1. APPLICATION OF THESE TERMS

1.1. Application of terms

(a) By accepting an IT Purchase Order issued by Macquarie University (University) (Purchase Order) the Supplier named in that Purchase Order agrees to these terms applying to the supply of Services and/or Deliverables under that Purchase Order.

(b) These terms are to be read as in addition to any terms specified in the Purchase Order and any schedule to it and any other attachment to it that is expressly incorporated in writing. No other terms apply to the Purchase Order except where:

(i) the University first provides its agreement in writing; or

(ii) enters into a longer form agreement such as a master supply agreement on the University’s terms and that agreement is quoted in the Purchase Order in which case the terms of that agreement will apply between the parties.

1.2. Amendments

No amendments to these terms will be binding on the parties unless approved in writing by the University staff member with the delegated authority to approve any such amendments.

2. INTERPRETATION

2.1 This Agreement

This Agreement consists of:

(a) the Purchase Order once accepted in accordance with clause 3;

(b) these terms; and

(c) any attachment to the Purchase Order expressly incorporated in writing.

If there is any inconsistency between the parts of this Agreement, the part listed earlier prevails to the extent of the inconsistency.

2.2 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 the Supplier is taken to accept the Purchase Order in accordance with clause 3.

Confidential Information means

(a) all information relating to the business, technology or other affairs of the Discloser that is:

(i) disclosed (including inadvertently) by a Discloser or their Representatives to the Recipient; or

(ii) otherwise learnt by the Recipient in connection with this Agreement, and

(b) in the case of the University, all information about the employees or students of the University, information disclosed by a third party which the University is required to keep confidential and all information created by the Supplier in the course of performing this Agreement or in respect of Intellectual Property owned by the University.

Confidential Information does not include the Excluded Information. Confidential Information may be acquired before, on or after the Commencement Date.

Consequential Loss means any loss or damage which, although in the contemplation of the parties at the time they entered into this Agreement, is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other act or omission.

Contract End Date means the date specified in the Purchase Order or if no date is specified in the Purchase Order, the date notified to the Supplier by the University as the Contract End Date.


Contract Material means any Material:

(a) created for the purposes of this Agreement;

(b) provided or required to be provided to the University as a Deliverable or 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.

Controlled Entity has the meaning given in s 16A of the Macquarie University Act 1989 (NSW).

Defect means a failure of a Deliverable to meet the Specifications for that Deliverable.

Deliverables means the deliverables, goods and outputs described in the Purchase Order and all other material created by the Supplier as part of the Services.

Discloser means the party disclosing Confidential Information.

Excluded Information means information which is in or becomes part of the public domain other than through a breach of this Agreement or an obligation of confidence owed to the Discloser.

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

Fee means the fees specified in the Purchase Order.

Infringement Claim means a claim which would, if true, constitute a breach of any of the warranties in clause 12.2
**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.

**IT Purchase Order** means a purchase order for information technology services and/or deliverables and/or goods and any schedule to it.

**Key Personnel** means such personnel of the Supplier as may be specified in the Purchase Order.

**Liability Cap** means the liability cap amount set out in the Purchase Order.

**Location** means the delivery location described in the Purchase Order.

**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 and indirect losses and damages including those arising out of any third party claim.

**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.

**Payment Schedule** means the payment schedule specified in the Purchase Order.

**Personal Information** means:

(a) personal information for the purpose of the Privacy Act 1988 (Cth);

(b) personal information for the purpose of the Privacy and Personal Information Protection Act 1998 (NSW); and

(c) health information for the purposes of the Health Records and Information Privacy Act 2002 (NSW), which is received or learnt by Supplier from any source as a consequence of or in the performance of its rights and obligations under this Agreement.

**Recipient** means the party receiving Confidential Information.

**Related Body Corporate** has the meaning given to it in the Corporations Act 2001 (Cwlth).

**Representative** of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor or sub-contractor of that party (but in the case of the University excludes the Supplier).

