



The University of New South Wales Purchase Order Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

Agreement means the legally binding agreement between the parties formed in accordance with clause 2.2 of these Terms and Conditions and constituted by the documents referred to in clause 2.1.

Background IP means Intellectual Property Rights owned or controlled by a party as at the date of this Agreement, or acquired or developed by a party (whether alone or jointly with any other person) during the term of this Agreement but independently of the Goods and/or Services, in each case which that party makes available to the other party for or in connection with the Goods and/or Services.

Confidential Information means all information disclosed by a party (**Discloser**) to the other party (**Receiving Party**) that is:

- (a) related to the operations, business, research or technology of the Discloser;
- (b) imparted in circumstances of confidence;
- (c) by its nature reasonably to be considered the confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence,

in each case, irrespective of the medium or means of disclosure or whether the disclosure is made directly or indirectly either by or to the Receiving Party or by the Discloser's Personnel, affiliates or Related Bodies Corporate but does not include any Excluded Information.

Excluded Loss means any special, indirect or consequential Loss arising under or in connection with this Agreement, including any loss of profits, loss of anticipated savings or loss of reputation.

Goods means the goods to be provided to UNSW by the Supplier under the Purchase Order.

GST means the tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related tax imposition Acts of the Commonwealth of Australia.

Intellectual Property Rights means any inventions, patents, trade marks, service marks, design rights, database rights (whether registered or otherwise) and any applications, renewals and extensions for these, copyright, know-how, trade or business names and all other intellectual or industrial property rights anywhere in the world, whether or not registered or capable of registration and any associated goodwill and the right to have Confidential Information kept confidential.

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

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), the *Modern Slavery Act 2015* (UK) and any relevant regulations or ancillary legislation published in respect of the above or any similar modern slavery legislation in another jurisdiction of which UNSW is required to comply.

Personal Information means personal information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW).

Personnel means any employee, officer, principal, agent, contractor, student or volunteer of a party.

Privacy Laws means all applicable laws which relate to the security, confidentiality, protection, privacy or secrecy of UNSW Data or Personal Information, including the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Privacy Act 1988* (Cth).

Purchase Order means the completed UNSW purchase order form issued by UNSW to the Supplier, which identifies the Supplier and includes a description and the price of the Goods and/or Services, and includes the documents referred to in or attached to the Purchase Order.

Related Bodies Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Security Breach means any actual or reasonably suspected:

- (a) act or omission that adversely affects UNSW Data, UNSW systems or Supplier systems;
- (b) unauthorised use of, unauthorised interference with, or unauthorised access to, Supplier systems or UNSW systems used by or on behalf of the Supplier;
- (c) damage to, or inability to access, UNSW Data or supplier Systems due to a malicious use, attack or exploit of such UNSW Data or Supplier systems;
- (d) unauthorised access to, theft or loss of UNSW Data;
- (e) unauthorised use of UNSW Data for purposes of actual or reasonably suspected theft, fraud, identity theft or other misuse;
- (f) breach of, or transmission of harmful code to UNSW systems arising from, in whole or part, an act, error, or omission of the Supplier or third parties acting on behalf of the Supplier; or
- (g) unauthorised disclosure of UNSW Data.

Services means the services to be provided to UNSW by the Supplier under the Purchase Order.

Specification means any specification applying to the Goods and/or Services and referred to in or attached to the Purchase Order.

Supplier means the party providing the Goods and/or Services identified in the Purchase Order.

Terms and Conditions means these terms and conditions.



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UNSW means the University of New South Wales or, where the party named in the Purchase Order as the purchasing party is a Related Body Corporate of UNSW, a reference in these Terms and Conditions to UNSW is to be taken to be a reference to that Related Body Corporate.

UNSW Data means all data and information (including Personal Information) of or relating to UNSW and the operations, facilities, customers, clients, students, Personnel, assets, or programs of UNSW in whatever form that data or information may exist and whether entered into, stored in, generated by, retrieved, printed, processed, produced, or accessed by the Supplier, as part of the supply under this Agreement.

Warranty Period means the one year period commencing on the date of supply of any Services or of any Goods to the nominated delivery point, unless otherwise stated in the Purchase Order.

WHS Legislation means all applicable work health and safety legislation, including the *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Act 2011* (ACT), *Work Health and Safety Regulation 2017* (NSW) and *Work Health and Safety Regulation 2011* (ACT).

