



**UNIVERSITY *of***  
**TASMANIA**

# **Deed of Agreement**

**between**

**University of Tasmania (the 'University')**

**and**

**The Royal Society of Tasmania (the 'Society')**

**Each a 'Party' and together the 'Parties'**

**Legal Services**  
**University of Tasmania**  
**Churchill Avenue**  
**Sandy Bay**  
<http://www.utas.edu.au/legal-services>

## RECITALS

- A. The object of the Society as stated in the Society rules is "The advancement of Knowledge." This object is achieved by programmes of lectures, panel discussions, symposia and excursions, by publications and by the use of the library of the Society. The Society is administered by a Council comprising elected and *ex officio* members. The Royal Society of Tasmania is set up under its own Act of the Tasmanian Parliament. This Act permits The Royal Society of Tasmania to create its own By-Laws.
- B. The University Library plays a pivotal role in supporting the learning, teaching, and research of the University of Tasmania. It provides access to and assistance with information resources, and leadership in information and research skills development. The Library operates, via a physical presence at a number of sites across several campuses. In addition, it maintains a strong electronic presence through the delivery of a wide range of online resources and services both on-campus and off-campus.
- C. The principle portion of The Royal Society of Tasmania Library was relocated to the University of Tasmania Library in 1969. The instrument that authorised this action, 'Conditions of transfer of The Royal Society of Tasmania to the University site', was approved and signed by a representative of the Society's Council on 13 December 1968.
- D. In 1992, the original 1968 agreement was replaced by a revised document entitled "Conditions for housing the library of The Royal Society of Tasmania at the University of Tasmania Library." This document was approved and signed by both parties in April 1992.
- E. Since 1969 the Society's collection has been housed at the Morris Miller Library, and managed by the Library. From 1969 onward, book and serial titles have been given card catalogue entries, and then gradually transferred from card catalogue to the Library's online library catalogue. In more recent years, selected material from the Society's archives have been digitised and made available via the University of Tasmania Library's institutional repository.
- F. The Library manages the Society Library's serials exchange scheme, which contributes to the currency of a portion of the Society Library's serial holdings. The University of Tasmania Library also manages the annual distribution of the *Papers and Proceedings of the Royal Society of Tasmania*, and pays to the Society an annual subvention in support of this publication and research promoted and disseminated by the Society.
- G. The Society has supported the Library in such initiatives as cataloguing and digitisation of its collections by way of project funding.
- H. The University Librarian designates a professional member of staff to act as librarian for the Collection.
- I. In 2013 the Parties entered a Memorandum of Standing (since lapsed) to continue the arrangements and now wish to record their agreement to enter legally binding obligations on the terms of this Deed of Agreement.



### **Librarian for the Collection**

11. The University Librarian shall direct a member of University Library professional staff, who has a relevant qualification, to fulfil the following responsibilities:
  - (a) act as University first point of contact for the Society on matters relating to the Collection;
  - (b) make professional decisions required for the management of the Collection, in consultation with the Senior Librarian Collections, without specific reference to the Society;
12. The University staff member appointed under clause 11 will perform their duties under this Deed of Agreement as part of their overall responsibilities as an employee of the University.

### **Dealings in Collection**

13. The University Library shall maintain publication exchange agreements which enhance the Collection.
14. The University Library shall be authorised and empowered to make copies of material in the Collection and communicate these copies for the purposes of fulfilling requests by users, preserving materials and for the administration of the Collection and other permitted purposes under the Copyright Act, subject to the following provisions:
  - (a) when fulfilling requests, the University Library shall take reasonable steps to protect the rights and interests of the Society and shall not permit, without authorisation from the Society, the reproduction of unique art works or illustrations or other material of apparent commercial value; and
  - (b) the University Library shall refer to the Society all requests for copies of materials where the stated or implied purpose of the request is: publication, re-publication, further dealing or reproduction, reuse, or any other purpose except private study or research.
15. The Parties acknowledge the Society granted the University a licence to publish in 2013 (attached at Annexure 1) for the Papers and Proceedings of the Society (0080-4703) 1849-64, 1924-2009.
- 15A. In addition to the license referred to in clause 15, the Parties further acknowledge the University has a license on the same terms and conditions as attached at Annexure 1 to publish the Papers and Proceedings of the Society from 2010 onwards, provided the same one year embargo will always apply.
16. In addition to the license described in clause 15, the Parties acknowledge that significant digitisation projects and large scale systematic copying of material in the Collection shall be undertaken under further separate agreement between the Society and the University.

### **Damage to The Collection**

17. The University has and will continue to hold general and products liability protection and property protection which will insure the Insured Items for damage but not for normal wear and tear, depreciation or damage not unexpected for a collection of items such as the Collection.
18. Insured items are:

- (a) Those items in the Collection for which an agreed value has been assigned in the attached Annexure 2 and Annexure 3 (the Valuations); and
- (b) each book included in the Collection which is not included in Annexure 2 or 3 for which the parties agree to assign a value of \$60 for each item for the purposes of clause 19 and 20A.