**Services** means the services described in the Purchase Order.

**Service Levels** means the service levels specified in the Purchase Order.

**Service Rebates** means the service rebates specified in the Purchase Order.

**Specifications** means the specifications for a Deliverable specified in the Purchase Order.

**Supplier Material** means any material (other than Contract Material and University Material) that is owned by or licensed to the Supplier and is:

(a) incorporated in any Deliverable;

(b) necessary to use or obtain the benefit of the Deliverables or the Services; or

(c) otherwise provided to the University under this Agreement.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties, but excluding GST) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of the University.

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

**Timetable** means the timetable set out in the Purchase Order.

**University Data** means all data and information, in any form, that is:

(a) collected, accessed, used or generated by the Supplier in the course of performing this Agreement; or

(b) provided by or on behalf of the University to the Supplier.

**University Group** means the University and its Controlled Entities.

**University Material** means:

(a) the Materials set out on in the Purchase Order; and

(b) any other material developed independently of this Agreement by the University or the University’s suppliers or contractors (not including the Supplier) and provided to or accessed by the Supplier in connection with its performance of this Agreement.

**Warranty Period** means the warranty period specified in the Purchase Order.

### 2.3 Interpretation

Unless the contrary intention appears, in this Agreement:

(a) a document (including this Agreement) includes any variation or replacement of it;

(b) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(c) the singular includes the plural and vice versa;

(d) the word person includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association;
5. SERVICES

5.1 Performance of Services
The Supplier must supply the Services to the University at the Location on the terms of this Agreement.

5.2 Service levels
The Supplier must supply the Services to meet or exceed any applicable Service Levels. The Supplier must provide a report to the University (in a form reasonably acceptable to the University) at the end of each month on its performance against the Service Levels in the previous month.

5.3 Service Rebates
If the Supplier fails to meet a Service Level, the Supplier must pay or credit to the University (at the University’s option) any applicable Service Rebates. Supplier acknowledges that payment or credit of Service Rebates are not the sole remedy of the University for the Supplier’s failure to meet Service Levels and does not limit the Supplier’s other rights and remedies.

6. DELIVERABLES

6.1 Supply of Deliverables
The Supplier must supply the Deliverables to the University at the Location on the terms of this Agreement.

6.2 Quality
The Supplier must ensure that each Deliverable:
(a) meets the Specifications and all other applicable requirements under this Agreement for that Deliverable; and
(b) is free from defects and omissions in material, design or workmanship.

6.3 Malicious Code
The Supplier must ensure that all software Deliverables are free from viruses and other codes which may corrupt, damage, destroy or adversely affect the performance of University Data or University IT infrastructure.

6.4 Defect Warranty Period
The Supplier must correct all Defects in a Deliverable during the Warranty Period at no additional cost (including additional Fees) to the University.

6.5 Third Party Warranties
The Supplier must assign, or if it cannot be assigned to the University all standard manufacturer’s warranties in respect of the Deliverables the Supplier has manufactured.

6.6 Title and Risk
Title to any physical Deliverable passes to the University on payment by the University of the Fees for that Deliverable. Risk in any physical Deliverable passes to the University upon the University having inspected the Deliverable and accepting in writing that the Deliverable has been delivered in good order.

6.7 Acceptance Testing
(a) If acceptance testing is specified for a Deliverable in the Purchase Order, the parties will undertake acceptance tests in accordance with the process and details set out in the Purchase Order.
(b) The University may accept or reject the relevant Deliverable tested within 5 Business Days after delivery of that Deliverable to the Location set out in the Purchase Order, or within such other period agreed by the University and the Supplier in writing. If the University does not notify the Supplier of acceptance or rejection of the Deliverable within the 5 Business Days (or other agreed period), the University will be taken to have accepted the Deliverable if:
   (i) the Supplier has notified the University in writing of such failure to notify; and
   (ii) the University has still not notified the Supplier of acceptance or rejection of the Deliverable within 5 Business Days of the receipt of the Supplier’s notice in paragraph (i).
(c) The University may reject a Deliverable if the Deliverable does not comply with the requirements for that Deliverable under this Agreement. If the
7. OTHER OBLIGATIONS OF SUPPLIER

7.1 Supplier responsibilities

In performing its obligations under this Agreement the Supplier 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) comply with applicable laws, regulations and industry standards as well as the by-laws, policies, procedures and directions of the University including those relating to security, access to the University’s physical and virtual (or online) infrastructure, privacy, health and safety, discrimination and harassment, parking and traffic; and

(c) satisfactorily complete all training required by the University (including induction, safety and anti-discrimination).

