

CONTRACTORS AGREEMENT

The Contractor has represented that it has the requisite experience and skills to provide the Services. La Trobe University ABN 64 804 735 113 (“the University”) has agreed to accept the Contractor’s offer to provide the Services upon the terms and conditions in this Agreement.

DETAILS:

Contractor	Company Name: Click in each shaded area in the table to enter text ABN/ACN:
Contractor’s contact for notices	Name: Title: Address: Email:
University’s Signatory (and contact for notices)	Name: Title: Address: Email:
Contractor project representative (day-to-day project representative)	Name: Title: Phone: Email:
University project representative (day-to-day project representative)	Name (project leader): Title: Phone: Email: School or Administrative Division:
Services	(Select <u>one</u>): <input type="checkbox"/> As set out in the document attached titled: <input type="checkbox"/> As described below:
Deliverables :	
Timetable for deliverables:	
Specified Personnel	1. 2. 3.
LTU Policies that expressly apply to this Contractor	
Other Insurances as required (if any)	
Checks	Prior to Commencement, all Specified Personnel must provide the University with: A Police Check YES <input type="checkbox"/> NO <input type="checkbox"/> A Working with Children Check YES <input type="checkbox"/> NO <input type="checkbox"/> Other YES <input type="checkbox"/> NO <input type="checkbox"/> If yes:
Fees and allowances	Amount(s): \$ (ex GST) <input type="checkbox"/> TOTAL or <input type="checkbox"/> PER HOUR for HOURS (max)
	GST: \$
	Total: \$
Time(s) for payment	

TERMS AND CONDITIONS

1 Services

- 1.1 The Contractor must perform the Services at the times and in the manner specified in the Details with due care and skill in accordance with the highest professional standards to the satisfaction of the University. The Contractor will ensure the personnel specified in the Details undertake the Services on behalf of the Contractor in accordance with the terms of this Agreement.

2 Payment

- 2.1 Subject to clause 1.1, the University must pay the Contractor the fees specified in the Details at the times specified. The Contractor must submit invoices for amounts payable and the University undertakes to pay such amounts within 30 days from the end of the month in which the invoice was received. If the Details provide that the Contractor is to be paid by progressive payments, the University may defer payment of a progressive payment until the Contractor has completed to the satisfaction of the University that part of the Services to which the progressive payment relates. Unless agreed between the parties in writing, the fees specified in the Details are the total amounts payable by the University.
- 2.2 In this clause terms have the meanings given those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Unless otherwise specified, the fees payable and any other consideration under this Agreement are exclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the supply subject to the recipient receiving a valid tax invoice for the supply at or before the time of payment. Any reimbursement of expenses under this Agreement will be net of input tax credits (if any) to which the party is entitled. The recipient may be required to withhold from any payment it is to make to the supplier such amount required by the *Taxation Administration Act 1953* (Cth) unless the supplier has, on or before the time payment is due, provided the recipient with an invoice quoting the supplier's correct ABN.

3 Confidentiality

- 3.1 The Contractor agrees not to disclose any Confidential Information to any third party without prior approval in writing from the University. In giving written approval, the University may impose such terms and conditions as it thinks fit.

4 Privacy

- 4.1 The Contractor agrees to be bound by the Privacy Laws with respect to any act done or practice engaged in by the Contractor for the purposes of this agreement in the same way and to the same extent as the University would have been bound by them in respect of that act or practice had it been directly done or engaged in by the University.
- 4.2 If the Contractor collects or has access to Personal Information in connection with the Services, the Contractor must:
- use the Personal Information only for the purposes of fulfilling its obligations under this Agreement;
 - take all reasonable measures to ensure the Personal Information is protected against loss, unauthorised access, misuse, modification or disclosure;
 - ensure any person who has access to the Personal Information is made aware of, and undertakes in writing, to observe the obligations in this clause; and

- not transfer or disclose Personal Information or Health Information outside Australia without obtaining the prior written consent of the University, and the University may in its discretion grant, decline or impose such conditions as it thinks fit.

