

Services Agreement

Non-capital works

Details

Date 12 March 2024

University

Name University of Tasmania (ARBN 055 647 848) (ABN 30 764 374 782)
Contact Craig Barling, DVC, Student Services & Operations
Address 2 Churchill Avenue, Sandy Bay TAS 7005
Phone (03) 6226 2595
Email craig.barling@utas.edu.au

Service Provider

Name William Edward Felix Hodgman (ABN 12 882 167 088)
Contact Will Hodgman
Address 6 Melrose Court, Sandy Bay, Tasmania 7005
Phone 0412 126 156
Email will@hodgmanpartners.com.au

Services

Services	Key Deliverables	KPIs / Milestones
	1. Assistance in adapting STEM Business Case into a fundable proposal	a) Assistance in preparing a plan to engage Federal Government b) STEM Proposal ready for submission to Federal Government by end of 2024 and prior to Federal Election, May 2025 c) Liaison with key leaders around the STEM Business Case.
	2. Assistance and advice with government relations regarding local issues particularly with respect to the benefits and opportunities of international education	a) Build relationships with Tasmanian bureaucracy focused on the value of international education in Tasmania b) Develop and implement an engagement plan to promote the benefits and opportunities of education in Tasmania
	3. Assistance and advice in growing our international student base in Southeast Asia and Singapore	a) To be an ambassador of the University of Tasmania in Singapore (with at least 2 events) b) Increased engagement from Singapore Agents c) Build Singapore Alumni Network

Services Fee \$60,000 excl GST.
Payment scheduled as invoiced with 30-day term.

Key dates

Start Date **1 March 2024**
End Date **12 months after the commencement of this agreement.**

Liability

Liability Cap Amount An amount equal to 3 times the Services Fee

Insurance Policies

Public liability insurance	Minimum amount: \$20,000,000 per event.
Professional indemnity insurance	Minimum amount: \$10,000,000. The insurance policy must be maintained for a period of 6 years after the End Date.
Workers' compensation insurance	As required by law.
Workers' compensation	As required by law.

Policies

Behaviour Policy available at <https://www.utas.edu.au/policy/policies>
Health and Safety Policy available at <https://www.utas.edu.au/policy/policies>
Covid 19 Safety Procedure available at https://www.utas.edu.au/data/assets/pdf_file/0004/1559389/Covid-19-Safety-Procedure.pdf

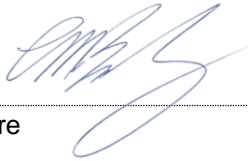
Interpretation

Capitalised terms used in this agreement have the meaning given in clause 28 (Defined terms).

Signing page

Executed as an agreement.

Executed for and on behalf of
**University of Tasmania (ARBN 055
647 848) (ABN 30 764 374 782)** by an
authorised representative:



Signature

Craig Barling

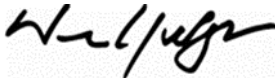
Full name

Signature of witness

(A witness is only required if signing in hard copy)

Full name of witness

Executed by: **William Edward Felix
Hodgman (ABN 12 882 167 088)**



Signature

William Edward Felix Hodgman

Full name

Signature of witness

(A witness is only required if signing in hard copy)

Full name of witness

PART A. Term

1. Term

This agreement starts on the Start Date and continues until the End Date.

2. Further Term

- (a) The University may, at its absolute discretion, extend the Term for a Further Term by notice in writing delivered to the Service Provider not less than 30 days before the End Date.
- (b) Any such extension will be on the same terms and conditions, as set out in this agreement.

PART B. Services

3. Services

3.1 General requirements

The Service Provider must provide the Services to the University:

- (a) for the duration of the Term;
- (b) with due care and skill, and to a standard to be expected of a person both competent and experienced in providing services similar to the Services; and
- (c) in accordance with University Policies and procedures, the University's reasonable directions and all applicable laws.

3.2 Cost effective

The Service Provider must manage its resources efficiently so as to comply with this clause 3 in a cost-effective manner.

3.3 Responsibility for Services

The Service Provider remains fully responsible for all Services irrespective of any review or acceptance of those Services by the University.

3.4 Non-exclusivity

The University may procure services the same as, or similar to, the Services from any other party, in its discretion.

3.5 Service Provider warranties

The Service Provider warrants that:

- (a) the Services and any supplies and materials incorporated in providing the Services will be fit for their intended purpose;
- (b) the Services are suitable, appropriate and adequate for the purposes made known to the Service Provider by the University on or before entering into this agreement;
- (c) it has satisfied itself that the Services Fee and the Expenses (if any) cover the cost of complying with all of its obligations under this agreement;
- (d) it has relied absolutely on its own independent analysis and investigations in deciding to enter into this agreement;
- (e) it will obtain and maintain, at its cost, all approvals and accreditations required for the Service Provider to provide the Services in accordance with this agreement; and
- (f) it will comply with all Australian standards, regulations, codes of conduct and requirements of any relevant Government Agency applicable to the Services or the Service Provider.

4. Quality

4.1 Non-compliance

If the University becomes aware that any part of the work performed under this agreement does not comply with this agreement, the University will as soon as practicable, notify the Service Provider of such non-compliance and the Service Provider must rectify the non-compliance at its cost.

