

# **Memorandum of Agreement**

Reference Number \_\_\_\_\_

## **Between**

The Centre for Urban and Regional Studies (University of Newcastle)

and

The Urban Research Centre (University of Western Sydney)

and

The Crown in the right of the State of New South Wales acting through the  
Regional Coordination Management Group of the Department of Premier  
and Cabinet (RCMG)

and

[ ..... ] (the “**Agency**”)

**concerning**

***“Data Provision, Handling and Processing for the Spatial Data  
Analysis Project (SDAP)”***

This **Memorandum of Agreement** is made on the .....day of .....2008

**BETWEEN**

The **Centre for Urban and Regional Studies** at the University of Newcastle, [ABN 15 736 576 735] a body corporate constituted pursuant to the *University of Newcastle Act* 1989, of University Drive, Callaghan NSW 2308 ("**CURS**")

**AND**

The **Urban Research Centre** at the University of Western Sydney, [ABN 53 014 069 881] a body corporate constituted pursuant to the *University of Western Sydney Act* 1997, of Locked Bag 1797, Penrith South DC NSW 1797 ("**URC**")

**AND**

The **Crown in the right of the State of New South Wales** acting through the Hunter Regional Coordination Management Group convened by the Department of Premier and Cabinet [ABN 34 945 244 274], of Level 5, 26 Honeysuckle Drive Newcastle NSW 2300 ("**RCMG**")

**AND**

[ ..... ] (the "**Agency**")

**Background**

- A. CURS, URC and RCMG have agreed to collaborate in the Spatial Data Analysis Project (the "Project") described in detail in the Research Partnership Agreement (Appendix D).
- B. The purpose of the Project is to develop fine-scaled indicators of social vulnerability to assist NSW State Agencies to monitor emerging social conditions across the Hunter region and to appraise rapidly the differential needs of geographical districts and shifts through time in the key dimensions of social vulnerability. The Project will mesh standard socio-demographic data (e.g. Census and Socio-Economic Indicators For Areas), with participating agency data, and assembled non-agency data sets (eg produced data-sets on service locations) to develop information (composite indicators, sets of maps, images, graphs and charts) which will enhance

collective planning and service prioritisation by the RCMG and other NSW government Agencies.

- C. The Agency has agreed to contribute data to the Project and this MoA sets out the procedures for supplying, securing and processing the Agency's data.

**The Parties agree as follows:**

**1. Definitions**

- a) In this MoA unless the context otherwise requires:

"Authorised Data Recipient" means the person(s) nominated by CURS in writing to the Agency as being authorised to receive the CD containing encrypted Identified Unit Record Data and associated metadata.

"De-identified Aggregated Data" means data that has been permanently separated from the identity of the person or household to whom the data apply so that the data is no longer regarded as "personal information" and/or "health information" under the *Privacy and Personal Information Protection Act 1998 (NSW)* and or the *Health Records and Information Privacy Act 2002 (NSW)*.

"Identified Unit Record Data" means data as collected and held by the Agency in a form which causes the data to be regarded as "personal information" and/or "health information" under the *Privacy and Personal Information Protection Act 1998 (NSW)* and or the *Health Records and Information Privacy Act 2002 (NSW)*.

"MoA" means this Memorandum of Agreement.

"Participating Agencies" means:

- i) a body corporate or an unincorporated body established or constituted for a public purpose by New South Wales State legislation (or any instrument made under that legislation (including a local authority));
- ii) a body established by the Governor of the State of New South Wales, or by a Minister of the State of New South Wales; or
- iii) an incorporated company over which the State of New South Wales exercises control,

which contributes data to the Project and includes the Agency.

"Project Intellectual Property" has the same meaning as in the Research Partnership Agreement.

"Registered CURS/URC Analysts" means those persons from time to time authorised by CURS and URC to handle and process Identified Unit Record

Data and/or to use the De-identified Aggregated Data for research purposes related to the Project. The names of such persons must be recorded on a list (in the form of Appendix C) maintained by CURS/URC.

"Research Partnership Agreement" means the Agreement dated January 2008 set out in Appendix D.

"SDAP" means the Spatial Data Analysis Project.

"SDAP Reference Committee" means the committee which will guide the project comprising the parties to this MOA and others as described in clause 9.

- b) In this MoA, unless a contrary intention appears from the context:
- i) Words importing singular only also include the plural and vice versa and words denoting a given gender shall include both genders.
  - ii) Clause headings shall not be deemed part of the conditions of the MoA or be taken into consideration in the interpretation or construction thereof, except for the purpose of rectifying any erroneous cross reference.
  - iii) A reference to legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it.
  - iv) A reference to a person or body which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.

## **2. Participation in the Project**

- a) The Agency agrees to participate in the Project by supplying Identified Unit Record Data on the terms set out in this MoA.
- b) CURS, URC and RCMG agree to conduct the Project in accordance with this MoA and the Research Partnership Agreement while respecting the special responsibilities of the Agency as the collector and custodian of the Identified Unit Record Data supplied under this MoA.
- c) The Agency is entitled to nominate a senior officer as its representative on the SDAP Reference Committee.
- d) At the appropriate time, CURS and/or URC will provide the Agency with a copy of the De-identified Aggregated Data processed from and being a geocoded aggregated version of the Identified Unit Record Data which the Agency provided for use in the Project.