1.2 Interpretation

- (a) In this Agreement, unless the contrary appears:
- (i) the singular includes the plural and vice versa;
 - (ii) a reference to a person includes a body corporate or partnership and includes that person's successors, administrators, executors and assigns;
 - (iii) dollars means Australian dollars unless otherwise stated; and
 - (iv) "including" and similar expressions are not words of limitation.
- (b) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (c) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (d) In the event of any conflict or inconsistency between this Agreement, any specific contract signed by UNSW and the Supplier and the Supplier's terms and conditions (including any software licence terms), the order of precedence will be: the specific contract signed by UNSW and the Supplier, followed by this Agreement and lastly, the Supplier's terms and conditions.

2. Agreement

- 2.1 This Agreement is made up of the Purchase Order, including any terms and conditions expressly incorporated into the Purchase Order and any documents attached to the Purchase Order, and these Terms and Conditions.
- 2.2 The Supplier is taken to have accepted a Purchase Order, and a legally binding agreement between UNSW and the Supplier will be formed, on the earlier of:
- (a) the date that it notifies UNSW of its acceptance in writing; or



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(b) the date on which it delivers, or commences to deliver the Goods or perform the Services.

2.3 If there is any inconsistency between any part of this Agreement, the order of precedence will be:

(a) the Purchase Order;

(a) any other terms and conditions expressly incorporated into the Purchase Order;

(b) any document attached to the Purchase Order; and

(c) these Terms and Conditions.

2.4 The Supplier represents and warrants that it has:

(a) carefully examined and agrees to comply with the Code of Conduct and Values available at <https://www.unsw.edu.au/governance/policy/browse-a-z> in addition to any other policies and procedures provided by UNSW to the Supplier in connection with this Agreement; and

(b) fully understood the conditions, risks, contingencies and other circumstances, including site conditions, which might affect the supply of the Goods and/or performance of the Services.

3. **Variation**

3.1 Any variation to this Agreement is not effective unless it is made in writing and signed by the parties to it.

3.2 UNSW may request to vary the Purchase Order by giving the Supplier written notice of the proposed variation.

3.3 The Supplier must use reasonable endeavours to accommodate any variation request made by UNSW under clause 3.2. If the Supplier can accommodate the variation request, the Supplier must promptly issue to UNSW a new Purchase Order setting out any changes resulting from the proposed variation, such as changes to costs and delivery or completion times, and if approved by UNSW in writing, the new Purchase Order will replace the previous version of the Purchase Order and will be incorporated into this Agreement as if it were the original Purchase Order.

4. **Performance and quality**

4.1 The Supplier warrants that:

(a) the Supplier and all Personnel engaged by it in connection with this Agreement have the resources and the competence, skill and knowledge to perform the Services and/or complete delivery of the Goods;

(b) the Goods and/or Services will be fit for the intended purpose specified in the Purchase Order or agreed by the parties writing and match the description of the Goods and/or Services referred to in the Purchase Order;

(c) where applicable, the Goods and/or Services will match any sample or demonstration of the Goods and/or Services given to UNSW by the Supplier;

(d) the Goods and any applicable installation will be complete, accurate, of merchantable quality and free from defects in design, materials or workmanship;

(e) it has all the necessary title or rights, including all Intellectual Property Rights, necessary to provide



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the Goods and/or perform the Services;

(f) UNSW's use of the Goods and/or Services or any licence granted under clause 5.3 will not infringe the Intellectual Property Rights of any third party; and

(g) it will supply to UNSW all documentation associated with the use of the Goods and/or Services.

4.2 The Supplier must comply with the standards of quality specified in the Purchase Order, all Specifications and any law or regulation applicable to the Goods and/or Services.

4.3 If no standards are specified, the Supplier must comply with the highest industry standards that normally apply to goods and services of the kind referred to herein as the Goods and/or Services.

4.4 UNSW may, on reasonable notice, inspect the Goods prior to delivery and the Supplier must give UNSW all reasonable access to its premises during business hours to enable such inspection.

4.5 The warranties referred to in clause 4.1 are in addition to any statutory warranties applicable to the Goods and/or Services.