4.2 Failure to rectify

If the non-compliance has not been rectified so that it complies with this agreement within 7 days of the University's notice, the University may:

- (a) refuse to provide payment for that part of the non-complying Services; and
- (b) perform, or have performed, the non-complying Services.

5. Variations

5.1 Variation request

The University may, at any time, request a Variation to the Services by giving written notice to the Service Provider.

5.2 Variation proposal

Within 5 Business Days of receipt of a Variation request made in accordance with clause 5.1 (Variation request), and before the Service Provider carries out the variation of the Services, the Service Provider must provide to the University a written proposal setting out any:

- (a) increased or decreased costs arising from the request supported by a detailed financial breakdown;
- (b) proposed modifications to this agreement; and
- (c) other impacts that the Variation will have on the Service Provider's ability to perform its obligations under this agreement.

5.3 Acceptance

- (a) The University may accept a proposal delivered in accordance with clause 5.2 (Variation proposal) by notifying the Service Provider in writing.
- (b) In the absence of such acceptance, the Services must be performed in accordance with this agreement without any variation.

6. Delays

6.1 No delay

The Service Provider must start and proceed with the delivery of the Services in accordance with any agreed timeframes and otherwise with due expedition and without delay.

6.2 Delay notice

The Service Provider must promptly notify the University in writing if it becomes aware of any delay to the delivery of the Services including the anticipated length of the delay.

6.3 Additional costs

To the extent that any delay to the delivery of the Services is caused by:

- (a) the Service Provider, the Service Provider will be responsible for any additional costs; and
- (b) the University, the University will be responsible for any additional direct costs.

6.4 Exclusions

Nothing in this clause 6:

- (a) obliges the University to pay extra costs for delay or disruption which has already been included in the value of a variation or any other payment under this agreement; or
- (b) limits the Service Provider's liability for damages for a breach of this agreement.

PART C. Personnel

7. Personnel

7.1 Personnel requirements

The Service Provider must ensure that all of its Personnel engaged to provide the Services:

- (a) are aware of and comply with the terms and conditions of this agreement;
- (b) have undertaken all necessary training and have obtained (and will maintain) all relevant approvals and accreditations necessary to undertake the Services; and
- (c) produce evidence of all approvals and accreditations necessary to provide the Services on request by the University.

7.2 National criminal history certificate

If requested by the University, the Service Provider must provide a copy of a national criminal history certificate for any Personnel who provide any Services.

7.3 Removal of Personnel

The University may request the Service Provider to remove specific Personnel from providing any Services, if the University (acting reasonably) is dissatisfied with that Personnel as a result of:

- (a) the content of, or failure to provide, a national criminal history certificate for that Personnel, in accordance with clause 7.2 (National criminal history certificate); or
- (b) performance of the Services by that Personnel,

without any increase in the Services Fee.

PART D. Access and WHS

8. Access to Premises

8.1 Access to Premises

Subject to clause 8.2 (Access conditions), the University will grant the Service Provider access to the parts of the Premises necessary for the Service Provider to provide the Services.

8.2 Access conditions

As a precondition to entering or remaining on the Premises, the Service Provider must:

- (a) ensure that any of its Personnel who attend the Premises have undertaken, any induction required by the University; and
- (b) have provided the University with certificates of currency for all insurances required to be maintained by the Service Provider under this agreement.

8.3 On-site requirements

All Personnel on the Premises must:

- (a) sign in at the University's reception and obtain a visitor's pass;
- (b) comply with the University's directions;
- (c) perform the Services in accordance with the Policies;
- (d) not use any equipment or enter into any areas without permission from the University; and

- (e) minimise any disruption to, and take all reasonable steps to protect the safety of, the University's Personnel and the Service Provider's Personnel.

8.4 Cooperation

The Service Provider acknowledges that other employees and agents of the University may also be operating on the Premises and agrees that it will comply with all requests of the University to ensure that any interference with such operations are avoided or minimised.

9. Workplace health and safety

9.1 Acknowledgement

The Service Provider acknowledges and agrees that during the Term, the Service Provider must, and must ensure that all of its Personnel, comply with all applicable workplace health and safety laws at all times while performing the Services.

9.2 Service Provider's compliance requirements

The Service Provider:

- (a) must comply with any of the University's requirements in connection with workplace health and safety;
- (b) must provide to the University all things necessary to enable the University to meet its obligations under any applicable workplace health and safety laws;
- (c) agrees that it has received from the University all relevant information held by the University that may reasonably be required by the Service Provider to discharge the duties imposed on the Service Provider by any applicable workplace health and safety laws;
- (d) must provide to the University upon request, evidence satisfactory to the University of the Service Provider's compliance with any applicable workplace health and safety laws; and
- (e) must, as far as is reasonably practicable, consult, cooperate and coordinate its activities with the University in all work, health and safety matters connected, arising out of, or associated with providing the Services and this agreement.