19. In the event of Insured Items being damaged or destroyed (excluding normal wear and tear, depreciation or damage not unexpected for a collection of item such as the Collection), the University will compensate the Society according to the following formulas:
- a. Compensation for permanent destruction of Insured Items will occur to the value assigned in the Valuations; and
  - b. Compensation for damage to Insured Items will occur to a percentage of the value assigned in the Valuations, with such percentage to represent the degree of damage to the item as agreed between the Society and University.
20. The Parties may update and amend the Valuations by way of written agreement with any new valuation only taking effect once agreed in writing by both Parties.

20A In addition to the ability to agree a new valuation under clause 20, the value of each of the Insured Items will be adjusted in accordance with the following formula:

$$\text{Adjusted Value} = \text{Current Value} \times \frac{\text{New CPI}}{\text{Old CPI}}$$

where

**Adjusted Value** means the value adjusted in accordance with this formula.

**CPI** means the Consumer Price Index (All Groups) for Hobart published by the Federal Government from time to time or the index officially substituted for it;

**Current Value** means the Value assigned under the Valuations or any updated or additional valuations agreed under clause 20;

**New CPI** means the CPI figure for the quarter ending immediately before the relevant date on which the valuation needs to be ascertained;

**Old CPI** means the CPI figure for the quarter ending immediately before the date on which this agreement commences.

- 21. The liability of the University under clause 19 will be reduced to the extent the actions of the Society contribute to the damage or destruction.
- 22. The University shall have in place a disaster management plan to protect the Collection within a reasonable time following commencement of this Deed.

23. The University Librarian shall notify the Society President of damage to the Collection within five working days from the date the damage is first identified.

#### **Disputes and mediation**

24. In the event of a dispute the Parties will endeavour to resolve the dispute amicably. If the dispute cannot be resolved, the Parties will revert to mediation.
25. In the event of any dispute or difference arising which cannot be resolved between the Parties it must be referred for mediation by a person appointed by the President of the Law Society of Tasmania to be conducted as follows:
- (a) a mediation must be commenced by a Party serving on the other Party notice of a dispute specifying the matter it requires to be determined;
  - (b) within fourteen (14) days the Parties must agree to a mediator or, in default of agreement, the President of the Law Society of Tasmania must be requested to appoint a mediator;
  - (c) the mediator has control of the timetable for mediation but, in any event, the mediation must be completed within sixty (60) days of notice of the dispute;
  - (d) each Party must bear its own costs of resolving any dispute under this clause and the Parties must bear equally the costs of any mediator appointed under this clause.
26. The Parties may mutually agree to terminate this Deed of Agreement at any time in writing.

#### **Notices**

27. Each notice under this Deed must be in writing addressed to the recipient at the address of the recipient specified below or as varied by notice in accordance with this clause:

- (a) If delivered by post to Society, addressed to:

Society President  
Royal Society of Tasmania  
GPO Box 1166  
Davey Street  
Hobart TAS 7001

- (b) If delivered by post to the University, addressed to:

The University Librarian  
University of Tasmania  
Churchill Avenue  
Hobart Tasmania 7005

and left or sent by pre-paid post to that address.

28. Notices given in accordance with clause 27 will be deemed to be received:

- (a) on the day of delivery if left; or
- (b) five (5) clear business days after being sent by pre-paid post.

## **Miscellaneous**

29. A waiver by a Party of any rights arising from a breach or non-observance by another Party of a term of this Agreement shall not be taken to operate in any ways as a waiver of any right arising from any subsequent continuation of that breach or non-observance, or any further or other breach or non-observance of the same or any other term.
30. If a provision of this Agreement is void or voidable or unenforceable but would not be void or voidable or unenforceable if it were read down and is capable of being read down, it must be read down accordingly.
31. If, despite clause 29 a provision of this Agreement is still void or voidable or unenforceable then:
- a) if the provision would not be void or voidable or unenforceable if a word or words were omitted, then that word or those words (as the case may be) are severed; and
  - b) in any other case, the whole provision is severed;
- and the remainder of this Agreement has full force and effect.

## **Relationship of Parties**

32. Nothing in this Agreement or in the relationship between the Parties is to be deemed to constitute any partnership, joint venture or agency relationship between the Parties and no Party shall imply otherwise when dealing with third parties.

## **Counterparts**

33. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **Entire Agreement**

34. This Agreement constitutes the entire agreement between the Parties, and supersedes all prior communications, negotiations, arrangement and agreements whether oral or written with respect to the subject matter of this Agreement.

## **Amendments**

35. No amendments to this Agreement shall be legally binding unless it is in writing signed by both Parties.

## **Governing Law**

36. This Agreement shall be governed by and construed in accordance with the law for the time being in force in Tasmania. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Tasmania for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

original document signed by all parties on this page