### **3. Term**

The MOA shall commence when signed by all parties and shall remain in force and effect until one of the events listed below occurs:

- a) the Research Partnership Agreement is terminated;
- b) this MoA is terminated by the Agency, by giving written notice of termination to all the other parties at any time before the commencement of processing of the Identified Unit Record Data; or
- c) termination of this MoA is otherwise agreed by all parties.

### **4. Ethical considerations**

Aspects of the Project requiring ethics approval will be approved by the appropriate ethics committees.

### **5. Data Management**

#### **Formatting and delivery of Identified Unit Record Data**

- a) The Agency will prepare files of Identified Unit Record Data which it agrees to contribute to the Project.
- b) The Agency will consult CURS/URC staff prior to preparing the files to discuss the technical aspects of the data format.
- c) The Agency (with the assistance of CURS/URC if required) will encrypt the Identified Unit Record Data to be used in the analysis and provide the encrypted data to CURS/URC on CD.
- d) The encrypted Identified Unit Record Data will be accompanied by metadata defining the data content, quality and origins including information on each data item as follows:
  - (i) name of file;
  - (ii) description;
  - (iii) validation or edits applied;
  - (iv) information on whether standardisation has occurred;
  - (v) level of precision of the field; and
  - (vi) confidentiality provisions of the Act(s) under which data were collected.
- e) The Agency will arrange for the CDs containing the encrypted Identified Unit Record Data and metadata to be delivered to CURS/URC by delivering the same to the Authorised Data Recipient (within a specified timeframe determined by the Agency and the SDAP Reference Committee). Identified Unit Record Data will not be posted or emailed to CURS/URC.

- f) The Authorised Data Recipient will, on receipt of the CDs, sign two originals of a confidentiality undertaking in the form set out in Appendix A. One signed original will be held by CURS and the other by the Agency.

#### **Processing and disposal of Identified Unit Record Data**

- g) Once the CDs containing the encrypted Identified Unit Record Data have been received by CURS/URC, they will be stored under secure conditions in CURS offices until the commencement of processing.
- h) All Identified Unit Record Data provided by the Agency will be geocoded and de-identified by aggregation to the appropriate geographical scale.
- i) Geocoding and aggregation of Identified Unit Record Data will be undertaken on a computer that is not connected to a network. Log-on to the computer and to the files containing the Identified Unit Record Data will both be password protected.
- j) No-one other than a Registered CURS/URC Analyst will be granted access to the Identified Unit Record Data.
- k) The list of Registered CURS/URC Analysts, and any change to this list, will be notified by CURS and URC in writing to the SDAP Reference Committee.
- l) Once geocoded, de-identified and aggregated, all Identified Unit Record Data held by CURS/URC will be destroyed and written confirmation of its destruction will be provided by CURS to the Agency.

#### **Management and disposal of De-identified Aggregated Data**

- m) Any De-identified Aggregated Data to be transferred between CURS and URC will be delivered in person, not posted or emailed.
- n) All De-identified Aggregated Data will be maintained, stored and processed under secure conditions in CURS/URC, on computers that are not connected to a network. Log-on to the computer and to the files containing the De-identified Aggregated Data will be password protected.
- o) No-one other than a Registered CURS/URC Analyst will be granted access to the De-identified Aggregated Data.
- p) De-identified Aggregated Data will be retained by CURS/URC for use in the Project until the expiration of this MoA, at which point it will be destroyed.
- q) Notwithstanding the requirements of clause 5(p) above, the De-identified Aggregated Data may be retained by CURS/URC for further research subject to the approval of the Agency which provided the source data.

- r) At the appropriate time, CURS/URC will notify the Agency and the SDAP Reference Committee (if applicable) that the De-identified Aggregated Data has been destroyed.

## **6. Confidentiality**

CURS and URC each acknowledge that the Identified Unit Record Data provided by the Agency under this MoA are subject to the confidentiality provisions of the Act(s) under which they were collected and to the *Privacy and Personal Information Protection Act 1998 (NSW)* and/or the *Health Records and Information Privacy Act 2002 (NSW)*. CURS and URC must:

- a) Ensure that any Authorised Data Recipient receiving the Identifiable Unit Record Data signs two copies of a confidentiality undertaking in the form set out in Appendix A. One copy of the original signed undertaking will be held by CURS, the other shall be provided to the Agency and a photocopy to RCMG.
- b) Advise all Registered CURS/URC Analysts that the Identified Unit Record Data provided by the Agency are subject to the confidentiality provisions of the Act(s) under which they were collected and to the *Privacy and Personal Information Protection Act 1998 (NSW)* and/or the *Health Records and Information Privacy Act 2002 (NSW)* and ensure that before handling any identifiable data, each Registered CURS/URC Analyst signs two copies of a confidentiality undertaking in the form set out in Appendix B. One copy of the original signed undertaking will be held by CURS, the other shall be provided to the Agency and a photocopy to RCMG.
- c) Not allow or permit:
  - (i) any Authorised Data Recipient and/or Registered CURS/URC Analyst who has not signed a confidentiality undertaking; and
  - (ii) any other person,to receive, handle, examine, process, use or store any Identified Unit Record Data.
- d) Record all breaches of confidentiality and promptly report any breach to the Agency and to the SDAP Reference Committee.
- e) Allow the Agency and/or RCMG, or a person authorized in writing by the Agency and/or RCMG, to inspect the arrangements for storage and security of any data stored for use in the Project.