7.2 No Conflict of Interest

The Supplier warrants that at the Commencement Date the Supplier has no conflict of interest in performing the obligations under this Agreement. The Supplier must notify the University promptly of any actual, perceived or potential conflict of interest which could affect its performance of this Agreement and agrees to take action to resolve the conflict.

7.3 Timetable

The Supplier must perform its obligations under this Agreement in accordance with the Timetable or if there is no timetable within reasonable time frames required by the University.

7.4 University Material

If the University provides University Material or facilities for use by the Supplier, the Supplier must:

(a) use that University Material or those facilities only for the purposes of performing its obligations under this Agreement and according to the manufacturer or licensor’s instructions and any instructions from the University;

(b) notify the University immediately if the Supplier becomes aware that the University Material or facilities are not working properly or have become lost or stolen; and

(c) return all University Material to the University on request or on termination of this Agreement.

7.5 Key Personnel

The Supplier must ensure that:

(a) its Key Personnel are appropriately qualified and have the expertise to provide the Services and Deliverables;

(b) it does not substitute other personnel for the Key Personnel without the written consent of the University; and

(c) if the University reasonably considers that any of the Key Personnel are not performing the Services and/or delivering the Deliverables to the standards expected of the University, at the University’s request, and at no additional cost to the University, replace such Key Personnel with personnel acceptable to the University who have appropriate qualifications and expertise.

8. FEES AND GST

8.1 Payment

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

8.2 Invoices

The Supplier must issue the University with an itemised tax invoice in accordance with the Payment Schedule for any Services or Deliverables for which it requires payment of the Fee. The invoice must be accompanied by a Contractor Statement.

8.3 Taxes

The Supplier acknowledges that the Fees include all Taxes, whether increased, new or additional amounts and all freight, insurance, delivery, travel, administration and other expenses which may be incurred by the Supplier in the performance of this Agreement.

8.4 Australian Business Number

The Supplier 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 Supplier the amounts required for the University to comply with the Taxation Administration Act 1953 (Cth) and related legislation.

8.5 GST wording

Words defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause 8.

8.6 GST inclusive pricing

All payments or other consideration by the University for any supply by the Supplier to the University in connection with this Agreement include any GST for which the Supplier is liable on that supply and the Supplier (not the University) is responsible for payment of that GST.

8.7 Set Off

The University is entitled to set off any amount owed to the Supplier against any amount payable by the Supplier (including amounts payable for breach of this Agreement) at any time in connection with this Agreement.
9. RECORDS

The Supplier must keep accurate records relating to the performance of this Agreement including accounts and copies of all materials including invoices, rebates, taxes, fees, time sheets and correspondence. On request by the University the Supplier must give the University access to, or verified copies, of these records.

10. INSURANCE

The Supplier must maintain during the Term (and in the case of insurances written on a claims made basis, for a further period of seven years) workers compensation insurance as required by law and those insurance policies specified in the Purchase Order. The Supplier must give the University a copy of the insurance policies or certificates of currency on request.

11. INTELLECTUAL PROPERTY

11.1 University Data

The Supplier agrees that the University owns the University Data and all Intellectual Property in the University Data. The Supplier must not store or allow the storage of the University Data outside Australia and not disclose or allow the disclosure of the University Data to any person outside Australia.

11.2 Contract Material

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 11 the Supplier assigns all Intellectual Property in the Contract Material to the University on creation. This does not affect the ownership of Intellectual Property in any Existing Material.

11.3 University Material

The University grants to the Supplier a non-transferable, non-exclusive, royalty-free licence to use the Intellectual Property in the University Material and the Contract Material for the Term solely for the purpose of the Supplier meeting its obligations under this Agreement and subject to any conditions which the University may reasonably require. Except as provided by the foregoing nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property or goodwill of the University.