- 4.3 The Contractor must notify the University immediately if:
- the Contractor becomes aware that use or disclosure of the Personal Information is required or authorised by or under law; or
 - if the Contractor becomes aware that the Personal Information has been used or disclosed in contravention of this clause, promptly give the University notice of the full details of the contravention; and

the University's knowledge of, or response to, any such notice, in whatever form, does not affect any other rights of the University under this Agreement.

5 Insurance

- 5.1 The Contractor must effect before the commencement of the Services and maintain for the duration of the Agreement the following insurances with an insurer with a minimum financial strength rating of A/Stable (Standard & Poor's) and where requested provide a certificate of currency for those insurances before commencing the Services and from time to time upon written request. The insurance policies should not have any limitation or exclusion that would effect this Agreement in addition to the insurer's standard policy conditions and exclusions.

- Professional Indemnity Insurance to the value of \$3million and in the aggregate any one policy period including run-off cover for six years after the completion of the Services;
- Public and Products Liability Insurance to the value of \$20million any one occurrence and in the aggregate any one policy period for Products Liability. The insurance is to include cover for property in the insured's physical or legal control for a minimum of \$100,000 and note the University as an interested party;
- Workers' compensation and employer's liability insurance covering all actual or deemed employees for the Contractor's activities and as required by law;
- personal accident /sickness and disability insurance affording cover at least equivalent to that afforded by a policy of the type referred to in 5.1(c) when workers' compensation and employer's liability Insurance is not required by law;
- other insurances as specified in the Details (if any).

- 5.2 In respect of all registrable vehicles to be brought into the inner campus/es of the University (other than a taxi) for the purposes of performing the Services, whether owned by the Contractor or its officers, employees, agents or contractors, the Contractor must ensure that the vehicle is covered by:

- motor vehicle third party bodily injury insurance with a state/territory authority or insurer; and
- third party property damage insurance for a minimum of \$20 million.

6 Intellectual Property

- 6.1 The ownership of any Background IP shall not be altered, transferred or assigned merely by virtue of its use for the purposes of this Agreement.
- 6.2 Contract IP will vest in the University.
- 6.3 The Contractor grants the University a perpetual, world-

wide, royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, publish, adapt, modify and communicate any Background IP supplied with or incorporated in the Contract IP to the extent necessary for the University to enjoy its rights in the Contract IP or otherwise receive the full benefit of the Services.

- 6.4 The Contractor warrants that all Material developed or produced under this Agreement will not infringe the intellectual property of third parties and to the best of its knowledge the material will not be defamatory or breach any confidentiality undertaking. The Contractor agrees to indemnify the University against any loss, damage or expense which the University incurs as a result of breach of this warranty.
- 6.5 If the Contractor or a person involved in the creation of any of the Material has a moral right to any Material (as defined under the *Copyright Act 1968* (Cth)), the Contractor consents, and will obtain the consent of any person in a form approved by the University, to the University doing or omitting to do anything that, but for this consent, would infringe those moral rights. This includes reproducing, publishing, performing, communicating, exhibiting, adapting, altering or using the material with or without attribution of authorship and whether or not such acts may be prejudicial to the author's honour or reputation.
- 6.6 The Contractor must deliver to the University all Material referred to in this clause 6 on demand or within five days of the date of termination of this Agreement.

7 Contractor's Status and Compliance with Laws

- 7.1 This Agreement does not create any agency, employer-employee relationship or a partnership of any kind. The Contractor is an independent contractor and neither the Contractor nor the Contractor's personnel are agents or employees of the University by virtue of this Agreement. The Contractor must not represent or hold itself out to any third party that it acts as agent employee or partner of the University. The Contractor acknowledges it has sole responsibility for the payment, if any, of superannuation, workers' compensation, wages and taxes incidental to employment of its own personnel.
- 7.2 The Contractor must comply with all applicable laws in performing the Services including but not limited to those relating to occupational health and safety matters and the *Equal Opportunity Act 2010* (Vic). When using the University's premises or facilities, the Contractor must comply with all University directions, statutes, regulations, policies and procedures, including but not limited to those relating to occupational health and safety and security and any policies expressly specified in the Details.
- 7.3 The Contractor warrants it has confirmed that any person involved in performing the Services who is a non-citizen of Australia has the appropriate Australian Visa to perform the Services. The Contractor warrants that it has complied and will continue to comply with the *Migration Act 1958* (Cth) in performing these Services.
- 7.4 If specified in the Details or otherwise upon request of the University from time to time, the Contractor agrees to obtain for its employees, officers, agents or subcontractors a police check, Working With Children Check or similar enquiry required by the University, before the Contractor engages or deploys the Personnel to perform the Services.