## **7. Project Research Materials**

- a) The parties acknowledge that the information produced by and the results of the research of the Project and any Project Intellectual Property created will at all times be dealt with in accordance with the Research Partnership Agreement.

- b) The parties acknowledge that the conduct of the research and the publication of the results will at all times be in accordance with the Research Partnership Agreement.

**8. SDAP Reference Committee**

- a) The Project shall be guided by the SDAP Reference Committee consisting of representatives of:
  - (i) CURS;
  - (ii) URC;
  - (iii) Each Participating Agency;
  - (iv) The Department of Premier & Cabinet representing the management of the RCMG
- b) The SDAP Reference Committee will be chaired by the representative from the Department of Premier and Cabinet representing the management of the RCMG or her or his nominee.
- c) The SDAP Reference Committee will meet if and as required, by teleconference or by face-to-face meeting.
- d) The SDAP Reference Committee may co-opt other persons with appropriate experience and or qualifications to assist it from time to time.

**9. Dispute Resolution**

- a) Where there is a conflict between the parties over any matter related to issues covered by this MoA, parties will meet to resolve the issue through the SDAP Reference Committee.
- b) If the parties fail to resolve a conflict, the matter shall be referred for resolution to the heads of the parties in dispute.

**10. Review**

The procedures detailed in this MoA will be periodically reviewed to take into account any relevant legislative and/or regulatory changes and/or developments in and experience with the Project.

**Executed as an Agreement:**

**Signed for and on behalf of CURS**

Name: .....

Position: .....

Signed:..... Date:.....

**Signed for and on behalf of URC**

Name: .....

Position: .....

Signed:..... Date:.....

**Signed for and on behalf of the Crown in right of the State of New South Wales acting through the Regional Coordination Management Group of the Department of Premier and Cabinet**

Name: .....

Position: .....

Signed:..... Date:.....

**Signed for and on behalf of [ *Insert name of Agency* ]**

Name: .....

Position: .....

Signed:..... Date:.....

## Appendix A

### Confidentiality Undertaking by Authorised Data Recipient (to be signed when data is collected)

To: [insert name and address of Agency]

I am authorised by the Centre for Urban and Regional Studies, University of Newcastle ("CURS") to receive certain data (the "Identified Unit Record Data") from the (insert name of agency) (the "Agency") for the Spatial Data Analysis Project ("SDAP"). I acknowledge that the Identified Unit Record Data delivered to me may contain personal information, health information and other information of a confidential nature which are subject to the confidentiality and privacy provisions of the Act(s) under which they were collected by the Agency and to the provisions of the *Privacy and Personal Information Protection Act 1998* (NSW) and/or the *Health Records and Information Privacy Act 2002* (NSW) (together the "Privacy Legislation").

I undertake:

1. to comply with, carry out and discharge to the maximum extent possible, the confidentiality and privacy provisions contained in the Privacy Legislation as if I was the Agency carrying out and discharging those obligations;
2. to ensure that the Identified Unit Record Data is stored in a stand-alone computer (unconnected to a network) provided by CURS, the computer is kept in a secured environment and password protected, access to the Identified Unit Record Data is password protected and the password is provided only to the data analysts authorised by CURS and the Urban Research Centre, University of Western Sydney ("URC") under a Memorandum of Agreement dated [insert date] ("the MoA") between CURS, URC, the Crown in right of the State of New South Wales acting through the Regional Coordination Management Group of the Department of Premier and Cabinet and the Agency; and
3. to take such other steps as may be necessary to ensure that unauthorised persons do not have access to the Identified Unit Record Data and/or the computer in which it is stored either physically or electronically.

I have read the MoA and to the extent applicable, I agree to comply with the terms and conditions relating to handling and use of the Identified Unit Record Data as specified in the MoA. I will not provide any of such data to any other person or

institution.

Signed by:		Witnessed by:	
Name:		Name:	
Date:		Date:	
OFFICE USE ONLY			
Descriptor of data:			
Original data (CD) returned?			

## Appendix B

### Confidentiality Undertaking by Registered CURS/URC Data Analysts (to be signed before data is received)

To: [insert name and address of Agency]

I am a Registered CURS/URC Data Analyst for the Spatial Data Analysis Project ("SDAP") and I agree that the defined terms contained in a Memorandum of Agreement dated [insert date] ("the MoA") between the Centre for Urban and Regional Studies, University of Newcastle ("CURS"), the Urban Research Centre, University of Western Sydney ("URC"), the Crown in right of the State of New South Wales acting through the Regional Coordination Management Group of the Department of Premier and Cabinet ("RCMG") and the [insert name of Agency] ("Agency") have the same meaning as in this Undertaking.

I acknowledge that the Identified Unit Record Data provided by the Agency for the purposes of the SDAP may contain personal information, health information and other information of a confidential nature which are subject to the confidentiality and privacy provisions of the Act(s) under which they were collected by the Agency and to the provisions of the *Privacy and Personal Information Protection Act 1998* (NSW) and/or the *Health Records and Information Privacy Act 2002* (NSW) (together the "Privacy Legislation").

