linkwest UWS Hawkesbury Foundation Ltd Illawarra Technology Corporation Ltd ANU Enterprise Pty Ltd
<b>University of Wollongong</b>	
<b>The Australian National University</b>	
<b>Latrobe University</b>	La Trobe Marketing Pty Ltd Medical Centre Development Pty Ltd La Trobe Winter Sport and Tourism Education Pty Ltd

**UNIVERSITY****AFFILIATED INSTITUTIONS**

**Swinburne University of Technology**

**Griffith University  
The University of Melbourne**

**Monash University**

**The University of New South Wales**

**Queensland University of Technology**

Swinburne Limited  
Swinburne Student Amenities Association Limited  
Swinburne (Holdings) Pty Ltd  
National Institute of Circus Arts Limited  
Swinburne Ventures Limited  
Griffith Medical Research Institute Ltd  
Victorian College of the Arts  
Melbourne Enterprises International Limited  
Meanjin Company Limited  
Australian Music Examinations Board (Vic) Ltd  
Australian International Health Institute (University of  
Melbourne) Limited  
Land and Food Services Limited  
Melbourne Business School Ltd  
The School of Forestry Creswick Ltd  
Australian National Academy of Music Limited  
Monash University Foundation Pty Ltd  
Monash International Pty Ltd  
Monash IVF Pty Ltd  
Monash College Group Pty Ltd  
Monash Commercial Pty Ltd  
Monyx Pty Ltd  
Monyx Education Services Pty Ltd  
Monash University South Africa  
Monash Southern Africa Pty Ltd  
Montech Pty Ltd  
AGSM Ltd  
AGSM Consulting Ltd  
University of New South Wales International House Ltd  
University of New South Wales Press Ltd  
NewSouth Innovations Pty Ltd  
Acyte Biotech Pty Ltd  
Cystemix Pty Ltd  
Qucor Pty Ltd  
HepatoCell Therapeutics Pty Ltd  
NewSouth Global Pty Ltd  
UNSW (Singapore) Pte Ltd  
  
UNSW (Hong Kong) Ltd  
UNSW Asia School Ltd  
NewSouth Global India Pvt Ltd  
NewSouth Global (Thailand) Ltd  
UNSW (Thailand) Ltd  
Australian Education Consultancy Ltd  
AUSTIL Australian Institute of Languages  
UNSW Asia Ltd  
The University of New South Wales Foundation Ltd  
UNSW Professorial Superannuation Pty Ltd  
UNSW Hong Kong Foundation Limited  
UNSW & Study Abroad - Friends and US Alumni, Inc.  
Geneco Pty Ltd  
QUT Enterprise Holdings Pty Ltd  
QUT Innovation Pty Ltd  
CIP Pty Ltd  
Brisbane Graduate School of Business Pty Ltd  
AHURI Queensland Research Centre Limited  
Injury Prevention and Control (Australia) Limited  
ACID Pty Ltd  
ACRE Limited

**UNIVERSITY**

**AFFILIATED INSTITUTIONS**

CIEAM Pty Ltd  
Diatech Pty Ltd  
ICON.Net Pty Ltd  
Farmacule BioIndustries Pty Ltd  
Tissue Therapies Pty Ltd  
Eyeline Publishing Limited