11.4 Supplier Material - Services

The Supplier grants to (or must procure for) the University a royalty-free, world-wide, non-exclusive licence for the Term (including a right of sublicense) to use, reproduce, modify and communicate to the public the Supplier Materials but only to the extent necessary to receive the full benefit of the Services (including implementing disaster recovery and business continuity plans of the University).

11.5 Supplier Material - Deliverables

The Supplier grants to (or must procure for) the University a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, modify and communicate to the public the Supplier Materials but only as part of the use or exploitation of the Deliverables in connection with the activities of the University (including implementation of disaster recovery and business continuity plans of the University).

12. Warranties

12.1 Deliverables

The Supplier represents and warrants that the Deliverables:

(a) meet the Specifications and all other applicable requirements under this Agreement applicable to the Deliverables;

(b) are of good quality and free from defects and omissions in material, design or workmanship; and

(c) are free from any charge or encumbrance.

12.2 No Intellectual Property infringement

The Supplier represents and warrants that the performance of their obligations under this Agreement; and the Deliverables or Services (or their use or provision) will not:

(a) breach any law or mandatory code of conduct;

(b) infringe any person’s rights (including Intellectual Property and Moral Rights);

(c) constitute a misuse of any person’s confidential information; or

(d) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

13. CONFIDENTIAL INFORMATION

13.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

13.2 Use of Confidential Information

A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient’s obligations or exercising the Recipient’s rights under this Agreement.

13.3 Disclosure of Confidential Information

Subject to clause 13.7, a Recipient may not disclose Confidential Information of the Discloser or the existence or contents of this Agreement to any person except:

(a) Representatives of the Recipient who require it for the purposes of the Recipient performing its obligations or exercising its rights under this Agreement and then only on a need to know basis;

(b) with the prior written consent of the Discloser;

(c) if the Recipient is required to do so by law or a stock exchange; or

(d) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.

13.4 Disclosure by Recipient

A Recipient disclosing information under clause 13.3(a) or clause 13.3(b) must ensure that persons receiving Confidential Information from it are aware it is the other party’s Confidential Information and do not disclose the information except in the circumstances permitted in clause 13.3.

13.5 Return of Confidential Information

Subject to clause 13.6, on the Discloser’s request, the Recipient must immediately deliver to the Discloser all
14. PRIVACY AND DATA

14.1 Supplier's dealing with Personal Information

The Supplier must:

(a) comply with all applicable state and federal privacy legislation and mandatory codes in relation to Personal Information as if it were regulated by those laws;

(b) comply with the University's privacy policy and all directions by the University relating to the means by which the University or its controlled entities complies with the applicable state and federal privacy legislation and mandatory codes;

(c) not collect, use or disclose the Personal Information other than for the purpose of performing its obligations under this Agreement;

(d) take such steps as are reasonable in the circumstances to ensure that the Personal Information is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure;

(e) not store or allow the storage of the Personal Information outside Australia and not disclose or allow the disclosure of the Personal Information to any person outside Australia; and

(f) immediately notify the University in writing, and give full details, of any breach of this clause 14.1.

14.2 Supplier's dealing with University Data

The Supplier must:

(a) not use, disclose or deal with the University Data other than for the purpose of performing this Agreement;

(b) take such steps as are reasonable in the circumstances to ensure that the University Data is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure; and

(c) immediately notify the University in writing, and give full details, of any breach of this clause 14.2.

15. TERMINATION

15.1 Termination for cause by University

The University may terminate this Agreement immediately by notice to the Supplier if:

(a) the Supplier breaches this Agreement and the breach is:

(i) not capable of remedy; or

(ii) is capable of remedy but is not remedied within 14 days of service on the Supplier of a notice specifying the breach and requiring it to be remedied;

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

(c) the University is entitled to terminate under clause 6.7(c)(iii);

(d) there is a change in control or ownership of the Supplier (which has not received the prior written consent of the University);

(e) the Supplier assigns or purports to assign its rights otherwise than as permitted by this Agreement; or

(f) the Supplier is subject to any action to have a controller, administrator, receiver, receiver and manager, liquidator or provisional liquidator appointed over its assets.

