



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 principal 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 Understanding (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.

TERMS

Commencement

1. This Deed of Agreement (the '**Agreement**') comes into effect on the date it is signed by the last of the Parties and continues in effect for three years and thereafter until notice in writing of at least 3 months is provided by a party of termination and otherwise unless terminated in accordance with the terms of this Deed.

The Collection

2. The Royal Society of Tasmania collection consists of the more than 7,000 books and 1600 journal titles, maps and private deposits each of which are either listed in the University Library catalogue (the '**Collection**') or described, at the date of this Deed, on the University of Tasmania Library special and rare collections website: <http://www.utas.edu.au/library/research/special-and-rare-collections>.
3. The University shall house the Collection adjacent to one of its principal collections to facilitate convenient use by Society members, University of Tasmania staff/students and the community.
4. In fulfilling its obligations under clause 3, the Collection may be housed by the University in more than one location.
5. In addition to standard community access, Society members may apply for community borrower membership without fee and borrow the University Library collections according to the rules, procedures and regulations of the University Library.
6. In the event of the Society ceasing to exist, the ownership of the Collection will pass to the University under terms to be agreed upon between the Parties at that time.

Status of the Society

7. The Society shall retain its direction, assets and identity as an independent corporate body, and retain ownership of its library collections.

Costs and payments

8. The University Library shall absorb the costs in relation to the maintenance, supervision and security of the Collection. This includes costs involved in cataloguing, secure physical housing of the physical (hardcopy) collection, and despatch of the exchange copies of the Society's *Papers and Proceedings*.
9. The Society shall from time to time provide to the University Library a gift of monies to carry out such actions necessary or desired for the care, promotion, distribution and discovery of the Collection. All aforementioned gifts shall be defined and executed as a deed of gift.
10. The University shall pay a subvention to the Society for its *Papers and Proceedings*. All amounts payable shall be determined by agreement between the University Librarian and Society President (in consultation with the Society Council). The amount payable shall be reviewed at such regular intervals as deemed appropriate by the University Librarian and Society President.

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, 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 Royal Society of Tasmania* (0080-4703) 1849-64, 1924-2009.
- 15A. In addition to the licence referred to in clause 15, the Parties further acknowledge the University has a licence on the same terms and conditions as attached at Annexure 1 to publish the *Papers and Proceedings of the Royal Society of Tasmania* from 2010 onwards, provided the same one year embargo will always apply.
16. In addition to the licence 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 agreements 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:

The 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 30 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 they are in writing and 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.

Executed as a Deed on the 29th day of October 2021

Executed for and on behalf of
Royal Society of Tasmania by the)
President in the presence of:)
)
)
)
)

M. Koolehof

Signature of President

MARY KOOLHOF

Name of President

DATE: 29.10.2021

M. Large

Signature of Witness

Morley Large

Name of Witness

Hon. Sec. 19 Davey St

Address of Witness

HOBART



Executed for and on behalf of the)
University of Tasmania by its)
authorised representative in the)
presence of:)
)
)
)

J. Burke

Signature of Authorised Representative

JANETTE BURKE

Name of Authorised Representative

UNIVERSITY LIBRARIAN

Title of Authorised Representative

Juliet Beale

Signature of Witness

Juliet Beale

Name of Witness

13A Bishop St

Address of Witness

New Town
Hobart.

DATE: 10 Nov. 2021