4.6 If requested to do so by UNSW during the Warranty Period, the Supplier must promptly correct any defect or failure in the Goods and/or Services within the timeframe specified by UNSW at no cost to UNSW by repair, replacement, modification or other means acceptable to UNSW.

4.7 If the Supplier fails to correct any defect or failure within the timeframe specified by UNSW under clause 4.6, UNSW may arrange for the performance of the necessary rectification work at the Supplier's expense (**Rectification Costs**). UNSW may set off the Rectification Costs against any amount payable by UNSW to the Supplier.

5. Intellectual Property

5.1 The Supplier agrees that:

(a) ownership of any Intellectual Property Rights arising from or in connection with the Goods and/or Services will vest in UNSW;

(b) it irrevocably assigns to UNSW all Intellectual Property Rights it may create (whether alone or with another person) arising from or in connection with the Goods and/or Services;

(c) it irrevocably consents to all acts or omissions by UNSW which may infringe the Supplier's moral rights arising from or in connection with the Services and will procure its authorised representative to provide such consent; and

(d) it will do all things reasonably requested by UNSW to give effect to UNSW's rights under this clause, including by executing any instrument and doing all things reasonably necessary to vest the registration of title or similar protection to UNSW.

5.2 Each party acknowledges that:

(a) the Background IP of a party remains the property of that party (or a third party licensor, as the case may be) and nothing in this Agreement assigns any right, title or interest in or to any Background IP of a party; and

(b) nothing in this Agreement prevents a party from commercialising its Background IP or using its Background IP to conduct research (including collaborative, contract or other external research)



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outside the scope of this Agreement.

- 5.3 The Supplier grants to UNSW, and will ensure that all relevant third parties grant to UNSW, a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sub-licence) to use, reproduce, modify, publish, adapt or communicate any Background IP so as to enable UNSW's unrestricted use of the Goods and/or Services.
- 5.4 If a third party claims, or UNSW reasonably believes that a third party is likely to claim, that the use by UNSW of all or part of the Goods and/or Services infringes its Intellectual Property Rights, the Supplier must, promptly at its own expense:
- (a) use its best efforts to secure the right for UNSW to continue to use the affected Goods and/or Services free of any claim or liability for infringement; or
 - (b) replace or modify the affected Goods and/or Services so that they, or the use of them, does not infringe the Intellectual Property Rights of any other person, without any reduction in the performance or quality of the affected Goods and/or Services.

6. Delivery of goods and services

- 6.1 Unless otherwise specified in the Purchase Order, the Supplier must deliver the Goods (adequately packaged and protected to ensure safe delivery) to the nominated UNSW address by the delivery date specified in the Purchase Order. The Goods must be accompanied by a delivery document which identifies the Purchase Order number. The execution of a delivery document by a UNSW staff member will represent UNSW's acknowledgement of delivery of the Goods, but such acknowledgement will not affect UNSW's right to seek rectification of any defective goods in accordance with this Agreement.
- 6.2 Title and risk will pass to UNSW upon delivery or upon UNSW taking possession of the Goods (as applicable).
- 6.3 The Supplier must promptly notify UNSW if it becomes aware that a delay in the delivery of Goods and/or Services may or will occur. UNSW may, in its discretion, grant an extension of time to any specified delivery date, provided that:
- (a) the delay is due to a cause beyond the reasonable control of the Supplier; and
 - (b) the Supplier satisfies UNSW that it has used its best endeavours to prevent or overcome the delay.
- 6.4 Where the Purchase Order requires the Supplier to supply Goods or provide Services which are or may be hazardous or dangerous to persons or property, the Supplier must at or before delivery of the Goods or at any relevant time in relation to performance of the Services, provide UNSW with relevant and appropriately detailed information and documentation as required under applicable legislation (including in relation to dangerous goods, occupational health and safety and the environment) and as may otherwise be reasonably required to enable UNSW to safely receive, handle, store and use the Goods or receive the Services.