15.2 Termination for convenience by the University

The Supplier may terminate this Agreement if the University has failed to pay an amount due in respect of this Agreement to the Supplier which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause 15.2 if payment is not made.

15.3 Termination for convenience by the University

The University may terminate this Agreement on 30 days’ notice for convenience. A termination under this clause 15.3 is without prejudice to any other right of the University.

16. INDEMNITY AND LIMITATION OF LIABILITY

16.1 Indemnity for the University

The Supplier must defend and indemnify the University and each other member of the University Group (and each of their employees, officers, students and agents, for whom the University holds the benefit of this indemnity in trust) against all Losses arising in connection with:

(a) any death or injury to persons, and any loss or damage to the real or personal property of a member of the University Group or a third party, caused by any act or omission of the Supplier or Supplier Representatives;

(b) any breach of clauses 13 or 14 of this Agreement by the Supplier; and

(c) any Infringement Claim.

16.2 Reduction

The Supplier’s obligation to indemnify the University under clause 16.1 reduces proportionately to the extent that the Loss has been caused or contributed to by a breach of this Agreement by the University or the University’s negligence.

16.3 Liability

Subject to clause 16.4:

(a) neither party will be liable to the other party under this Agreement for any Consequential Loss; and
(b) the aggregate liability of a party to the other party under this Agreement whether in contract, tort (including negligence), statute or any other cause of action (other than the obligation to pay Fees due) is limited to the Liability Cap specified in the Purchase Order, or if no Liability Cap is specified, twice the value of the Fees paid or payable under this Agreement.

16.4 No limitation

Nothing in this Agreement operates to limit or exclude:

(a) liability that cannot be limited or excluded by law;
(b) the Supplier’s liability in respect of the indemnity in clause 16.1; and
(c) the Supplier’s liability resulting from its fraudulent or unlawful act or omission.

16.5 Proportionate liability

The parties agree that, to the extent permitted by law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) and legislation having a similar effect in other states and territories of Australia, in respect of the Supplier, the Supplier’s subcontractors and the Supplier’s Related Bodies Corporate, is excluded in relation to all and any rights, obligations or liabilities sought to be enforced as a breach of contract or a claim in tort or otherwise.

17. NOTICES

17.1 How to give an effective notice

A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee’s address or sent to the addressee by pre-paid mail. If it is left at the addressee’s address before 5.00pm on a Business Day it is taken to be received 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, it is taken to be received at 9.00am on the next Business Day. If it is sent by pre-paid mail, it is taken to have been received three Business Days after it is posted.

17.2 Addresses for notices

Each parties address is as set out in the Purchase Order.

18. GENERAL

18.1 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.

18.2 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.

18.3 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 effect of this Agreement.

18.4 Operation of indemnities

Each indemnity in this Agreement survives the termination of this Agreement. 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.

18.5 Assignment

(a) The Supplier must not assign its rights under this Agreement or purport to novate its rights and obligations under this Agreement without the prior written consent of the University.

(b) The University may assign its rights under this Agreement or novate its rights and obligations under this Agreement without the prior written consent of the Supplier. The Supplier must execute all documents necessary to give effect to such novation or assignment.

18.6 Relationship

The relationship of the University and the Supplier 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.

18.7 Subcontracting

The Supplier must not subcontract any of its obligations under this Agreement without the prior written consent of the University. The Supplier 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.

18.8 No withholdings

The University is not responsible for withholding or remitting any payment for an impost such as tax or superannuation in respect of the Supplier or its Representatives.

18.9 Variation

No agreement or understanding varying or extending this Agreement is binding upon either party unless in writing (including any exchange of emails confirming the agreed variation).

18.10 Survival

Clauses 10, 11, 12.2, 13, 14, 16 and 18 survive the termination or expiry of this Agreement, as do any rights and remedies accrued before termination or expiry.