I undertake to:

1. comply with, carry out and discharge to the maximum extent possible, the confidentiality and privacy provisions contained in the Privacy Legislation as if I was the Agency carrying out and discharging those obligations;
2. use, handle and manipulate the Identified Unit Record Data only for the purposes of geo-coding, de-identifying and aggregating the data and once processing of the data is complete, to destroy (or permanently erase) the same from the computer and any other medium on which it may be stored;
3. use the De-identified Aggregated Data only for *bona fide* research purposes related to the SDAP in accordance with the appropriate ethical and university approvals and I will not use it for any other purposes or research without first obtaining prior written permission from the chair of the SDAP Reference Committee;

4. ensure that the Identified Unit Record Data and/or De-identified Aggregated Data is stored in a stand-alone computer (unconnected to a network) provided by the CURS and/or URC, the computer is kept in a secured environment and password protected, access to the Identified Unit Record Data is password protected and the password is kept secret and provided only to the other Registered CURS/URC Analysts;
5. take such other steps as may be necessary to ensure that unauthorised persons do not have access to the Identified Unit Record Data, the De-identified Aggregated Data and/or the computer in which any of the data is stored either physically or electronically.
6. erase and destroy all copies of the De-identified Aggregated Data on any computer(s) or medium on which it is stored on completion of the Project or earlier termination of the MoA, unless I have been notified in writing that CURS and URC has been granted permission to use the De-identified Aggregated for other research purposes.

I have read the MoA and to the extent applicable, I agree to comply with the terms and conditions relating to handling and use of the Identified Unit Record Data and the De-identified Aggregated Data as specified in the MoA.

Signed by:		Witnessed by:	
Name:		Name:	
Date:		Date:	

## Appendix C

### Register of CURS/URC analysts for the purposes of the SDAP project

Name:	Position:

**AUSTRALIAN RESEARCH COUNCIL  
LINKAGE PROJECTS PROGRAM 2007  
(Round 2)**

**RESEARCH PARTNERSHIP AGREEMENT**

*between*

**The University of Newcastle**

*and*

**The University of Western Sydney**

*and*

**The Crown in Right of the State of New South Wales**

in relation to Project LP0776385:

*Enabling inter-agency data sharing to support the spatial analysis  
of social vulnerability in a transforming region*

ARC Linkage Projects Program 2007 (Round 2)

**Research Partnership Agreement**

**THIS AGREEMENT** is made in counterparts the ..... day of ..... 200 ...

**BETWEEN**

The University of Newcastle, [ABN 15 736 576 735] a body corporate constituted pursuant to the *University of Newcastle Act* 1989, of University Drive, Callaghan NSW 2308 (“**UN**”)

**AND**

The University of Western Sydney, [ABN 53 014 069 881] a body corporate constituted pursuant to the *University of Western Sydney Act* 1997, of Locked Bag 1797, Penrith South DC NSW 1797 (“**UWS**”)

**AND**

The Crown in the right of the State of New South Wales acting through the Hunter Regional Coordination Management Group convened by the Department of Premier and Cabinet [ABN 34 945 244 274], of Level 5, 26 Honeysuckle Drive Newcastle NSW 2300 (“**RCMG**”)

**PREAMBLE**

This Agreement concerns a research project which depends on the availability of data (much of it confidential) from a number of NSW State Agencies. Part of the research is to determine whether and on what conditions such agencies will provide the data or any alternative information which would allow the research to proceed according to the Grant Application.

In the event that the protocols for the provision of data cannot be developed to the satisfaction of any individual agency, the scope of the research may be altered by agreement between the Parties.

**RECITALS**

- A. UN and RCMG (the latter as a “partner organisation”) applied for and UN has been awarded a Linkage Projects Program grant ("the Award") by the Australian Research Council (“ARC”) to conduct the research project named in Schedule 1 ("the Project") and detailed in the application for the award (attached as Appendix 1: ARC Linkage Application).

- B. The amount of the Award as evidenced by the Grant Letter (attached as Appendix 2) is less than that requested and some modification of the project is required.
- C. The application for the award describes the roles of the Parties and their contributions to the Project. UWS has agreed to provide, as an in-kind contribution to the Project, the services of a “Chief Investigator”.
- D. It is a condition of the Grant (see Appendix 3 - the ARC Funding Agreement) that UN and RCMG enter into a written agreement providing for specified matters including the role and contribution of the partner organisation in the Project.
- E. The Project may lead to the transfer of Confidential Information to UN and UWS from NSW State agencies in accordance with the protocols to be developed during the project.
- F. At the appropriate times information transfer agreements (including specific confidentiality provisions) will be entered into between UN and UWS and each of those NSW State Agencies.
- G. In the meantime, ownership and use of any Confidential Information or Intellectual Property connected with the Project shall be determined in accordance with the following terms and conditions.

## **THE PARTIES HEREBY AGREE AS FOLLOWS:**

### **1 Interpretation**

- 1.1. In construing this Agreement including the Recitals, the following words and expressions shall have the following meanings hereby assigned to them:

**“Administering Organisation”** means UN.

**“ARC”** means the Australian Research Council, as established pursuant to the Australian Research Council Act 2001.

**"ARC Linkage Application"** means the application for the Award (attached as Appendix 1).

**"Background Intellectual Property"** means a Party's Intellectual Property existing prior to the commencement of the Project which that Party contributes to the conduct of the Project.

**“Commercialise”**, in relation to Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating that Intellectual Property, or to license any third party to do any of those things; and **“Commercialisation”** shall be similarly construed.

**"Confidential Information"** means information that:

- a is by its nature confidential; or
- b is communicated by one Party to another Party as confidential;  
or
- c the other Party knows or ought to know is confidential  
and includes but is in no way limited to:
  - d a Party's Background Intellectual Property;
  - e any material which relates to the affairs of a third party; or
  - f information relating to the policies, strategies, practices and  
procedures of the RCMG or any NSW State Agencies.

**"Eligible non-Government Body"** means a body which is:

- a directly or indirectly, partially or entirely, funded by the State  
of New South Wales; and
- b non-profit making.

**"Funding Contract"** means the contract between the Commonwealth of Australia and The University of Newcastle in relation to funding provided to The University of Newcastle for the ARC Linkage Projects Program for projects commencing in 2007 (Round 2). A copy of the Funding Contract is attached to this Agreement as Appendix 3.

**"Funding Rules"** means the ARC'S "Linkage Projects Funding Rules for Funding commencing in 2007" (attached as Appendix 4).

**"GST"** is a goods and services tax and has the same meaning as given in the GST Law.

**"GST Law"** means any law imposing or relating to a GST and includes *A New Tax System (Goods & Services Tax) 1999* (Cth) and any regulations based on this Act.

**"Input Tax Credit"** has the same meaning as given in the GST Law.

**"Intellectual Property"** includes all copyright including future copyright, trade marks, designs, patents registered and unregistered, plant breeders rights, trade secrets and know-how, semiconductor or circuit layout, and all other intellectual property as defined in Article 2 of the Convention of 1967 establishing the World Intellectual Property Organisation.

**"NSW State Agencies"** means:

- a a body corporate or an unincorporated body established or constituted for a public purpose by New South Wales State legislation (or any instrument made under that legislation (including a local authority);
- b a body established by the Governor of the State of New South Wales, or by a Minister of the State of New South Wales; or
- c an incorporated company over which the State of New South Wales exercises control.

**"Parties"** means the entities that are party to this Agreement and "Party" means any one of them.

**"Partner Organisations"** means RCMG.

**"Performance Obligations"** means the obligations of UN set out in sub-clauses 3.1, 3.2 and 3.3.

**"Project Intellectual Property"** means Intellectual Property which is created or developed in the course of the Project.

**"Tax Invoice"** has the same meaning as given in the GST Law.

- 1.2. In this Agreement, unless a contrary intention appears from the context:
- a Words importing singular only also include the plural and vice versa and words denoting a given gender shall include both genders.
  - b Clause headings and notes in square brackets shall not be deemed part of the conditions of the Agreement or be taken into consideration in the interpretation or construction thereof, except for the purpose of rectifying any erroneous cross reference.
  - c All monetary amounts referred to in this Agreement shall be deemed to be in Australian currency.
  - d All references to clauses are references to clauses in this Agreement, unless the contrary appears from the context.
  - e A reference to legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it.
  - f A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.

## **2 Obligations of the Partner Organisation and UWS**

- 2.1 UWS and RCMG each acknowledges that UN is the administering organisation under the Funding Contract and agree not to impede or prevent UN from complying with any of its obligations under the Funding Contract.
- 2.2 UWS will provide UN with the in-kind contribution of the services of a "Chief Investigator" described in the ARC Linkage Application to the value as shown in Schedule 1 for the purposes of the Project.
- 2.3 RCMG will provide UN with the with the financial support and in-kind contributions described in Part C of the ARC Linkage Application to the value and at the times shown in Schedule 1 for the purposes of the Project. The

provision of the financial support and the in-kind contributions under this Agreement is conditional on:

- a UN meeting its Performance Obligations under this Agreement; and
  - b the execution, coming into effect and continued operation of the Funding Contract.
- 2.4 UWS and RCMG will each carry out their respective obligations under the Project described in the ARC Linkage Application diligently and competently and use reasonable endeavours to collaborate and work with each other and with UN in carrying out the Project.
- 2.5 RCMG warrants that its relationship with UN and with all Chief Investigators named in Appendix 1 to perform the Project is in accordance with the ARC Linkage Projects Funding Rules (attached as Appendix 4).
- 2.6 RCMG agrees to indemnify UN for any loss, liability or expense incurred or suffered by UN as a result of any breach of this Agreement caused by UN's reliance on the assurance given by RCMG in accordance with paragraph 2.5.

### **3 Obligations of UN**

- 3.1 UN will carry out the Project diligently and competently in accordance with the ARC Linkage Application and the Funding Contract and generally accepted professional scientific and ethical principles,
- 3.2 UN must use the financial support and in-kind contributions provided by RCMG for the Project and for no other purpose.
- 3.3 UN must:
- a meet its obligations under the Funding Contract; and
  - b immediately notify RCMG if:
    - i the Commonwealth of Australia withholds payment to UN under the Funding Contract for any reason; or
    - ii the Funding Contract is varied or terminated for any reason.
- 3.4 Without limiting RCMG's rights under this Agreement, if:
- a UN fails to comply with one or more of its Performance Obligations; or
  - b RCMG has a reasonable basis to believe that UN is not complying with its Performance Obligation,
- RCMG may, upon notice, withhold payment of the financial support or the supply of the in-kind contributions (or any part of it) until:
- c UN complies with its Performance Obligations;
  - d RCMG is otherwise satisfied that the Performance Obligations will be met by UN in accordance with this Agreement; or
  - e this Agreement is terminated by RCMG.

- 3.5 UN must provide RCMG with:
- a a copy of each annual report which it provides to the ARC in compliance with the Funding Contract; and
  - b quarterly progress reports (which may not necessarily be in writing) as specified in the Grant Application.
- 3.6 RCMG may use any report or information received from UN in the course of any activities within RCMG's functions for monitoring and evaluation purposes, subject to compliance with its confidentiality obligations as set out in this Agreement.

## 4 Confidential Information

- 4.1. All Confidential Information submitted by one Party to another Party, whether existing prior to the commencement of the Project or created in the course of the Project, shall be kept confidential and shall not be disclosed to any third party without the prior written consent of the disclosing Party, such consent is not to be unreasonably withheld. A Party must not use any Confidential Information provided by another Party except for the purposes of the Project and/or this Agreement.
- 4.2. Confidential Information shall not include information that:
- a at the time of disclosure is or thereafter becomes a part of the public domain through no act or error of the receiving Party;
  - b is received by a Party from a third party lawfully in possession thereof and who has the lawful power and authority to disclose such Confidential Information to the receiving Party;
  - c is required to be disclosed by law.
- 4.3. The Party intending to rely on any of the exceptions stated in sub-clause 4.2 shall bear the onus of proof that the exception applies.
- 4.4. The ownership of Confidential Information which exists prior to the commencement of the Project shall not be altered or transferred merely by virtue of its use in the Project.
- 4.5. On termination of this Agreement, or upon request of the disclosing Party in writing to the receiving Party, the receiving Party shall return to the disclosing Party all documents and copies of documents containing Confidential Information received or obtained from the disclosing Party in connection with the Project.
- 4.6. Each Party shall assume responsibility for the actions of its employees, students, agents and representatives who have access to the Confidential Information from time to time and shall ensure that they are aware of and strictly bound by the confidentiality obligations created under this Agreement.

- 4.7. Any Confidential Information communicated to a Party hereunder may be disclosed by that Party to any sub-licensee properly appointed in accordance with this Agreement provided that such disclosure is limited to such officers or employees of the sub-licensee as cannot properly fulfil their duties to the sub-licensee without such disclosure and who undertake in writing to keep such information confidential. The disclosure of such Confidential Information to a sub-licensee shall be limited to information that is necessary for the licence.

## 5 Intellectual Property

- 5.1. Where use of Background Intellectual Property is necessary for the conduct of the Project, each Party grants to the other a non-exclusive royalty free licence to use its Background Intellectual Property solely for the conduct of the Project. The ownership of Background Intellectual Property shall not be altered or transferred merely by virtue of its use in the Project.
- 5.2. Project Intellectual Property shall be owned by UN and the Partner Organisations as tenants in common in proportion to their cash and in-kind contribution to the project as set out in Schedule 1 hereto.
- 5.3. Where a Party commercialises any Project Intellectual Property, the terms of any licence shall include a payment of licence fees and/or royalties on normal commercial terms and will be governed by this **clause 5**. If any Party seeks to Commercialise the Intellectual Property created or developed by the Project, it shall first have candid discussion with each other Party on the extent of payment of royalties, licence fees or other considerations that are appropriate recompense to the other Party for the value of its share of the Intellectual Property.
- 5.4. Each Party shall obtain the written consent of each other Party prior to the commercial use or Commercialisation of Project Intellectual Property. "One Party may be appointed to act on behalf of all the Parties with respect to the granting of commercial licences and the collection of fees and royalties,"
- 5.5. All matters relating to application for patent protection shall be determined by mutual consent of the Parties.
- 5.6. Each Party shall each be entitled to use the Project Intellectual Property for:
- a internal purposes;
  - b to carry out further research and policy development collaboration;
  - c for the purposes of academic publication relating to social vulnerability and its fine-scaled analysis, the organisation and regulatory management of inter-agency data sharing and the development of an on-going spatial data analysis resource and GIS facility; and

- d any purposes connected with the delivery of State and local government services.
- 5.7. RCMG shall be entitled to grant non-exclusive sub-licences to NSW State Agencies and/or Eligible non-Government Bodies to use the Project Intellectual Property for any purposes set out in sub-clauses 5.6b, 5.6c and/or 5.6d.
- 5.8. Each Party shall be entitled to grant non-exclusive licences to third parties to use the Project Intellectual Property for non commercial purposes.

## **6 Publication**

- 6.1 Subject to clause 4, each Party may publish the material relating to the results of the Project provided that:
  - a all material prepared for publication by a Party is provided to the other Party for approval to publish at least thirty (30) days prior to the publication or submission to a third party for publication, which approval shall not be unreasonably withheld;
  - b if during the approval period, the other Party requests that the material not be published or submitted in the form provided, then the Party submitting or publishing the material must:
    - i amend the material as requested by the other Party; or
    - ii delay publication of the material or submission of the material to a third party for publication for a period not exceeding ninety (90) days or such longer period as may be agreed between the Parties having regard for the reasonable concerns of any of the Parties.
- 6.2 UN must, during the term of this Agreement, acknowledge the financial support and in-kind contributions provided by RCMG in any public statements about the Project including any official opening of the Project.
- 6.3 RCMG may publicise the awarding of the financial support and in-kind contributions at any time after it is awarded. Without limiting the preceding, RCMG may publicise any of the following details:
  - a the name of UN and UWS;
  - b the amount of the financial support and the value of the in-kind contributions as specified in Schedule 1; and
  - c the title and brief description of the Project as it appears in the Grant Application or as may be agreed between the Parties from time to time.

## **7 Other Obligations**

- 7.1. Each Party shall ensure that all students, independent contractors and/or consultants engaged in the Project execute, prior to commencing work:

- a an assignment to the Party of all Intellectual Property developed by the student, contractor and/or consultant in relation to the Project; and
  - b a confidentiality agreement with respect to the Confidential Information in which the student, independent contractor and/or consultant covenants to keep the Confidential Information confidential and not to disclose it to any other party and to only use the Confidential Information for the sole purpose of carrying out the work on the Project.
- 7.2. UN makes no warranty or assurance as to the suitability of the Project results for any purpose.

## **8 Warranties and Indemnities**

- 8.1. Each Party warrants that the use of any Background Intellectual Property supplied by that Party will not infringe the Intellectual Property rights of any third party.
- 8.2. UN and UWS each warrant to RCMG that the use of the Project Intellectual Property for any of the purposes permitted by this Agreement will not infringe the Intellectual Property rights of any third party.
- 8.3. Each Party ("the Indemnifier") hereby indemnifies and agrees to keep indemnified each other Party and its respective directors, officers, employees, agents and representatives ("the Indemnified") from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) howsoever arising that the Indemnified may suffer, incur or sustain as a result of:
  - a any unlawful, wilful or negligent act or omission by the Indemnifier or its directors, officers, employees, agents or representatives in connection with the Project; or
  - b any breach of any warranty provided by the Indemnifier contained in this Agreement.
- 8.4. The indemnity given by an Indemnifier pursuant to sub-clause 8.3 shall be reduced proportionately to the extent that any wilful, unlawful or negligent act or omission by the Indemnified under this Agreement, or any of its directors, officers, employees, agents or representatives may have contributed to any such liability, loss, harm, damage, cost or expense.
- 8.5. None of the Parties shall be liable to any other Party by way of indemnity or by reason of any breach of contract or statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any other indirect or consequential damage whatsoever that may be suffered by another Party.
- 8.6. UN and UWS must maintain for the duration of the Agreement the following insurance:

- a workers compensation insurance in accordance with applicable legislation;
- b public liability insurance in an amount of not less than [*Twenty Million Dollars (\$20,000,0000)*]; and
- c professional liability insurance in an amount of not less than [*Five Million Dollars \$5,000,000*].

## 9 Infringement

- 9.1. Each Party must promptly notify each other Party of:
- a any claim or allegation that the exercise of any rights granted under this Agreement or the use of any Project Intellectual Property, Background Intellectual Property and/or Confidential Information constitutes an infringement of the rights of any third party, and
  - b any third party's infringement or threatened infringement of any Project Intellectual Property, Background Intellectual Property and/or Confidential Information of which it becomes aware.
- 9.2. The Parties are to confer as to what steps, if any, are to be taken against any person infringing any Project Intellectual Property, Background Intellectual Property and/or Confidential Information.

## 10 Dispute Resolution

- 10.1. A Party must not commence legal proceedings relating to this agreement unless the Party wishing to commence proceedings has complied with this clause.
- 10.2. The Parties will co-operate with each other and use their best endeavours to resolve by mutual agreement any differences between them and all other difficulties which may arise from time to time relating to this Agreement.
- 10.3. Any dispute not resolved under **clause 10.2** will be dealt with as follows:
- a the Party claiming a dispute exists must notify the other Parties of that dispute;
  - b within fourteen (14) days of receipt of that notification, the dispute must be referred to the Chief Executive Officers of the Parties or their nominees for resolution; and
  - c if the dispute is not resolved within sixty (60) days, any Party may refer the dispute for mediation to the Australian Commercial Dispute Centre Limited (“ACDC”).
  - d If the Dispute has not been resolved within sixty (60) days of referral to the ACDC any party may initiate proceedings in a court.
- 10.4. Nothing in this clause prevents a Party from seeking interlocutory relief through courts of appropriate jurisdiction.

## 11 Notices

11.1. The address for notices at UN is:

Manager, Research Office  
University of Newcastle  
University Drive  
Callaghan NSW 2308  
Phone: (02) 49 215300  
Fax: (02) 49 217164  
Email: Judy.Alexander@newcastle.edu.au

11.2. The addresses for notices at UWS and RCMG are set out in Schedule 2.

## 12 Termination

- 12.1. This Agreement shall commence on the date first written above and will continue in force until one of the events listed below occurs:
- a. 30 June 2010;
  - b. the Parties terminate this Agreement by mutual consent upon giving each other 30 days' written notice;
  - c. the Funding Contract is terminated;
  - d. the funding promised under the Funding Contract is not received by UN; or
  - e. this Agreement is terminated by RCMG.
- 12.2. RCMG may terminate this Agreement by giving written notice of termination to UN and UWS if UN fails to remedy a Material Breach of this Agreement to RCMG's reasonable satisfaction within 30 days of receiving a notice of default from RCMG or such longer period that RCMG may allow having regard to the nature of the breach.
- 12.3. In this clause "Material Breach of this Agreement" includes, but is not limited to, any failure by UN to comply with one or more of its Performance Obligations, which in all cases will be deemed a material breach.
- 12.4. Notwithstanding the occurrence of one or more of the events specified in **sub-clauses 12.1(a) to (d)**, the Parties may by written agreement determine that this Agreement will continue upon terms specified in such written agreement.
- 12.5. The rights and obligations contained in clauses 3, 4, 5, 6, 7, 8, 9, and 10 shall survive termination of this agreement.
- 12.6. The termination or expiry of this Agreement is without prejudice to any accrued rights or remedies of any Party.

### **13 General**

- 13.1. Any provisions of this Agreement which are held to be illegal or otherwise in conflict with any laws, statutes or regulations shall be deemed to be severed from the remainder of the Agreement and the validity of the remaining provisions shall not be affected.
- 13.2. This Agreement does not establish a partnership between the Parties and no Party may act on behalf of any other Party or bind any other Party to any legal obligation.
- 13.3. This Agreement constitutes the entire agreement between the Parties.
- 13.4. This Agreement may be varied by the further written agreement of the Parties.
- 13.5. No failure or delay by a Party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by that Party of any time or other consideration, will operate as a waiver of a default by the other Party. Any waiver of a default of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 13.6. This Agreement shall be construed and governed in accordance with the laws of New South Wales.

### **14 GST**

- 14.1 Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the supply.
- 14.2 If GST is or will be payable by RCMG on any contribution (whether financial or in-kind contribution) under this Agreement, then RCMG must also pay UN the amount of such GST.
- 14.3 The recovery of any amount in respect of GST by UN from RCMG is subject to UN issuing to RCMG a Tax Invoice enabling RCMG to claim any applicable Input Tax Credits.
- 14.4 Each Party warrants that it is registered for GST purposes as at the date of this Agreement and will continue to be so for the term of the Agreement."

**EXECUTED BY THE PARTIES ON THE DATE WRITTEN ABOVE**

Signed for and on behalf of the Crown )	
in right of the State of New South Wales )	
by its authorised officer )	
but not so as to incur personal liability )	.....
in the presence of )	Signature of authorised officer
)	
..... )	.....
Signature of witness )	Name of authorised officer
)	
..... )	.....
Name of witness )	Position of authorised officer

Signed for and on behalf of the )	
University of Western Sydney )	
by its authorised officer )	.....
in the presence of )	Signature of authorised officer
)	
..... )	.....
Signature of witness )	Name of authorised officer
)	
..... )	.....
Name of witness )	Position of authorised officer

Signed for and on behalf of the )	
University of Newcastle )	
by its authorised officer )	.....
in the presence of )	Signature of authorised officer
)	
..... )	Professor Barney Glover
Signature of witness )	Deputy Vice-Chancellor (Research)
)	
..... )	
Name of witness )	

## Schedule 1:

**Project title:** *Enabling inter-agency data sharing to support the spatial analysis of social vulnerability in a transforming region.*

**Project Stages:** *The Project will be undertaken in four stages. Stages 1 and 2 are to develop protocols for the transfer of Confidential Information from NSW State Agencies to UN and UWS for the purposes of Stages 3 and 4. Prior to the transfer of any Confidential Information, UN and UWS will enter into agreements with each Agency in accordance with the new protocols.*

### **RCMG Contributions:**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>Cash</b>	23500	26000	10500		60000
<b>In-kind</b>	46213	46213	46213		138639
<b>Total</b>	69713	72213	56713		198639

### **University of Western Sydney Contributions:**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>Cash</b>	0	0	0		0
<b>In-kind</b>	78517	81678	84978		245173
<b>Total</b>	78517	81678	84978		245173

### **University of Newcastle Contributions\*:**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>Cash</b>	52000	53000	50000		155000
<b>In-kind</b>	178272	173182	169640		521094
<b>Total</b>	230272	226182	219640		676094

\*The Funding Contract provides that for the purposes of this Agreement, the ARC funding is deemed to be a contribution of UN

## Schedule 2

The address for notices at UWS is:

Professor Phillip O'Neill  
Director, Urban Research Centre  
University of Western Sydney  
Level 6, 34 Charles St  
Parramatta NSW 2150  
Phone: 02 8833 5988  
Fax: 02 9891 5899  
Email: p.oneill@uws.edu.au

The address for notices at Hunter RCMG is:

Mr Ben Chard  
Regional Coordinator  
Hunter Regional Coordination Management Group  
Department of Premier and Cabinet  
Level 5, 26 Honeysuckle Drive  
Newcastle NSW 2300  
Phone: 02 4927 8799  
Fax: 02 4927 8798  
Email: Ben.Chard@premiers.nsw.gov.au