8 Termination

- 8.1 The University may, without prejudice to any right of action or remedy which has accrued or which may accrue in favour of the University, terminate this Agreement immediately by notice in writing to the Contractor if the Contractor:
- (a) fails to deliver the Services or otherwise breaches this

Agreement; or

- (b) has any winding up petition presented against it or is placed under official management, administration, provisional liquidation or a receiver or receiver and manager or other controller (as that term is defined in the *Corporations Act 2001* (Cth)) is appointed over its undertaking or property or any part of its property or undertaking or, in the case of an individual, becomes bankrupt or insolvent or enters into any arrangement or assignment with creditors.
- 8.2 The University may terminate this Agreement in whole or in part for convenience by giving the Contractor not less than one month's notice in writing at any time and for any reason. If the Agreement is terminated under this sub-clause 8.1, the University must pay the Contractor for services provided before the effective day of termination. The Contractor will not be entitled to any compensation for loss of profits. The fees payable to the Contractor will be reduced on a pro-rata basis if the Agreement is terminated as to part under sub-clause 8.2.
- 8.3 The Contractor may terminate this Agreement at any time by giving to the University not less than six weeks' notice in writing.

9 Sub-Contracting or Assignment

- 9.1 The Contractor must not sub-contract the performance of any part of the Services or any rights or obligations under this Agreement without the prior written approval of the University. The University may impose conditions as part of its approval.
- 9.2 Either party may assign any rights or obligations under this Agreement with the consent of the other which consent must not be unreasonably withheld.
- 9.3 The Contractor remains fully responsible for carrying out the Services notwithstanding that the Contractor has subcontracted the performance of any part of the Services.

10 Conflict of Interest

- 10.1 The Contractor warrants that, at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.
- 10.2 If a conflict of interest arises or appears likely to arise during the term of this Agreement, the Contractor undertakes to notify the University immediately in writing and to take such steps as the University may reasonably require to resolve or otherwise deal with the conflict. If the Contractor fails to notify the University or is unable or unwilling to resolve or deal with the conflict as required, the University may terminate this Agreement in accordance with sub-clause 8.1.

11 Access to Contractor's Premises

- 11.1 The Contractor must at all reasonable times give to the University's Representative access to premises occupied by the Contractor where the Services are being undertaken and must permit the University's Representative to inspect the performance of the Services and any University Material or other Material relevant to the Services.

12 Warranty

- 12.1 The Contractor warrants that:
- (a) it has voluntarily entered into this Agreement;
- (b) other than as set out in this Agreement, the University has not made any promises, representations or inducements to the Contractor to enter into this Agreement;
- (c) that the Services will be fit for the purpose consistent with this Agreement, and that any goods provided in conjunction with the Services are new when delivered, fit for the disclosed purpose,

conform to the description, model number and match the sample or demonstration model (if any) provided, are free from defects (including in materials, workmanship and installation), are of acceptable quality and comply with all laws and applicable standards

- (d) the Contractor has had full opportunity to consult legal advisers concerning the nature and effect of this Agreement;
- (e) the Contractor understands its obligations to take out the insurances specified in this Agreement; and
- (f) the Contractor is aware that the University is relying on this warranty in entering into this Agreement.

