Agreement to acquire services (non-IT services)

### Parties

Macquarie University ABN 90 952 801 237 of Macquarie University, NSW 2109 (University).

[insert name] ABN / ACN [insert ABN or ACN] of [insert address] (Contractor)

### Agreement

The University engages the Contractor to provide the Services on the terms set out below in the Details and in the attached document headed ‘General Terms’. These General Terms form part of this agreement.

### Details

<table>
<thead>
<tr>
<th>Defined Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement Date</td>
<td>[insert date]</td>
</tr>
<tr>
<td>Contract End Date</td>
<td>[insert date]</td>
</tr>
<tr>
<td>Services (clause 2.1)</td>
<td>[insert a description of the Services to be provided. Attach a schedule if necessary.]</td>
</tr>
<tr>
<td>Deliverables (clause 2.1)</td>
<td>[Insert details of any deliverables to be provided by the Contractor to the University and when required to be provided eg progress reports, final reports.]</td>
</tr>
<tr>
<td>Key Personnel (clause 2.4)</td>
<td>[insert details of any Key Personnel to be provided by the Contractor. If there are no Key Personnel insert ‘Not applicable’].</td>
</tr>
<tr>
<td>University Equipment (clause 4.3)</td>
<td>The University will provide the following equipment: [insert list of equipment]. If no University equipment is to be provided insert ‘Not applicable’.]</td>
</tr>
<tr>
<td>Location (clause 6.1)</td>
<td>[insert location where Services are to be provided]</td>
</tr>
</tbody>
</table>
| **Service Fee**  
| (clause 5) | [Insert details of Service Fee] |
| **Timetable**  
| (clause 3.6) | [Insert timetable details. If no timetable is to be met by the Contractor insert ‘Not applicable’] |

**Guidance Note** – Payment Schedule – see Guidelines for Agreement to acquire services (non-IT services) which discusses payments made over a period of time and whether they should be based on milestones or some other structure. If payments are to be made by Milestone Payments, the Optional Schedule to this agreement should be included in the agreement and referred to under Payment Schedule.

| **Payment Schedule**  
| (clause 5.2) | [Insert payment schedule]  
| | [Where payment is to be made by Milestone Payments write – See Schedule. And then complete the milestones dates, descriptions, payment and retention percentage details in the Schedule.] |

| **Address for Notices University**  
| (clause 16.2) | Title:  
| | Address: Macquarie University, North Ryde 2109  
| | Telephone:  
| | Email: |

| **Address for Notices Contractor**  
| (clause 16.2) | Title: [name]  
| | Address: [.address.]  
| | Telephone: [.telephone.]  
| | Email: [.email.] |

**Special Terms**  
This agreement is subject to the following special terms.  
[Insert special terms. If no special terms insert ‘Not applicable’]
Signed on behalf of MACQUARIE UNIVERSITY by its authorised officer:

__________________________
Signature of authorised officer

__________________________
Name of authorised officer

__________________________
Date

__________________________
Position of authorised officer

[Option 1 Company under s127 Corporation Act]

Signed by [insert name of Contractor]

__________________________
Signature of director

__________________________
Signature of director/secretary

__________________________
Name of director

__________________________
Name of director/secretary

__________________________
Date

[Option 2 Company by single director/secretary]

Signed by [insert name of Contractor]
by its sole director and sole company secretary

__________________________
Signature of sole director/secretary

__________________________
Name

__________________________
Date
[Option 3 Company by authorised officer]

Signed on behalf of [insert name of Contractor] by its authorised officer:

________________________  _________________________
Signature of authorised officer  Name of authorised officer

________________________
Date

________________________
Position of authorised officer

[Option 4 Natural person]

Signed by [insert name ]:

________________________  _________________________
Signature of Contractor  Name of Contractor

________________________
Date
GENERAL TERMS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this agreement.

Business Day means any day other than:
(a) a Saturday, Sunday or public holiday in Sydney; or
(b) 27, 28, 29, 30 or 31 December.

Commencement Date means the date specified in the Details or if no date is specified in the Details, the date on which this agreement became executed by all parties.

Confidential Information means information in any form or medium that is not Excluded Information and that relates to the past, present or future operations or affairs of the University or its controlled entities and:
(a) the University makes the Contractor aware is considered by the University to be confidential; or
(b) is by its nature confidential or the Contractor knows or ought to know is confidential.

Confidential Information may be acquired before, on or after the Commencement Date. Confidential Information includes the existence of this agreement and information about the employees or students of the University.

Consequential Loss means consequential or indirect loss or damages including loss of profits, revenue, data, goodwill or opportunities and damages arising from third party claims.

Contractor Statement means a completed and signed Subcontractors Statement regarding Workers Compensation, Pay-roll Tax and Remuneration. The form is available from the Office of State Revenue website at:

Contract Material means any Material:
(a) created for the purposes of this agreement;
(b) provided or required to be provided to the University as part of the Services;
(c) derived from the Material referred to in paragraphs (a) or (b); or
(d) created as a result of using the resources (including Confidential Information and Intellectual Property) of the University.

Details means the details set out on the cover pages of this agreement.

Excluded Information means information that the Contractor can establish is in the public domain other than through a breach of this agreement.

Existing Material means any Material in existence at the Commencement Date and developed by the Contractor or its Representatives independently of the performance of this agreement.

Intellectual Property means all present and future rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not capable of protection by statute, common law or in equity and including copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names and inventions.

