1. GENERAL

1.1. Application of Terms

(a) These Terms apply to the order for goods (Goods), services (Services) and/or Software placed by Macquarie University (University) as described in the purchase order to which these Terms are attached (Purchase Order).

(b) These Terms are to be read in addition to any terms specified in the Purchase Order itself and/or in any attachment to the Purchase Order that is expressly incorporated in writing. Unless otherwise explicitly agreed in writing by the University, these Terms prevail over any other terms that may be attached to, or referenced in, a Supplier quotation.

1.2. Amendments

No amendments to these Terms will be binding on the parties unless approved in writing by the University.

1.3. Definitions

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.

Background IP means Intellectual Property owned by a party prior to the date of this Agreement.

Contract IP means Intellectual Property created in providing the Deliverables.

Contract Materials means any Deliverables containing Background IP or Contract IP.

Confidential Information means all data and/or information in any form or medium exchanged between the parties for the purposes of this Agreement before, on or after the date of this Agreement (including the terms of this Agreement) relating to the past, present or future operations, business, research or technology of the disclosing party or the controlled entities of the University.

Deliverables means the Goods, Services, Software or other outputs described in the Purchase Order, and all other material created by the Supplier in connection with the provision of those Goods, Services and Software. Harmful Code means any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any Software.

Intellectual Property means all present and future rights conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

Losses means liabilities, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

1.4. Interpretation

Unless the context otherwise requires, words importing the singular include the plural and vice versa; references to a person include a body corporate, a natural person, an association, a governmental agency and their successors, administrators, executors and assigns; and headings are for guidance only.

2. OFFER AND ACCEPTANCE

(a) The Supplier is taken to have accepted the Purchase Order if the Supplier:

(i) notifies the University in writing that it accepts the Purchase Order no more than 7 days after receipt by it of the Purchase Order; or

(ii) delivers the Services and/or Deliverables described in the Purchase Order by the due dates specified in the Purchase Order or as agreed in writing by the parties.

(b) Once the Purchase Order is accepted, the Purchase Order, combined with these Terms (and any terms in the Purchase Order and/or any attachment expressly incorporated in writing), and any terms and conditions expressly agreed in writing by the parties will form a binding agreement between the parties (Agreement).

3. CANCELLATION AND VARIATIONS

(a) The University may, at any time before delivery of the relevant Goods, Services or Software, vary or cancel a Purchase Order.

(b) If the University cancels a Purchase Order and the Supplier establishes to the University’s satisfaction the Supplier already incurred expense in arranging for the order or delivery of the Goods and/or Services specified in the Purchase Order, the University agrees to pay the Supplier’s reasonable costs or expenses incurred.

(c) Cancellation of a Purchase Order operates to terminate the Agreement.
4.3 Statutory Warranties

(d) If the University varies the Purchase Order and the variation causes an increase or decrease in the cost of the Goods, Services and/or Software, or time required to deliver those Goods, Services and/or Software, the Supplier must promptly notify the University of:

(i) the additional or reduced cost resulting from the proposed variation; and
(ii) any revised delivery or completion times as a result of the variation.

(e) If the parties agree, the Purchase Order will be varied by the University to reflect the agreed variation including costs and delivery times.

4.4 Defects

(a) During the Warranty Period the University may give written notice to the Supplier of any failure or defect in the Deliverables.

(b) The Supplier must promptly correct any defect or failure notified by the Supplier during the Warranty Period at no cost to the University by repair, replacement, modification or other means acceptable to the University.

(c) If the Supplier fails to correct any defect or failure of which it has been notified under this clause 4.4 within the time specified in the notice, the University has the right to rectify the defect or failure itself or have the rectification undertaken by a third party. All costs incurred constitute a debt due and payable by the Supplier to the University and may be deducted from moneys otherwise payable by the University to the Supplier.

4.5 Grant of Software Licence

Where the Deliverable in a Purchase Order includes Software:

(a) the Supplier hereby grants the University a non-exclusive licence to access and use that Software on the terms and conditions provided by the Supplier to the University prior to acceptance of that Purchase Order, for the period specified in the Purchase Order, or the period otherwise agreed in writing by the parties; and

(b) the Supplier agrees to provide to the University a copy of any Software documentation or material prior to installation of the Software.

4.6 Harmful Code

The Supplier represents and warrants that the Deliverables will not introduce any Harmful Code into the University's systems, and that the Supplier will not, nor will it suffer or permit any third party under its direction or control to, introduce any Harmful Code into the Deliverables or the University's systems in the course of providing the Goods and/or Software and/or Services. If any Harmful Code is introduced, the Supplier must promptly notify the University, take all necessary action to eliminate the Harmful Code and, at the Supplier's own cost, repair any harm or destruction caused by that Harmful Code.

4.7 Modern Slavery

(a) The Supplier must, in connection with its production, procurement and supply of the 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 mean the Modern Slavery Act 2018 (NSW) and Modern Slavery Act 2018 (Cth) and Modern Slavery means as defined in the Modern Slavery Laws.

5. ACCEPTANCE AND TITLE

5.1 Acceptance

Payment of any invoice by the University will not be deemed acceptance of any Deliverables, but rather such Goods and/or Services will be subject to a four-month period of
inspection, testing, acceptance or rejection by the University.