13 Dispute Resolution

13.1 If a dispute occurs between the parties in connection with this Agreement, the following dispute resolution procedure must be followed:

- (a) the party claiming that a dispute has arisen ("Complainant"), must give written notice ("Notice") to the other party to the dispute ("Respondent") specifying:
 - (i) the nature of the dispute;
 - (ii) what outcome the Complainant wants; and
 - (iii) what action the Complainant considers will settle the dispute;
- (b) upon the Respondent receiving the Notice, the parties to the dispute must endeavour in good faith to resolve the dispute;
- (c) if the dispute is not resolved within 21 days after the Respondent receives the Notice (or within such further period as the parties may agree) then either party may refer the dispute to a mediator agreed by the parties and if the parties cannot agree about who should be the mediator within 35 days after the Respondent received the Notice (or within such further period as the parties agree), either party may ask the President or Senior Office-bearer of the Law Institute of Victoria to appoint a mediator.

13.2 The parties agree to attend any mediation arranged under clause 13.1 and to endeavour in good faith to settle the dispute by mediation before having recourse to arbitration or litigation.

13.3 Unless otherwise agreed between the parties in writing, the parties are equally liable for the costs of the mediation. However each party must bear its own costs associated with attending the mediation.

13.4 Clause 13 does not affect the right of a party to take legal proceedings under this Agreement.

14 Indemnity

14.1 The Contractor must indemnify and keep indemnified the University from and against any loss, costs, expenses, demands or liability incurred by the University in connection with this Agreement arising from or as a consequence of the negligence, wilful misconduct or default of the Contractor, its employees, sub-contractors or agents except to the extent that the loss, cost, expense, demand or liability is caused by the negligence, wilful misconduct or default of the University or its employees or agents.

14.2 Notwithstanding anything else contained in this Agreement, a party's aggregate liability to the other party under or arising from this Agreement or in tort (including negligence) or under statute arising from acts or omissions by the party shall not exceed the sum of \$10 million. This limitation of liability does not apply to liability for personal injury including death or for loss or destruction of, or

damage to, any tangible property.

15 General

15.1 This Agreement constitutes the entire agreement between the parties as to its subject matter and replaces all prior representations, agreements and understandings in relation to that subject matter. The Agreement may only be varied by the further written agreement of the parties. This Agreement will be governed by the laws of Victoria.

15.2 To the extent of any inconsistency between these Terms and Conditions, the Details and any schedule or attachment to the Details, these Terms and Conditions will prevail.

15.3 If a party to this Agreement consists of more than one person, those persons will be jointly and severally bound under this Agreement.

15.4 All notices required to be given under this Agreement must be in writing sent to the address of the party as set out in the Details or otherwise notified by a party from time to time. Any notice may be delivered by post or email.

15.5 Clauses 3, 4, 6, 12, 13 and 14 will survive the expiration or termination of this Agreement.

16 Definitions

16.1 In this Agreement, unless the contrary intention appears: "Background IP" means IP existing prior to the commencement of or created independently of this Agreement

"Confidential Information" means information that is by its nature confidential, is designated by the University as confidential or the Contractor knows or ought to know is confidential, but does not include information which:

- (i) is or becomes public knowledge other than by breach of this Agreement or by any unlawful means; or
- (ii) is required by law to be disclosed;

"Contract IP" means IP in all Material created, developed or produced under this Agreement;

"Details" means the details set out on page one of this Agreement;

"Intellectual Property" or "IP" includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary, artistic or any other fields;

"Moral Rights" means moral rights under and in accordance with the *Copyright Act 1968* (Cth), namely the rights of an author, being an individual:

- (a) to be attributed as author of his/her work;
- (b) not to have his/her work falsely attributed; and
- (c) not to have his/her work subjected to derogatory treatment;

"Material" includes all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations reports, models, concepts, source codes, software, equipment, goods, files, computerized data, photographic recordings, audio or audio visual recordings;

"Personal Information" means any personal information or health information as defined in the Privacy Laws;

"Privacy Laws" includes the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic), the *Privacy and Personal Information Protection Act 1998* (Cth) and all other applicable privacy and data protection laws;

"Services" means the services and associated goods specified in the Details.

EXECUTED BY THE PARTIES AS AN AGREEMENT:

SIGNED for and on behalf of the **University** by
an Authorised Signatory

SIGNED for and on behalf of the **Contractor**

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date: