**DEED OF DEPOSIT OF MATERIAL – NYINGARN PLATFORM**

**This Deed of Deposit is entered into between:**

The researcher or research organisation named in Item 1 of the Schedule (the **Researcher**)

**AND**

The person or organisation who is named in Item 2 of the Schedule (the **Depositor**)

**BACKGROUND**

1. Nyingarn is an online platform for primary sources in Australian Indigenous languages for the public to access and use for research and educational purposes (the **Platform**).
2. The Platform has the primary aim of making Indigenous language materials available to Aboriginal and Torres Strait Islander people, for personal and community-led Indigenous language projects.
3. The Depositor holds primary sources incorporating Indigenous languages and knowledge.
4. The Researcher has requested digital copies of certain primary sources, which are described in detail in Item 3 of the Schedule (the **Materials**), be made available for incorporation on the Platform.
5. The Researcher will enrich, transcribe, and digitally upload the Materials to the Platform for educational and research access and use by the general public.
6. The Researcher requests and the Depositor agrees to deposit the Material(s) with the Researcher for use on the Platform, on the terms and conditions in this Deed.

**The Depositor acknowledges that the Platform is a pilot project that runs until mid-2024 at which time the Platform and all content will be taken over by the Australian Institute of Aboriginal and Torres Strait Islander Studies.**

**THE PARTIES AGREE AS FOLLOWS:**

1. **Deposit**
	1. The Depositor agrees to deposit the Materials on the Platform for use on or in relation to the Platform and for public access and use for the life of the Platform.
2. **Copyright**
	1. Is the Depositor the copyright owner of the Materials?

[ ]  Yes (go to clause 2.4)

[ ]  No

* 1. Is the item out of copyright (70 years after the death of the author) and so is in the public domain?

[ ]  Yes (go to clause 4)

[ ]  No

* 1. Does the Depositor have permission from the copyright owner(s) to licence use of the Materials to the Research for reproduction, editing and use on the Platform?

[ ]  Yes

[ ]  No (go to clause 2.3)

* 1. Where the Depositor is not the copyright owner of the Materials, the Depositor has provided all known information about the copyright owner in Item 4 of the Schedule. The Researcher agrees to seek permission to use the Materials from the copyright owner. If the Researcher is unable to obtain permission from the copyright owner, the Researcher will make a risk assessment as to whether to upload the Materials to the Platform. The Nyingarn Controller will follow the [AIATSIS Takedown Policy](https://aiatsis.gov.au/takedown-request#toc-assessment-criteria) in deciding whether to permit use of the Digital Formats on the Platform.
	2. Where the Depositor is the copyright owner of the Materials, the Depositor grants permission to the Researcher, subject to clauses 3 and 4, to reproduce and use the Materials for the purposes of the Platform, including creating and using the Digital Formats on the Platform, and allowing the public to access the Materials as incorporated in the Digital Formats.
	3. Does the Depositor grant permission to the Researcher to sub-licence use of the Materials to third-party users of the Platform (under a CC BY-NC-SA 4.0 Licence)?

[ ]  Yes

[ ]  No

* 1. The Researcher will acknowledge the Depositor, and where known, the copyright owners and/or authors of the Materials in any use of the Materials or Digital Formats.
	2. Where the copyright owners and/or authors are not known or where consent has not been sought for the use of the Materials, and the Researcher proceeds to develop and use the Digital Formats on the Platform, a notice will be clearly identified on the Digital Formats and/or the Platform.
	3. The Nyingarn Controller will ensure that members of the public who use the Digital Formats in accordance with a CC-BY-NC or any other agreed licence, are notified that they must attribute the Depositor, and where known, the copyright owner and author, in any use of the Digital Formats.
1. **Indigenous Cultural and Intellectual Property (ICIP)**
	1. The parties acknowledge and agree that ownership of any ICIP rights in the Materials and Digital Formats will remain with the traditional custodians of that ICIP.
	2. The parties agree to comply with the [AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research](https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf) and this clause 3 when using the Materials and the Digital Formats.
	3. The Depositor will, to the best of their knowledge, identify in Items 6 and 7 of the Schedule any ICIP contained in the Materials, the traditional custodians of that ICIP, and any cultural protocols or restrictions relating to use of the ICIP in the Materials, if known.
	4. If the traditional custodians of ICIP are unknown, or consent has not or cannot be sought for use of ICIP in relation to the Platform, the Nyingarn Controller will determine whether to proceed with the Researcher’s proposed use of the Digital Formats on the Platform.
	5. The Researcher will acknowledge the traditional custodians of any ICIP in the Materials and Digital Formats, where known and where reasonably possible, unless notified otherwise, and will ensure (where relevant) that members of the public using the Digital Formats in accordance with a CC BY-NC-SA 4.0 or any other agreed licence, are notified of the same.
2. **Conditions on Access and Use**
	1. Permission to use the Materials as described in this Agreement is subject to the following conditions:

[ ]  Embargo – the Materials cannot be accessed until: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*date or other event*)

[ ]  No public access: the Materials are only to be accessed and used by the following people/group: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. The Depositor has identified in Items 5 and 7 of the Schedule all other known conditions on access and use of the Materials as contemplated by the Agreement.
	2. The Researcher agrees to comply with these conditions and will make sure where reasonably possible that any third party who accesses the Materials, including the Atlas of Living Australia Digivol Unit, is aware of the conditions.
	3. The Depositor understands that:

## a prominent acknowledgement addressing inclusion of the Materials and ICIP on or in relation to the Platform and the Digital Formats is made on the Platform;

## a simple mechanism for complaint, feedback, or right of reply in relation to reproduction of Materials or ICIP on the Platform is made available to users; and

## such feedback will be dealt with promptly, in a culturally appropriate manner and in accordance with the [AIATSIS Takedown Policy](https://aiatsis.gov.au/takedown-request#toc-assessment-criteria);

## the Nyingarn Controller will remove any Digital Formats from the Platform upon reasonable request made to the Researcher or to the Nyingarn Controller by the Depositor or the general public, including ICIP rights-holders; and

## the Platform will contain notices that tell users of the Platform who wish to use Digital Formats for purposes other than as agreed to by the Depositor in this Agreement, that they must seek permission from the copyright owners of the Materials and any ICIP rights-holders.

1. **General**
	1. This Deed contains all the terms and conditions of the deposit of the Materials with the Researcher for reproduction and use on the Platform.
	2. This Deed can only be varied by written agreement of the parties.
	3. Nothing in this Deed creates a partnership, agency, or employment relationship.
	4. This Deed can be executed electronically in counterparts. Each counterpart will be deemed an original and all counterparts will be taken together and deemed to be one instrument.
2. **Definitions and Interpretation**
	1. For the purposes of this Deed:

## **Digital Format** means the enriched and transcribed digital version of the Materials to be developed by the Researcher, including with the assistance of the Atlas of Living Australia, and incorporated on the Platform for public access and use;

## **Indigenous Cultural and Intellectual Property (ICIP)** refers to the rights of Australian Aboriginal and Torres Strait Islander people to their cultural heritage. This includes all tangible and intangible knowledge including traditional knowledge, traditional cultural expression, objects, sites, language, song, dance, music, stories, ceremonies, and the secret/sacred;

## **Materials** has the meaning given to it in Item 1 of the Schedule and refers to the digital copies of the primary sources to be deposited with the Researcher for use on the Platform;and

## **Nyingarn Controller** means the organisation responsible for the overall management and control of the Platform and any Materials and Digital Formats on the Platform. The Nyingarn Controller will be the Australian Institute of Aboriginal and Torres Strait Islander Studies from mid 2024 onwards.

## **Platform** means the Nyingarn online platform for storage of and access to Indigenous Australian language primary sources, and such other resources as may be incorporated from time to time. The Platform is administered by the Nyingarn Controller.

**EXECUTED AS A DEED**

**Signed by the Researcher**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of authorised officer Signature of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of authorised officer Name of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Position Position

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date

**Signed for and on behalf of *[Insert Holding Institution name and ABN]***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of authorised officer Signature of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of authorised officer Name of witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Position Position

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date

**SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **1** | **The Researcher** | Name:Organisation Name (if applicable):ABN:Address:Phone:Email: |
| **2** | **The Depositor****Holding Institution or copyright holder** | Name:Organisation Name (if applicable):ABN:Address:Phone:Email: |
| **3** | **MATERIALS** | *Insert the following details for each item to be deposited:*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Title** | **Author** | **Date** | **Notes** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

If more space is required, please attach a separate document to this Deed with the details of each additional item. |
| **4** | **COPYRIGHT OWNER OF THE MATERIALS**  | **If the Depositor is not the copyright owner of the Materials, what details or information can the Depositor provide** e.g. name and contact details of copyright owner or estate; information about licence under which the Depositor uses the Materials**?**[*Insert details where known*]:

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Copyright Owner** | **Contact Details**  | **Permission?** |
|  |  |  | Y/N |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**If the copyright owner(s), authors or authors’ estates are not contactable after 2 months, the Researcher will make a risk assessment and decide whether to use the Materials on the Platform.**  |
| **5** | **COPYRIGHT – RESTRICTIONS ON ACCESS AND USE**  | **Are there any other restrictions that apply to the Researcher and/or third party users if they wish to use the Materials in the Digital Format?** [ ]  Yes [ ]  No[*If yes, insert details*]:

|  |  |  |
| --- | --- | --- |
| **Item** | **Restrictions on use for the Researcher** | **Restrictions of use 3rd Party** |
|  |  |  |
|  |  |  |

 |
| **6** | **INDIGENOUS CULTURAL & INTELLECTUAL PROPERTY (ICIP)** | **Is there ICIP in the Materials?****Does the Depositor know who the Traditional Custodians of the ICIP are?****Does the Depositor have consent from Traditional Custodians of ICIP to permit the Researcher to deposit the Materials for use on the Platform?** **If not, does the Depositor know the name or contact details of Traditional Custodians or other information about any authority the Depositor claims?**[*Insert details where known*]:

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Details of ICIP?** | **Name & Contact of Custodians?**  | **Consent or Authority? (Y/N)** |
|  |  |  | Y/N |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

 |
| **7** | **ICIP - CONDITIONS ON ACCESS & USE** | **Are there any cultural protocols or restrictions on access or use of ICIP in the Materials (if known)?****Do the Materials contain secret, sacred, or sensitive information, images or knowledge?**[*If yes, insert details*]:

|  |  |  |
| --- | --- | --- |
| **Item** | **Cultural Protocols or Restrictions on use of ICIP?** | **Secret, Sacred or Sensitive info? (Y/N)** |
|  |  |  |
|  |  |  |
|  |  |  |

 |