7. Payment

- 7.1 Except as otherwise stated in the Purchase Order or agreed in writing by the parties:
- (a) the price payable to the Supplier under the Purchase Order is a fixed GST-inclusive price, which is not subject to any variation, including variations in the cost of labour, material or exchange rates;
 - (b) the Supplier shall be responsible for the payment of all freight, packaging, handling, insurance, taxes, duties and charges payable with respect to the Goods and/or Services and the Purchase



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Order price shall be deemed to be inclusive of all such costs, taxes, duties and charges; and

- (c) UNSW must pay correctly rendered tax invoices within thirty (30) days of the end of the month in which it receives the invoice, provided:
- (i) the relevant Goods and/or Services have been received or performed in accordance with this Agreement; and
 - (ii) the invoice bears the Purchase Order number and a description of the Goods and/or Services provided.

8. Indemnity and insurance

- 8.1 Each party (**Indemnifying Party**) indemnifies the other party and its Personnel against all Loss, where such Loss was caused by a negligent act or omission of the Indemnifying Party, or its Personnel in connection with this Agreement.
- 8.2 The Indemnifying Party's liability to indemnify the other party and its Personnel under this Agreement will be reduced proportionally to the extent that any negligent act or omission of the other party caused or contributed to the Loss.
- 8.3 Notwithstanding any other provision in this Agreement, no party is liable to any other party under or in connection with this Agreement for any Excluded Loss.
- 8.4 To the extent permitted by law, the aggregate liability of each party under or in connection with this Agreement, whether in contract, tort (including negligence), statute or any other cause of action, is limited to the total price payable to UNSW under this Agreement, except for any Loss arising from:
- (a) death or personal injury; or
 - (b) damage to tangible property.
- 8.5 The Supplier must:
- (a) take out and maintain adequate insurance in relation to the Goods and/or Services, including public and product liability insurance (in the amount of not less than \$20,000,000 per claim), public liability insurance (in the amount of not less than \$10,000,000 per claim), professional indemnity insurance (in the amount of not less than \$10,000,000 per claim) and workers compensation in accordance with applicable law and awards; and
 - (b) ensure that every permitted subcontractor engaged by the Supplier complies with the obligations in clause 8.5(a).
- 8.6 UNSW may request the Supplier to provide evidence of such insurances by providing copies of certificates of currency to UNSW and the Supplier must respond to any such request within seven (7) days.
- ## 9. Work, health and safety
- 9.1 Each party (**Visiting Party**), when attending the other party's premises (**Host Party**), must comply with, and ensure, so far as reasonably practicable, that they and their Personnel comply with, all reasonable work health and safety and security measures applying to the Host Party including:
- (a) complying with the WHS Legislation;



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- (b) any Host Party policies and procedures, which have been notified by the Host Party to the Visiting Party in writing; and
- (c) any other instructions, directions and requests made by the Host Party to the Visiting Party regarding work health and safety matters, or environmental matters, including by providing the Host Party with any reasonable assistance in investigating any work health and safety matter if requested to do so by the Host Party (including by providing access to any relevant information, documents or Personnel of the Visiting Party).

10. Suspension and termination

- 10.1 UNSW may, by written notice to the Supplier, immediately suspend all or part of the Purchase Order for any reason whatsoever.
- 10.2 The Supplier must comply with the notice of suspension as soon as reasonably practicable upon receipt, and if UNSW provides written notice to the Supplier that the suspension is to cease, the Supplier must resume work under the Purchase Order as soon as reasonably practicable.
- 10.3 Either party may terminate this Agreement for convenience by thirty (30) days' notice in writing to the other party.
- 10.4 A party may terminate this Agreement immediately by written notice if the other party:
 - (a) commits a material breach of this Agreement not capable of remedy;
 - (b) commits a material breach of this Agreement capable of remedy and fails to remedy the breach within fourteen (14) days after receiving written notice requiring it to do so; or
 - (c) becomes the subject of any form of insolvency or administration.

For the purposes of this clause 10.4, a failure to perform any obligation by the time stipulated in the Purchase Order is deemed to be a breach of a material term or condition of the Agreement.

- 10.5 If this Agreement is suspended or terminated under this clause 10:
 - (a) UNSW must pay the Supplier for the Goods and/or Services provided under this Agreement, including any reasonable costs incurred by the Supplier as a direct result of the suspension or termination, up to the date of suspension or termination, provided the Supplier provides adequate evidence of its costs to UNSW; or
 - (b) if UNSW has paid the Supplier in advance, the Supplier must reimburse UNSW for the Goods and/or Services not yet delivered or supplied to UNSW within fourteen (14) days of the suspension or termination date.
- 10.6 Termination of the Purchase Order will result in the termination of this Agreement.

11. Data ownership and handling

- 11.1 UNSW is the owner of any and all Intellectual Property Rights and other rights and interests in UNSW Data.
- 11.2 The Supplier:
 - (a) agrees and acknowledges that it has no Intellectual Property Rights or any other ownership rights



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or interests in UNSW Data and that nothing in this Agreement will confer any such rights on it; and

- (b) assigns to UNSW for no fee any and all present and future Intellectual Property Rights that the Supplier has or may acquire in respect of UNSW Data.

11.3 The Supplier must:

- (a) only access, use, process, disclose and handle UNSW Data solely for the purpose of providing the Supply and only in accordance with this Agreement and UNSW's instructions;
- (b) not sell, commercially exploit, let for hire, assign rights in, or otherwise dispose of any UNSW Data;
- (c) not make UNSW Data available to a third party other than a subcontractor approved under this Agreement, and then only as is necessary for the subcontractor to provide the subcontracted Supply and subject to legally enforceable obligations no less stringent than the obligations under this Agreement (and the Supplier will hold the benefit of such obligations in trust for UNSW);
- (d) not access, transfer, take or send UNSW Data outside of New South Wales unless the Supplier has the prior written consent of UNSW to do so (which consent may be withheld in UNSW's absolute discretion and may be given subject to conditions); and provide all appropriate protection of UNSW Data consistent with Privacy Laws, industry best practice and, if requested by UNSW, provide details of the systems and processes used to protect UNSW Data; and
- (e) comply with all security, storage, retention and disposal procedures with respect to UNSW Data as set out in this Agreement or as otherwise required by UNSW from time to time.

11.4 If the Supplier becomes aware of a Security Breach or a potential Security Breach, the Supplier must:

- (a) promptly notify UNSW of that fact, together with reasonable details of the actual or potential Security Breach and any steps required to be taken to mitigate the effects of that Security Breach;
- (b) promptly rectify the actual Security Breach and mitigate its effects or, if the Security Breach is a potential Security Breach, take all steps necessary to prevent the potential Security Breach;
- (c) assist UNSW in identifying any UNSW Data and any resulting data integrity issues that may have been impacted by the Security Breach;
- (d) if the breach is caused by the Supplier or its Personnel, promptly make such modifications to its systems and procedures as are necessary to ensure that a breach or potential breach of the same, or similar nature, as the Security Breach, does not occur again; and
- (e) cooperate with any directions issued by UNSW or its nominee in respect of the investigation, remediation and notification of any Security Breach, including in respect of any dealings with regulators, affected individuals, and the general public.

12. **Confidentiality**

12.1 Each party may use Confidential Information of each other party solely for the purposes of this Agreement.

12.2 A Receiving Party must and must ensure their Personnel:

- (a) keep secure and maintain the confidentiality of any Confidential Information of a Discloser;



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- (b) refrain from using or directly or indirectly disclosing any Confidential Information of a Discloser, or attempting to do so, except for the purposes of this Agreement;
- (c) take all action necessary to maintain the confidential nature of the Confidential Information;
- (d) take reasonable steps to keep the Confidential Information:
 - (i) within its possession and control, and
 - (ii) secure and properly stored to protect it from unauthorised access, disclosure or use, or loss, damage or destruction;
- (e) notify UNSW as soon as the Receiving Party becomes aware of a breach of this Agreement or any actual, suspected or likely unauthorised access to, or use or disclosure of the Confidential Information, and
- (f) not disclose Confidential Information to any third party without the Discloser's prior written consent, except where otherwise permitted under this Agreement.

12.3 The Receiving Party may disclose Confidential Information if required by any law or order of any government agency provided that it:

- (a) only discloses the minimum amount of information necessary to comply with the requirement;
- (b) takes all reasonably available legal measures to avoid such disclosure;
- (c) notifies the Discloser as soon as practicable after such disclosure is ordered so that the Discloser may seek an appropriate protective order or other remedy, and
- (d) consults with the Discloser as to the form of disclosure to be made and takes account of any reasonable comments of the Discloser.

12.4 A Receiving Party must cease all use of and return to the Discloser, or on the Discloser's instruction, destroy all Confidential Information on expiration or termination of this Agreement.

12.5 Despite clause 12.4, the Receiving Party may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):

- (a) to fulfil legal, regulatory or reporting obligations;
- (b) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by law, and

provided the Receiving Party maintains the confidentiality of the Confidential Information in accordance with this clause 12.

13. Privacy

13.1 The Supplier must ensure that any collection, use, disclosure, or transfer by the Supplier or its Personnel of Personal Information in connection with the Agreement complies with all applicable Privacy Laws, and the UNSW Privacy Policy available at <https://www.unsw.edu.au/governance/policy/browse-a-z>.

13.2 The Supplier must, in regard to Personal Information provided to it by UNSW, or otherwise collected by



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the Supplier in the course of performing the Services under this Agreement:

- (a) use such Personal Information only to perform its obligations under this Agreement or as otherwise required by law;
- (b) take reasonable steps to protect such Personal Information from misuse, interference and loss and from unauthorised access, modification or disclosure;
- (c) ensure that all software deployed incorporates industry best practice in relation to the implementation of encryption systems, anti-virus protection, patches, updates and upgrades for security purposes;
- (d) not transmit such Personal Information outside Australia without the written agreement of UNSW;
- (e) segregate such Personal Information from other data stored or processed by the Supplier or its other customers;
- (f) notify UNSW as soon as practicable of becoming aware of a security breach which affects such Personal Information;
- (g) disclose such Personal Information only to officers, employees, agents and contractors of the Supplier to the extent necessary to perform its obligations under this Agreement or as otherwise required by law; and
- (h) following a request from an individual to access to their Personal Information held by the Supplier, comply with any reasonable written instruction from UNSW regarding the provision to that individual of access to their Personal Information, unless compliance with such an instruction is not permitted by law.

13.3 On termination of this Agreement, the Supplier must:

- (a) not use, copy or disclose any Personal Information obtained by the Supplier in connection with this Agreement;
- (b) if requested by UNSW, promptly return to UNSW in an electronic readable format all copies of Personal Information including current, back up and archive information; and
- (c) if requested by UNSW, destroy all copies of Personal Information.

14. Modern Slavery

14.1 The Supplier must ensure that:

- (a) neither it nor its Personnel engage in any conduct or omission which may contravene any Modern Slavery Laws;
- (b) it does all things required or necessary to mitigate or reduce modern slavery risks in its operations and supply chains, and to stay in compliance with all applicable Modern Slavery Laws; and
- (c) the terms of the contractual commitment entered into with any Personnel engaged by the Supplier in connection with this Agreement permit termination of such commitments where the Supplier has reasonable grounds to believe there has been, or there is likely to be, a breach of any applicable Modern Slavery Laws.



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14.2 The Supplier must:

- (a) promptly notify UNSW if it becomes aware of a suspected or actual breach by it or its Personnel of any Modern Slavery Laws;
- (b) cooperate in good faith with UNSW in investigating the circumstances relevant to any possible, potential, suspected or actual breach of any Modern Slavery Laws, whether or not notification has been given under clause 14.2(a); and
- (c) give such assistance and access to documents and Personnel as UNSW may reasonably require in connection with action under clause 14.2(b) or UNSW's compliance with its obligations under the Modern Slavery Laws.

14.3 Without limiting any other provisions of this Agreement, the Supplier indemnifies UNSW in respect of liability or loss incurred as a result of the Supplier's breach of any of the obligations in this clause 14.

14.4 Without limitation, for the purposes of clause 10, a breach of this clause 14 will entitle UNSW to immediately terminate this Agreement in whole or in part.

15. **Notices**

15.1 A party notifying or giving notice under this Agreement must give notice:

- (a) in writing;
- (b) addressed to the address of the other party specified in the Purchase Order or other address as notified in writing by the other party from time to time; and
- (c) by either leaving at or sending by prepaid post or by email to that address, sending by electronic form such as email to that address.

15.2 A notice given in accordance with this clause is deemed received:

- (a) if left at the recipient's address or sent by email, on the date of delivery, unless the sender receives a delivery failure message; or
- (b) if sent by prepaid post, five (5) days after the date of posting.

16. **Access to information**

16.1 This clause 16 applies only where the Supplier is to provide services to the public on behalf of UNSW under this Agreement.

16.2 If this clause applies:

- (a) the Supplier must, within seven (7) days of receiving a written request from UNSW, provide UNSW with immediate access to the following information contained in records held by the Supplier:
 - (i) information that relates directly to the performance of the Services provided to UNSW by the Supplier pursuant to the Agreement;
 - (ii) information collected by the Supplier from members of the public to whom it provides, or offers to provide, the Services pursuant to this Agreement; and



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- (iii) information received by the Supplier from UNSW to enable it to provide the Services pursuant to this Agreement.
- (b) For the purposes of clause 16.2(a), information does not include:
- (i) information that discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Supplier is prohibited from disclosing to UNSW by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) information that, if disclosed to UNSW, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to UNSW, whether at present or in the future.
- (c) The Supplier will provide copies of any of the information in clause 16.2(a), as requested by UNSW, at the Supplier's own expense.
- (d) Any failure by the Supplier to comply with any request pursuant to clause 16.2(a) or (c) will be considered a breach of an essential term and will allow UNSW to terminate this Agreement by providing notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice. Once the Supplier receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of UNSW, then the termination will take effect seven (7) days after receipt of the notice.

17. Public Interest Disclosures

17.1 In this clause 17, words and expressions:

- (a) which are not defined in this Agreement, but which have a defined meaning in the *Public Interest Disclosures Act 2022* (NSW) (**PID Act**), have the same meaning as in the PID Act; and
- (b) which are defined in this Agreement but, by such a definition, are given a different meaning in other clauses of this Agreement to the meaning given in the PID Act, take the same meaning as in the PID Act in this clause.

17.2 This clause 17 applies only where the Supplier is to deliver services on behalf of UNSW or to exercise the functions of UNSW under this Agreement.

17.3 The Supplier must ensure that all individuals involved in providing Services under this Agreement are made aware of the following:

- (a) that those individuals are public officials for the purposes of the PID Act;
- (b) how to make a voluntary public interest disclosure;
- (c) UNSW's public interest disclosure policy available at <https://www.unsw.edu.au/governance/policy/browse-a-z>; and
- (d) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Act or law.

17.4 The Supplier must notify UNSW of a voluntary public interest disclosure of which the Supplier becomes



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aware where either:

- (a) the disclosure relates to UNSW; or
- (b) the maker of the disclosure is known to be a public official associated with UNSW.

- 17.5 The Supplier must notify UNSW of serious wrongdoing committed, or alleged to be committed, by an individual providing Services under this Agreement.
- 17.6 The Supplier must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of UNSW or any other agency (as defined in the PID Act).
- 17.7 The Supplier acknowledges that:
- (a) UNSW has an obligation to take corrective action under s. 66 of the PID Act; and
 - (b) UNSW has a right to terminate this Agreement in response to a finding of serious wrongdoing or other misconduct involving the Supplier or an individual providing Services under this Agreement.
- 17.8 If the Supplier subcontracts this Agreement in whole or in part, the Supplier must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding the Supplier in this clause 17.
- 17.9 The parties acknowledge that the regulations made under the PID Act may make further provision about terms that must, or must not, be included in an agency service contract or a class of agency service contracts.

18. **Subcontracting not permitted**

- 18.1 The Supplier must not subcontract any part of this Agreement without the prior written consent of UNSW.
- 18.2 The Supplier will not be relieved of any of its liabilities or obligations under this Agreement by reason of any subcontract or third party engagement and will remain liable to UNSW for the acts, default and neglect of any subcontractor as if they were the acts, defaults or neglect of the Supplier.

19. **General**

- 19.1 The warranties in clause 4.1 and the provisions of clauses 5, 8, 11, 12, 13, 16 and 17 survive the termination of this Agreement.
- 19.2 Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture employment, principal and agent or trustee and beneficiary between the parties.
- 19.3 The failure by a party to require performance of an obligation under this Agreement by the other party will not operate as a waiver of the obligation and the other party remains liable to perform all its obligations under this Agreement.
- 19.4 A party must not assign, novate, or otherwise deal with this Agreement without the prior written consent of the other party.
- 19.5 This Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.



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- 19.6 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 19.7 Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary to give full effect to this Agreement.
- 19.8 Any term of this Agreement, which is wholly or partially unenforceable, illegal or void is severed to the extent that it is void or unenforceable, and the rest of this Agreement is not affected and remains in force.



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