Loss means liabilities, losses, damages and costs (including legal costs on a full indemnity basis whether incurred by or awarded against a party) and Consequential Loss.

Material means documents, data, concepts, designs, inventions, developments, systems, equipment, software, goods or other material or information.
Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as conferred by the Copyright Act 1968 (Cth), and the rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

Personal Information means:
(a) information or an opinion (including information or an opinion forming part of a database) whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion; and
(b) health information for the purposes of the Health Records and Information Privacy Act 2002 (NSW).

Representative means an employee, officer or agent of the Contractor and includes any Key Personnel.

Services means the Services specified in the Details and providing any Deliverables specified in the Details.

Specified Acts means:
(a) failure to identify the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth);
(b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material or infringing copies (within the meaning of the Copyright Act 1968 (Cth);
(c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material, including dealing with infringing copies, within the meaning of the Copyright Act 1968 (Cth), without attributing the authorship; or
(d) adding any additional content or information to the Contract Material.

Term means the period from and including the Commencement Date to and including the Contract End Date.

1.2 Rules for interpreting this agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:
(i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
(ii) a document or agreement (including this agreement), or a provision of a document or agreement (including this agreement), is to that document, agreement or provision as amended, supplemented, replaced or novated;
(iii) a party to this agreement or to any other agreement or document includes a successor in title, permitted substitute or a permitted assign of that party;
(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
(v) keys includes any electronic access card or opening device; and
(vi) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) A reference to dollars or $ is to an amount in Australian currency.

(g) If a party to this agreement is made up of more than one person, or a term is used in this agreement to refer to more than one party:

(i) an obligation of those persons is joint and several;

(ii) a right of those persons is held by each of them severally; and

(iii) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

2. SERVICES AND RELATIONSHIP

2.1 Contractor to provide Services
The Contractor must provide the Services to the University for the Term.

2.2 Independent contractor
The relationship of the University and the Contractor under this agreement is that of principal and independent contractor. This agreement does not make either party a joint venturer, partner, employee or agent of the other. No act or omission of either party is to bind the other party except as expressly set out in this agreement.

2.3 No withholdings
The University is not responsible for withholding or remitting any payment for an impost including tax or superannuation in respect of the Contractor or its Representatives.

2.4 Performance by Contractor

(a) The Contractor must do the work needed to provide the Services or do the work through its Representatives who have appropriate qualifications and skills. If Key Personnel are specified in the Details the Contractor must do the work needed to provide the Services through its Key Personnel.

(b) The Contractor warrants that it and its Representatives are suitably qualified, skilled and competent to perform the Services.

(c) The Contractor may, with the written consent of the University, engage a subcontractor to assist in providing the Services. The Contractor remains fully responsible and liable for the performance of all work provided under this agreement and for all costs incurred with respect to its subcontractors.

2.5 Undertaking by Representative
Prior to each Representative commencing work for the Contractor in providing the Services the Contractor must, if requested to do so by the University, ensure that the Representative has signed the Deed Poll set out in the Annexure and provided it to the University.

3. OBLIGATIONS OF CONTRACTOR

3.1 Contractor responsibilities
In providing the Services the Contractor must (and must ensure that its Representatives):

(a) perform the Services with all due skill and care, competently in an efficient and professional manner;

(b) perform the Services to the satisfaction of the University and within reasonable time frames required by the University;

(c) comply with applicable laws, regulations and industry standards;

(d) comply with the by-laws, policies, procedures and directions of the University including those relating to security, privacy, health and safety, discrimination and harassment, parking and traffic;

(e) use only first class materials fit for the purpose required by the University;

(f) complete the Services to a high standard in accordance with best practice;
(g) satisfactorily complete all training required by the University (including induction, safety and anti-discrimination); and

(h) keep the University regularly informed of all matters relevant to the Services.

3.2 No Conflict of Interest

During the Term:

(a) the Contractor must not, and must ensure that its Representatives do not, provide any services of a similar nature to the Services to any person other than the University without the University’s prior written consent;

(b) the Contractor must disclose in writing as and when requested and in the form required by the University the financial and other private interests of the Contractor and, where applicable, its Representatives, (including shareholdings, directorships and board memberships) in any entity which in the opinion of the University does or may compete with, or adversely impact, the business of the University; and

(c) if the Contractor becomes aware of any conflict of interest or possible conflict of interest affecting the Contractor or its Representatives, the Contractor must immediately advise the University in writing in which event the University may terminate this agreement immediately under clause 13.2.

3.3 Entitlement to work in Australia

(a) Where the Contractor is a natural person the Contractor must be entitled to work in Australia and must provide to the University evidence of entitlement to work in Australia prior to the Commencement Date.

(b) Where the Contractor is a natural person and the holder of a visa the Contractor:

(i) must, prior to the Commencement Date, provide to the University a copy of their visa evidencing permission to work in Australia;

(ii) consents to the University using any system for checking visa status provided by the Department of Immigration and Border Protection to check the Contractor’s visa status including the Visa Entitlement Verification Online system; and

(iii) must inform the University immediately of any change in circumstance affecting their visa status.

(c) Where the Contractor is not a natural person the Contractor:

(i) warrants that each of its Representatives is entitled to work in Australia; and

(ii) must have procedures in place to ensure, and must verify in accordance with the Migration Act 1958 (Cth), that each of its Representatives is entitled to work in Australia. On request by the University the Contractor must provide, within seven Business Days, evidence that it is complying with its obligations under this clause 3.3(c)(ii).