5.2. Rejection of Goods and Software

If following inspection or testing the University determines that the Goods and Software are not as described in the Purchase Order or have not been supplied in accordance with these Terms, then without prejudice to any other right or remedy of the University, the University may reject the Goods and Software (in whole or in part) and the Supplier must within 7 days or such other time agreed between the parties comply with a requirement of the University to;

(a) replace, without cost to the University, the rejected Goods and Software with goods and software that are in all respects in accordance with the Specifications; or
(b) refund any payment for the rejected Goods and Software; or
(c) repair or rectify the Goods and Software, to the satisfaction of the University.

5.3. Title

(a) The title to and risk in the Goods and Deliverables pass to the University on delivery to the Site specified in the Purchase Order or as otherwise agreed in writing by the parties.

(b) If the University notifies the Supplier that the Goods and Deliverables are rejected, the title to and risk in the rejected Goods and Deliverables immediately reverts back to the Supplier.

6. SUB-CONTRACTING

(a) The Supplier may not sub-contract any obligations under the Agreement without the prior written consent of the University.

(b) Where the Supplier sub-contracts any of its obligations under the Agreement, the Supplier remains liable for carrying out and completing those obligations.

7. FEES AND INVOICES

7.1. Fees

Subject to these Terms, the University must pay to the Supplier the fees specified in the Purchase Order (Fees). Subject to clause 7.3, the Fees include all taxes (other than GST), expenses, costs and charges including freight and courier charges.

7.2. Invoices

(a) The Supplier may issue an itemised tax invoice to the University on completion of the Services or the date of delivery of the Goods or Software.

(b) The Supplier must issue the University with an itemised tax invoice for Goods, Services and/or Software for which it requires payment. The invoice must:

(i) specify the Purchase Order number;
(ii) specify the date of delivery;
(iii) describe the Goods, Software and/or Services delivered – including quantity;
(iv) specify bank account details for electronic payment; and

(c) Unless otherwise specified in the Purchase Order or agreed by the parties in writing, the University agrees to pay the Supplier the Fees within 30 days of the end of the month of receipt and acceptance of a correctly rendered invoice by the University.

7.3. GST

(a) Words defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause 7.3.

(b) If any supply under the Agreement is a taxable supply, in addition to the payment for the supply, the party receiving the supply must pay and reimburse to the party making the supply any GST applicable to the supply. Subject to the receipt by the recipient of the supply of a valid tax invoice in relation to the payment to be made for that supply, any amount of GST payable is to be paid at the same time as the payment for the supply to which it relates.

8. INDEMNITY AND INSURANCE

8.1. Indemnity

The Supplier 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 it directly or indirectly sustains or incurs as a result of:

(a) any negligent or unlawful act or omission of the Supplier, Supplier personnel, or any subcontractor engaged by the Supplier; and
(b) any infringement of the Intellectual Property or moral rights of a third party arising out of the provision or use of the Goods, Services and/or Software.

8.2. Third Party Claims

If a third party claims, or the University reasonably believes that a third party is likely to claim, that all or part of the Contract Materials infringe their Intellectual Property or breach confidentiality, the Supplier must, in addition to the indemnity under the Agreement and to any other rights that the University may have against it, promptly, at the Supplier’s expense:

(a) use its best efforts to secure the rights for the University to continue to use the affected Contract Materials free of any claim or liability for infringement; or
(b) replace or modify the affected Contract Materials so that the Contract Materials or the use of them does not infringe the Intellectual Property of any other person without any degradation of the performance or quality of the affected Contract Materials.

8.3. Insurance

(a) The Supplier must have and maintain:

(i) Public and Products Liability Insurance ($20 million for each occurrence);
(ii) Professional Indemnity Insurance ($10 million for each occurrence);
(iii) if providing Software, cyber liability insurance ($2 million for each occurrence); and
(iv) other reasonably required insurances having regard to the nature of the business and obligations to supply Goods and/or Services under the Agreement.
10. GENERAL

10.1. Termination

The University may terminate the Agreement by:

(a) written notice to the Supplier if the Supplier breaches a term of the Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

(b) written notice to the Supplier if the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager; or

(c) cancelling a Purchase Order under clause 3.

10.2. Governing Law

The Agreement is governed by the law in force in New South Wales.

10.3. Giving effect to the Agreement

Each party agrees to do anything (including execute any document) to ensure that its employees and agents do anything (including executing any document) that the other party may require to give effect to the Agreement.

10.4. Notices

Any notice to be given by one party to the other under the Agreement must be in writing and sent to the other party’s address set out in the Purchase Order.

10.5. Rights and obligations

(a) The University reserves the right to retain other persons or entities to supply the Goods, Services and/or Software, including any part of the Goods, Services and/or Software.

(b) The Supplier may only assign its rights or novate its rights and obligations under the Agreement with the prior written consent of the University.

(c) Each warranty and indemnity in the Agreement survives termination of the Agreement.

10.6. Exercise of rights

The exercise of rights 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 the Agreement.

10.7. Compliance with University policies

If the Supplier is required to provide any Services within any lands or buildings owned or occupied by the University, then the Supplier must comply with all reasonable directions of the University and must observe the University’s by-laws, rules and policies, which are downloadable from the following website: https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central

10.8. Publication

If required to do so by law whether under GIPA or otherwise, the Supplier agrees that the University has the right to publish details of the Agreement and/or the Agreement itself in the manner set out in the applicable requirements.

10.9. Inconsistency

If there is an inconsistency between a provision of any two or more of:
(a) a formal written University contract entered into between the Supplier and the University for the Goods, Services and/or Software described under the Purchase Order;

(b) these Terms;

(c) any terms added to the Purchase Order; or

(d) any other annexures or attachments to the Purchase Order,

then the first-mentioned terms prevail in the order set out.