3.4 Inspection of Services

(a) The University may inspect the performance of the Services at any time.

(b) The University can make the Contractor stop work at any time if any aspect of the Services is not acceptable to the University.

(c) If there is a defect in performance of the Services the University may by notice require the Contractor to remedy the defect at no additional cost to the University.

(d) If the Services do not meet their purpose or are not in accordance with this agreement, the University may by notice require the Contractor to redo the Services at no additional cost to the University.

(e) Where the Contractor fails to remedy a defect in performance of the Services or redo the Services within the time specified in a notice by the University under clause 3.4(c) or 3.4(d) the University may arrange for the performance of the necessary work and recover the cost from the Contractor.

(f) If the University considers that a Representative or subcontractor engaged by the Contractor does not have sufficient skill or expertise to provide the Services to the standard required under this agreement, the University may notify the Contractor and the Contractor must replace that person with another of appropriate skill and expertise.
3.5 **Key Personnel**

(a) The Contractor must not substitute other personnel for the Key Personnel without the written consent of the University.

(b) If the University reasonably considers that any of the Contractor’s Key Personnel are not performing the Services to the standards expected of the University, the University may, by providing 14 days’ notice in writing, require the Contractor to substitute the Contractor’s Key Personnel with personnel acceptable to the University.

(c) If the Contractor’s Key Personnel are unavailable or on leave, the Contractor must provide within five Business Days other qualified personnel approved by the University to ensure the Contractor meets its obligations under this agreement.

3.6 **Timetable**

The Contractor must provide the Services in accordance with the Timetable.

3.7 **Modern Slavery**

(a) The Contractor must (and must ensure that its Representatives), in connection with its production, procurement and supply of the Services and Deliverables pursuant to the agreement:

(i) comply with the Modern Slavery Laws as if it were bound by them; and

(ii) provide such assistance as may be reasonably requested by the University to enable the University to comply with its obligations under the Modern Slavery Laws.

(b) For the purposes of this clause, **Modern Slavery Laws** means the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth) and **Modern Slavery** means as defined in the Modern Slavery Laws.

4. **MATERIALS & EQUIPMENT**

4.1 **Title and risk**

Title to any Materials used by the Contractor in providing the Services passes to the University on delivery to the University's premises. Risk of Materials remains with the Contractor until the Materials are used or installed.

4.2 **Contractor's Equipment**

The Contractor must provide all equipment except for the University Equipment.

4.3 **University Equipment**

If the University provides University Equipment or facilities for use by the Contractor, the Contractor must:

(a) use that University Equipment or those facilities only for the purposes of providing the Services;

(b) not remove the University Equipment from the University's premises;

(c) ensure the University Equipment and facilities are used according to the manufacturer’s instructions and any instructions from the University;

(d) notify the University immediately if the Contractor becomes aware that the University Equipment or facilities are not working properly or have become lost or stolen; and

(e) return all University Equipment to the University on request or on termination of this agreement.

5. **PAYMENT AND GST**

5.1 **Service Fee**

The University will pay to the Contractor the Service Fee. The Service Fee includes all expenses incurred by the Contractor including travel and administration expenses.
5.2 Invoices
The Contractor must issue the University with an itemised tax invoice in accordance with the Payment Schedule for any Services for which it requires payment of the Service Fee. The invoice must be accompanied by a Contractor Statement.

5.3 Payment
The University will (except to the extent the invoice is in dispute) pay the Contractor’s tax invoice within 30 days of the end of the month in which the Contractor submits the invoice.

5.4 Services in accordance with agreement
Despite anything set out in this agreement the University is not obliged to pay any Service Fee until it is reasonably satisfied that the Contractor has provided the Services in accordance with this agreement.

5.5 Australian Business Number
The Contractor must provide the University with its Australian Business Number (ABN) before performing any Services, and until it does provide its ABN, the University may withhold from any payment made to the Contractor the amounts required for the University to comply with the Taxation Administration Act 1953 (Cth) and related legislation.

5.6 GST wording
Words defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause 5.

[Optional clause 5.7 – use this clause and optional clauses 5.8 and 5.9 if supply is exclusive of GST.]

5.7 [Payment of GST
Subject to clauses 5.8 and 5.9, in addition to paying the Service Fee the University must pay to the Contractor an amount equal to any GST payable on any taxable supply made by the Contractor in connection with this agreement.

5.8 Overpayment
The Contractor must refund to the University any overpayment by the University in relation to GST within 14 days of the Contractor becoming aware of the overpayment and the Contractor must issue an adjustment note or tax invoice in relation to the overpayment.

5.9 Contractor must be registered for GST
If the Contractor is not registered for GST the University has no obligation under this clause 5 to pay an amount in respect of GST to the Contractor.]

[Optional clause 5.10 – use this clause in place of clauses 5.7, 5.8 and 5.9 if supply includes GST]

5.10 [GST inclusive pricing
All payments or other consideration by the University for any supply by the Contractor to the University in connection with this agreement include any GST for which the Contractor is liable on that supply and the Contractor (not the University) is responsible for payment of that GST.

5.11 Set Off
The University is entitled to set off any amount owed to the Contractor against any amount payable by the Contractor (including amounts payable for breach of this agreement) at any time in connection with this agreement.

6. LOCATION AND SECURITY OF PREMISES

6.1 Location
The Contractor must carry out the Services at the Location.
6.2 University access
If the University has granted the Contractor or its Representatives access to University premises for the purpose of providing the Services the Contractor and its Representatives must only access the University premises for that purpose and must comply with the University’s security requirements and health and safety requirements. The Contractor must make sure that it and its Representatives secure and lock any doors or gates used by them when they leave premises to which the University has given access.

6.3 Keys
The Contractor must make sure that keys given to the Contractor or its Representatives by the University are not duplicated, and are returned to the University when the Services are completed, or when requested by the University. If any keys are lost or damaged, the Contractor must pay the cost of replacing any locks.

7. INSPECTION OF RECORDS

7.1 Records
The Contractor must keep proper accounts, accurate records and copies of all materials including invoices, rebates, taxes, fees, time sheets and correspondence relating to the provision of the Services.

7.2 Access
The Contractor must, within three Business Days of any request, give the University access to or verified copies of the accounts, records and materials referred to in clause 7.1.

7.3 Continuing Obligation
The Contractor’s obligations under this clause 7 continue after the Contractor ceases to provide the Services to the University.

8. INSURANCE

8.1 Insurance policies
The Contractor must make sure that it and its Representatives are covered by insurance policies for the Term (and in the case of insurances written on a claims made basis, for a further period of seven years) for:

(a) workers compensation insurance, as required by law in respect of its liability for injury or death of its Representatives;

(b) professional indemnity insurance for its liability for its own acts and omissions and those of its Representatives for a limit of not less than [[$10,000,000]] for each claim;

(c) public and products liability insurance with a limit of not less than [[$20,000,000]] for each occurrence which insures the Contractor and its Representatives for:

(i) loss of, damage to or loss of use of any property; and

(ii) the bodily injury, disease, illness (including mental illness) or death of any person (other than an employee of the insured), arising out of or in connection with the Services or any products supplied by the Contractor; and

(d) insurance for loss of or damage to parts and Materials left or stored on the University's premises by the Contractor or its Representatives before use or installation.

8.2 Evidence of policies
The Contractor must give the University a copy of the insurance policies or certificates of currency prior to the Commencement Date and then on request. The Contractor must notify the University within two Business Days of the cancellation of any of the policies of insurance required under this agreement.
9. INTELLECTUAL PROPERTY

9.1 Disclose Contract Material
The Contractor must disclose to the University all Contract Material.

9.2 Rights in Contract Material
(a) All rights, including Intellectual Property, in, or which may be obtained from, the Contract Material vest in the University. To the extent necessary to give effect to this clause 9 the Contractor assigns all Intellectual Property in the Contract Material to the University. This does not affect the ownership of Intellectual Property in any Existing Material.

(b) The Contractor grants to (or will procure for) the University a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any Existing Material in conjunction with the Contract Material.

(c) The Contractor warrants that it is entitled, or it will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 9.2.

9.3 Effect to clause
The Contractor must sign any document and do anything required by the University to give effect to this clause 9, including doing anything necessary to assist the University to obtain or maintain registration or to protect or prove the ownership of any Intellectual Property rights in any Contract Material.

9.4 No Intellectual Property infringement
The Contractor warrants that:
(a) the use of any Material supplied by the Contractor in the course of providing the Services will not; and

(b) the Contractor and the Representatives will not in the course of providing the Services, infringe any Intellectual Property rights of any person or give rise to any liability to make royalty or other payments to any person.

9.5 Survival of clause
The operation of this clause 9 survives the termination of this agreement.

10. MORAL RIGHTS

10.1 Consent to use of Moral Rights
To the extent permitted by the Copyright Act 1968 (Cth), and for the benefit of the University:
(a) where the Contractor is a natural person and the author of the Contract Material, the Contractor:
   (i) consents to the performance of the Specified Acts by the University whether those Specified Acts occur before or after this consent is given;
   (ii) agrees not to institute, maintain or support any claim or proceeding for infringement of the Contractor’s Moral Rights; and
   (iii) waives all Moral Rights in the Contract Material outside Australia.

(b) if paragraph (a) does not apply, the Contractor agrees to:
   (i) obtain from each Representative who is an author of Contract Material a written consent which extends directly or indirectly to the performance of the Specified Acts by the University (whether occurring before or after the consent is given); and
   (ii) on request provide the executed original of any such consent to the University.
10.2 Survival of clause
The operation of this clause 10 survives termination of this agreement.

11. CONFIDENTIAL INFORMATION

11.1 Ownership of Confidential Information
The Contractor acknowledges that all Confidential Information which has or may come into the possession of the Contractor remains the property of the University.

11.2 Obligations of confidentiality
Except as permitted by clause 11.3, the Contractor must:
(a) not disclose Confidential Information directly or indirectly in any form to anyone else; and
(b) not use or make a copy of any Confidential Information except to perform any of its obligations under this agreement.

11.3 Exceptions to obligations of confidentiality
The obligations in clause 11.2 do not apply to the Contractor if:
(a) the University has first agreed in writing to the particular disclosure, use, or copying;
(b) the information is disclosed to an officer or employee of the Contractor who needs to know the information concerned to perform its duties; or
(c) disclosure of any Confidential Information is required to comply with any applicable law or requirement of any government agency or regulatory body, and the Contractor first informs the University of the intended disclosure and cooperates with the University to limit the disclosure as reasonably requested.

11.4 Security of Confidential Information
The Contractor must:
(a) keep effective control of Confidential Information;
(b) ensure that Confidential Information is secure from theft, loss, damage or unauthorised access or alteration;
(c) if required by the University, enter into a separate agreement with any client, licensor or supplier of the University in relation to the protection of Confidential Information;
(d) ensure that its Representatives and persons other than the Contractor do not disclose, use or copy Confidential Information except as permitted by this clause 11; and
(e) if required by the University obtain from each Representative to whom Confidential Information is disclosed, a written undertaking to comply with the obligations of the Contractor under this clause 11 in a form approved by the University.

11.5 Return of Confidential Information
Upon completion of the Services or upon termination of this agreement for any reason, the Contractor must immediately:
(a) deliver to the University (or if in electronic form, erase or destroy and deliver evidence of erasure or destruction) all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control; and
(b) ensure that any person who receives the Confidential Information by the Contractor's authority returns the Confidential Information to the University in any form in which it is held (or if it is in electronic form, erases or destroys it and gives evidence of its erasure or destruction to the University).

11.6 Right to publish information
If required to do so whether under the Government Information (Public Access) Act 2009 (NSW) or otherwise, the Contractor agrees that the University has the right to publish the details of this agreement in the manner set out in the applicable requirements.

11.7 Survival of clause
The operation of this clause 11 survives termination of this agreement.
11.8  **[Access to Information held by Contractor – Government Information (Public Access) Act 2009 (NSW) (GIPA Act)]**

(a) The Contractor must, within seven days of receiving a written request by the University, provide the University with immediate access to the following information contained in records held by the Contractor:

(i) information that relates directly to the performance of the Services;

(ii) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Services; and

(iii) information received by the Contractor from the University to enable it to provide the Services.

(b) For the purposes of sub-clause 11.8(a), information does not include:

(i) information that discloses or would tend to disclose the Contractor’s financing arrangements, financial modelling, cost structure or profit margin;

(ii) information that the Contractor is prohibited from disclosing to the University by provision made by or under any Act, whether of any State, Territory, or of the Commonwealth; or

(iii) information that, if disclosed to the University, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the University, whether at present or in the future.

(c) The Contractor must provide copies of any of the information in sub-clause 11.8(a), as requested by the University, at the Contractor’s own expense.

(d) Any failure by the Contractor to comply with any request under sub-clause 11.8(a) will be considered a breach of an essential term and will allow the University to terminate this agreement by providing notice in writing of its intention to do so with the termination to take effect seven days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven day period to the satisfaction of the University, then the termination will take effect seven days after receipt of the notice.

12. PRIVACY

12.1 Contractor’s dealing with Personal Information

Where the Contractor has access to Personal Information in order to perform its obligations under this agreement, the Contractor must:

(a) comply with all applicable state and federal privacy legislation and not do, or permit, anything which would cause the University or its controlled entities to be in breach of their obligations under state or federal privacy legislation;

(b) comply with the University’s privacy policies including its Privacy Management Plan;

(c) comply with the University’s reasonable directions as to collection, storage, use and handling of that Personal Information;

(d) only use that Personal Information for the purpose of, and to the extent necessary for, fulfilling its obligations under this agreement;

(e) ensure that its Representatives and subcontractors comply with the obligations imposed on the Contractor under this clause 12.1 and upon request from the University obtain from its Representatives and subcontractors a deed of privacy in a form acceptable to the University; and

(f) not disclose, or allow access to, that Personal Information to third parties or any person outside Australia without the University’s prior written consent.
12.2 Incident
In this clause 12 Incident means unauthorised access to, disclosure of or loss of Personal Information or any breach of clause 12.1.

12.3 Notify University
If the Contractor becomes aware of or suspects any Incident the Contractor must:
(a) immediately notify the University and provide the University with written details of the Incident including the nature of the Incident;
(b) take all appropriate or necessary remedial action to mitigate any potential loss of or interference with Personal Information;
(c) promptly (within no more than 3 days of a request) comply with the University’s reasonable directions to investigate and assess the Incident including its possible impact and likelihood of harm to individuals to whom the Personal Information relates;
(d) report in writing to the University the results of any investigation and assessment;
(e) provide all assistance requested by the University in relation to the University’s own investigation and assessment of the Incident; and
(f) comply with the University’s reasonable directions in connection with how the Incident is managed and reported.

12.4 Cost of managing Incident
The Contractor must bear its own costs in complying with clause 12.3.

12.5 Reporting Incident
The Contractor must obtain University written approval prior to notifying any regulatory authority or affected individual of the Incident.

12.6 University’s rights with respect to Personal Information
Where the Contractor is a natural person, the Contractor consents to the University:
(a) collecting, using and storing the Contractor’s Personal Information for any lawful purpose relating to the Contractor’s provision of the Services or to the conduct of the University’s business;
(b) disclosing the Contractor’s Personal Information to other persons for any lawful purpose relating to the Contractor’s provision of the Services or to the conduct of the University business. These persons include the Australian Tax Office, superannuation fund trustees and administrators, Contractors, bankers, insurers, medical, rehabilitation or occupational practitioners, laboratory analysts, investigators, financial and legal advisers, potential purchasers on sale of business, law enforcement bodies and regulatory authorities; and
(c) transferring the Contractor’s Personal Information outside New South Wales and Australia in the course of the University’s business activities.

12.7 Survival of clause
The operation of this clause 12 survives termination of this agreement.

13. TERM AND TERMINATION

13.1 Term and Renewal
Unless this agreement is terminated before expiry of the Term, the University and the Contractor may, at any time before expiry of the Term, agree in writing to extend the Term for a specified period (Renewal Term). The terms of this agreement as modified in writing by the parties apply to any Renewal Term.

[Alternative in clause 13.2 – Decide if both parties or just the University should be able to terminate on giving notice ie. at their convenience]
13.2 [Termination on Notice]

[The University/Either party] may terminate this agreement by giving four weeks’ notice to the [Contractor/other party].

13.3 Immediate termination by the University

The University may terminate this agreement immediately by notice to the Contractor if the Contractor:

(a) breaches this agreement and the breach is not remedied within 14 days of service on the Contractor of a notice specifying the breach and requiring it to be remedied;

(b) acts in a manner that the University reasonably regards as inappropriate or unprofessional;

(c) fails to provide the Services in a safe manner;

(d) becomes insolvent or goes into liquidation or provisional liquidation or enters into any arrangement or composition with its creditors;

(e) is subject to any action to have a controller, administrator, receiver, receiver and manager, liquidator or provisional liquidator appointed over its assets;

(f) dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason;

(g) is charged with a breach of any law or is the subject of proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the NSW Police Force or a similar public body whether of a state, territory or the Commonwealth;

(h) fails to provide satisfactory evidence of the Contractor’s or any of its Representative’s entitlement to work in Australia, as specified in clause 3.3; or fails to notify a change in that entitlement;

(i) fails to provide satisfactory evidence of the insurance policies as specified in clause 8; or

(j) notifies the University of a conflict of interest under clause 3.2 or the University becomes aware that such a conflict of interest exists.

A termination under this clause 13 is without prejudice to any other right or action the University may have against the Contractor.

**Guidance Note – Optional clause 13.4 – Consequences of termination – If Milestone Payments in the optional Schedule are not used then insert optional clause 13.4**

[optional clause 13.4]

13.4 [Consequences of termination]

If this agreement is terminated for any reason, then:

(a) both parties must return all property in their possession belonging to the other party, including Confidential Information;

(b) the University will pay in accordance with clause 5 the Service Fee for Services provided by the Contractor prior to the date of termination;

(c) the University will pay the Contractor for any reasonable costs directly attributable to providing the Services and incurred by the Contractor prior to the date of termination to the extent those costs were incurred with the prior knowledge of the University and adequate proof of the costs is supplied to the University; and

(d) where the University has paid the Service Fee to the Contractor for Services not yet delivered the Contractor must reimburse the University the amount of the Service Fee that relates to those undelivered Services.]
14. INDEMNITY

14.1 The University not responsible
The Contractor agrees that the University is not responsible for any aspect of the Services and releases the University from all liability arising in relation to the Services.

14.2 Indemnity for the University
The Contractor indemnifies the University (and each of the University's employees, officers, students and agents, for whom the University holds the benefit of this indemnity in trust) against all Losses caused or contributed to by:

(a) any unlawful or negligent act or omission of the Contractor, a Representative or a subcontractor;
(b) any breach of this agreement by the Contractor;
(c) any claim by a third party arising out of the Contractor providing the Services;
(d) any infringement of Intellectual Property or Moral Rights of a third party arising out of the provision of the Services or use of the Contract Material;
(e) any misuse or disclosure of Confidential Information or Personal Information by the Contractor;
(f) without limiting clause 2.3, the University being held to be the employer of the Contractor or a Representative or any payment the University is required to make in respect of the Contractor or a Representative (including payroll taxes, other taxes, superannuation contributions in order to avoid incurring a superannuation guarantee charge liability and any penalty and legal costs on an indemnity basis).

14.3 Limit to liability
The Contractor's obligation to indemnify the University reduces proportionately to the extent that the University caused or contributed to the Loss.

15. NOTICES

15.1 How to give an effective notice
A notice, consent or other communication under this agreement must be in writing and signed by an authorised person and must be either left at the addressee's address or sent to the addressee by pre-paid mail or email and is deemed to be delivered to the addressee:

(a) if it is left at the addressee's address before 5.00pm on a Business Day, on that day. If it is left at the addressee’s address on a day that is not a Business Day or after 5.00pm on a Business Day, at 9.00am on the next Business Day;
(b) if it is sent by pre-paid mail within Australia, six Business Days after it is posted;
(c) if it is sent by international post, ten Business Days after it is posted; and.
(d) if it is sent by email, when an email receipt is acknowledged by the recipient personally (not by any automatically generated system email).

15.2 Addresses for notices
A party's address is the Address for Notices as set out in the Details. A party may change its address by notice to the other party.

16. AMENDMENT AND ASSIGNMENT

16.1 Amendment
This agreement can only be amended or replaced by another agreement executed by the parties.

16.2 Assignment
(a) The Contractor may only deal with its rights under this agreement with the consent of the University.
(b) The University may deal with its rights under this agreement without the consent of the Contractor, and may disclose to any potential holder of the right or interest any information relating to this agreement or any party to it.

17. GENERAL

17.1 Governing law

This agreement is governed by the laws of New South Wales and any dispute relating to it must only be referred to the courts of New South Wales and the federal courts of Australia.

17.2 Exercise of rights

The exercise of a right does not prevent any further exercise of that right or the exercise of any other right. Neither the exercise of a right nor a delay in the exercise of a right operates as an election or a variation of the terms of this agreement.

17.3 Operation of this agreement

(a) This agreement contains the entire agreement between the parties about its subject matter.

(b) Any provision of this agreement which is unenforceable is, where possible, to be severed unless this would materially change the intended effect of this agreement.

17.4 Operation of indemnities

(a) Each indemnity in this agreement survives the termination of this agreement.

(b) A party may recover a payment under an indemnity in this agreement before it makes the payment in respect of which the indemnity is given.

17.5 Inconsistency with other agreements

If this agreement is inconsistent with any other agreement between the parties, this agreement prevails to the extent of the inconsistency.

17.6 Time is of the essence

Time is of the essence in respect of the Contractor's obligations.
Annexure

DEED POLL DATED [date]

BY [name], Sydney NSW 2000 (Representative)

FOR THE BENEFIT OF Macquarie University ABN 90 952 801 237 (University)

BACKGROUND:
A. The University has engaged the Contractor to provide Services to the University.
B. I have been employed by the Contractor to provide some or all of the Services for the Contractor.
C. I understand that the Agreement imposes obligations and requirements on the Contractor in respect of conduct by its Representatives and I agree to the terms of this deed poll.

OPERATIVE PROVISIONS
1. Definitions
Defined terms in the Agreement have the same meaning is this deed poll.

Agreement means the Agreement to acquire services between the University and [Contractor Company’s Name] (Contractor) dated [date].

2. Nature of relationship
I am not an employee, contractor or agent of the University. The Contractor has informed me that the University will make all payments in relation to providing the Services under the Agreement, directly to the Contractor. The Contractor is solely responsible for all payments to me.

3. Provision of Services
(a) As an employee or agent of the Contractor, I am suitably skilled, trained, qualified and competent to perform the work required by the Contractor in order to fulfil its obligations under the Agreement.
(b) I must perform my work as the Representative in a proper and efficient manner with all due care and skill to the satisfaction of the University and within reasonable time frames required by the University.
(c) I must act in good faith in all of my dealings with the University and not do anything harmful to the University.
(d) I have read the Agreement and understand the obligations and requirements of the Contractor in respect of my conduct as the Representative. I agree to comply with all directions of the Contractor in order for the Contractor to fulfil its obligations under the Agreement.
(e) I must comply with all applicable laws, regulations and industry standards.
(f) I must comply with the by-laws, policies and procedures and directions of the University including those relating to security, privacy, health and safety, discrimination and harassment, parking and traffic.
(g) I must attend and satisfactorily complete all training as required by the University including, induction, safety and anti-discrimination training.

4. No conflict of interest
(a) Except with the prior written consent of the University while I am performing work at the University I must not perform work for or provide any services of a similar nature to the Services to any person other than the University.
(b) Except with the prior written consent of the University I must not secure interests or engage in activities which may conflict with my obligations under this deed poll.
(c) I must disclose in writing as and when requested in the form required by the University, my financial and other private interests (including shareholdings, directorships and board memberships) in any entity which, in the opinion of the University, does or may compete with or adversely impact the business of the University.
5. Confidential Information

5.1 Ownership of Confidential Information
I acknowledge that all Confidential Information which has or may come into my possession remains the property of the University.

5.2 Proper use and security of Confidential Information
Subject to clause 5.3, I:
(a) must not use, disclose or copy Confidential Information in any form or in any manner, except for the purpose of and to the extent necessary to provide the Services; and
(b) must use my best endeavours, including keeping such information in a safe place and implementing adequate security measures, to ensure that all Confidential Information is secure from unauthorised access, use, disclosure or copying.

5.3 Exceptions
I understand that the obligations in clause 5.2 do not apply:
(a) if the University has agreed in writing to the specific disclosure, use or copying of Confidential Information; or
(b) to the extent disclosure of specific Confidential Information is required to comply with any applicable law.

5.4 Notifying the University
I must immediately notify the University if I:
(a) become aware of any breach of the obligations in clause 5.2 or any other unauthorised access, use, disclosure of copying of Confidential Information by any person; or
(b) am lawfully obliged to disclose any Confidential Information to a third party, in which case I must comply with the University's lawful directions in relation to the disclosure.

5.5 Returning Confidential Information
I must return all originals and copies (or if in electronic form, erase or destroy and deliver evidence of erasure or destruction) of all Confidential Information to the University immediately upon request, and at the completion of my work as the Representative.

5.6 Other agreements
If required by the University, I must enter into a separate agreement with the University or any client, licensor or supplier of the University in relation to the protection of Confidential Information.

5.7 Continuation of obligations
I acknowledge that my obligations under this clause 5 continue after I cease to perform work as the Representative.

6. Privacy

6.1 Representative's compliance with privacy and health laws
I must comply with all the Contractor's obligations under the Agreement regarding the collection, use and disclosure of Personal Information in accordance with applicable privacy and health laws, and relevant policies of the University.

6.2 Collection of personal information
I consent to:
(a) the University collecting, using and storing my Personal Information for any lawful purpose relating to the provision of the Services by the Contractor or the conduct of the University's business; and
(b) the University transferring my Personal Information outside New South Wales and Australia in the course of the University's business activities.

6.3 Disclosure of personal and health information
I consent to the University disclosing my Personal Information to other persons for any lawful purpose relating to the provision of the Services by the Contractor or the conduct of the
University business. These persons include the Australian Tax Office, superannuation fund trustees and administrators, contractors, bankers, insurers, medical, rehabilitation or occupational practitioners, laboratory analysts, investigators, financial and legal advisers, potential purchasers on sale of business, law enforcement bodies and regulatory authorities.

7. Intellectual Property and Moral Rights

7.1 Contract Material

(a) I must disclose all Contract Material to the University.

(b) The University owns all rights in and to the Contract Material including any Intellectual Property rights in or which may be obtained from the Contract Material.

(c) To the extent necessary to give effect to this clause 7 I assign all Intellectual Property in the Contract Material to the University.

(d) I grant the University a permanent irrevocable, royalty-free, world-wide, non-exclusive licence (including, right of sub licence) to use Existing Material in conjunction with the Contract Material.

7.2 No Intellectual Property infringement

(a) I warrant that:

(i) the use by the University of any Materials supplied by me in the course of my work as the Representative will not; and

(ii) I will not in the course of my work as the Representative;

infringe any Intellectual Property rights of any person nor give rise to any liability to make royalty or other payments to any person.

7.3 Moral Rights

To the extent permitted by applicable law and for the benefit of the University, I unconditionally and irrevocably:

(a) consent to any act or omission, including performance of the Specified Acts, that would otherwise infringe my Moral Rights in any Contract Material, whether occurring before or after this consent is given;

(b) agree that I will not institute, maintain or support any claim or proceeding for infringement of any of my Moral Rights in any Contract Material; and

(c) waive all of my Moral Rights in the Contract Material outside Australia.

7.4 Effect to clause

On request by the University I must do all things and sign all documents necessary to give effect to this clause 7, including doing anything necessary to assist the University to obtain or maintain registration or to protect or prove the ownership of any Intellectual Property rights in any Contractor Material.

7.5 Continuation of obligations

I acknowledge that my obligations under this clause 7 continue after I cease to perform work as the Representative.

8. Indemnity

I indemnify the University (and each of the University's employees, officers and agents, for whom the University holds the benefit of this indemnity in trust) against all Losses incurred as a result of or in connection with:

(a) any unlawful or negligent act or omission by the Contractor or myself;

(b) any breach of the Agreement by the Contractor;

(c) any a breach of this deed poll by me or a breach of any express or implied warranty given by me;

(d) any infringement of any Intellectual Property or Moral Rights of a third party arising out of the provision of the Services or use of the Contract Material;

(e) any claim by a third party arising out of the Contractor providing the Services;
(f) any misuse or disclosure of Confidential Information by the Contractor or by myself; or

(g) without limiting clause 2.5 of the Agreement, the University being held to be the employer of myself, or any payment the University is required to make (including payroll taxes, other taxes, superannuation contributions in order to avoid incurring a superannuation guarantee charge liability and any penalty and legal costs on an indemnity basis).

EXECUTED as a deed poll

SIGNED, SEALED and DELIVERED
by [name] in the presence of:

__________________________
[ name ]

__________________________
Signature of witness

__________________________
Name of Witness
1. DEFINITIONS

Milestone means the milestones described in paragraph 2.2 of this Schedule.

Milestone Date means the milestone dates set out in paragraph 2.2 of this Schedule.

Milestone Description means the milestone descriptions set out in paragraph 2.2 of this Schedule.

Milestone Payment means the milestone payments set out in paragraph 2.2 of this Schedule.

Partial Achievement means only meeting part of the Milestone Description.

Retention means the sum determined in accordance with paragraph 3 of this Schedule.

2. SERVICE FEE

2.1 Milestones

(a) The Service Fee must be paid to the Contractor by Milestone Payments, with the payment of each Milestone Payment being conditional on the Contractor having achieved the appropriate Milestone in accordance with paragraph 2.2.

(b) Subject to paragraph 2.1(c), each Milestone Payment is due on the condition referred to in paragraph 2.1(a) being met.

(c) If any Milestone has only reached Partial Achievement by its corresponding Milestone Date and the University has given notice under paragraph 3 the amount due is the relevant Milestone Payment less any Retention.

2.2 Achieving Milestones

A Milestone is achieved when the Milestone Description has been met to the reasonable satisfaction of the University.

<table>
<thead>
<tr>
<th>Milestone number</th>
<th>Milestone Description</th>
<th>Milestone Date</th>
<th>Milestone Payment $</th>
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<tbody>
<tr>
<td>1.</td>
<td>[Description]</td>
<td>[Date]</td>
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<tr>
<td>2.</td>
<td>[Description]</td>
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<td>3.</td>
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<td>5.</td>
<td>[Description]</td>
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3. RETENTIONS

(a) If any Milestone has not been met by its corresponding Milestone Date, the University may, without prejudice to any other right or remedy that the University may have, deduct and retain an amount calculated by multiplying the relevant Milestone Payment by [percentage %] (or such other higher rate as the University acting reasonably may determine, having regard to the nature and level of compliance with the Milestone Description applicable to the relevant Milestone).

(b) Where the University exercises its right under paragraph 3(a) it must notify the Contractor in writing of the University’s determination in respect of the relevant Milestone and the amount of the Retention.

(c) The Retention is due and payable to the Contractor upon achievement of the relevant Milestone in accordance with paragraph 2.2.