9.3 Providing the Services

When performing the Services, and at all times when the Service Provider or any of its Personnel are on the Premises, the Service Provider must:

- (a) promptly notify the University of any security breaches, accident, property or environmental damage or notifiable incident pursuant to any workplace health and safety laws, which occur during the course of performing the Services;
- (b) notify the University in writing where there is a conflict between the Services and any applicable workplace health and safety laws and must consult, co-operate and co-ordinate with the University to find an appropriate resolution;
- (c) not do anything which may place the University in breach of any applicable workplace health and safety laws; and
- (d) perform the Services in a manner that will not cause any harm, damage or nuisance to the environment.

PART E. Compliance

10. Policies

The Service Provider agrees:

- (a) that the Service Provider's compliance with the Policies is an essential and material requirement of this agreement;
- (b) that upon execution of this agreement, the Service Provider is deemed to have accepted its compliance with all of the Policies including the specific requirements of each Policy;

- (c) to advise the University immediately of any inability to comply, or any suspected or actual non-compliance with the Policies; and
- (d) that any breach of the Policies will be considered by the University to be a breach of this agreement to which clause 24.1 (Default) will apply.

11. Modern Slavery

11.1 Warranty

The Service Provider warrants that:

- (a) it has not, and will not engage in any Modern Slavery practices;
- (b) it does and will continue to comply with all laws relating to Modern Slavery;
- (c) it does and will continue to take reasonable steps to ensure that there is no Modern Slavery in its supply chains or in its subcontractor's supply chains;
- (d) neither the Service Provider nor any of its Personnel:
 - (i) has been convicted of any offence involving Modern Slavery; and
 - (ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any Government Agency regarding any offence or alleged offence of or in connection with Modern Slavery.

11.2 Compliance

The Service Provider must:

- (a) implement and maintain throughout the Term the appropriate due diligence procedures for its own suppliers and subcontractors to ensure that there is no Modern Slavery in its supply chains; and
- (b) do all things necessary to immediately rectify or avoid any Modern Slavery risk in its supply chains.

11.3 Notification

The Service Provider must promptly notify the University as soon as it becomes aware of any actual or suspected Modern Slavery in a supply chain which has a connection with this agreement.

11.4 Records

The Service Provider must:

- (a) maintain a complete set of records to trace the supply chain of all goods and services provided to the University in connection with this agreement; and
- (b) provide all information reasonably required by the University to comply with any law or legal requirement to provide a compliance statement in relation to Modern Slavery.

12. Prohibition on Sexual Misconduct

12.1 Acknowledgement

The Service Provider acknowledges that:

- (a) maintaining a safe and respectful environment that is free of Sexual Misconduct is of material significance to the University; and
- (b) the University may terminate this agreement with immediate effect by written notice to the Service Provider where it knows or reasonably suspects that the Service Provider or its Personnel has engaged in Sexual Misconduct.

12.2 Compliance

The Service Provider agrees that it and its Personnel must:

- (a) comply with the University's Behaviour Policy as published from time to time on its website; and
- (b) not engage in Sexual Misconduct while performing its obligations under this agreement or while attending any University premises.

12.3 Notification

- (a) The Service Provider must notify any allegations of Sexual Misconduct arising in the course of the Service Provider or its Personnel performing obligations under this agreement or while attending any of the University premises to the University's Work Health and Safety Unit by email: health.safety@utas.edu.au.
- (b) Upon receiving notice of an allegation of Sexual Misconduct in respect of the Service Provider or its Personnel, the Service Provider agrees to accommodate all reasonable requests of the University to:
 - (i) vary this agreement; or
 - (ii) suspend the performance of the Service Provider's obligations under this agreement,where reasonably required to investigate an allegation of Sexual Misconduct or to provide appropriate support or protect the safety of any alleged victims of Sexual Misconduct.

13. Conflict of interest

The Service Provider must immediately notify the University of the existence or likelihood of a conflict of interest or potential conflict of interest as soon as it becomes apparent to the Service Provider and cooperate with the University to resolve such conflict of interest.

14. Reports and record keeping

14.1 Reporting

The Service Provider will provide any reports to the University which the University reasonably requires during the Term.

14.2 Record keeping

The Service Provider must:

- (a) ensure that all Records are stored securely and kept in safe custody for at least 7 years and provided to the University on request as soon as reasonably practicable; and
- (b) immediately notify the University in the event of any breach of this clause 14.2.

14.3 Survival

This clause 144 survives the termination or expiry of this agreement.

15. Audit

15.1 Access

- (a) The Service Provider must give the University and its nominated auditors access to audit and inspect its sites, facilities, records, materials and resources relevant to this agreement.
- (b) The University is not entitled to audit or inspect information about the Service Provider's costs, margins, trade secrets or other customers.
- (c) The University must give reasonable notice of any requested audit or inspection and may exercise its rights under this clause 15.1 only once each calendar year.

15.2 Non-compliance

If an audit or inspection under clause 15.1 (Access) reveals that the Service Provider is not complying with this agreement, the Service Provider must, and must ensure that any relevant Service Provider Personnel, take such actions as are necessary to promptly remedy the non-compliance.

15.3 Costs

Each party will bear its own costs associated with audits or inspections conducted under clause 15.1 (Access), unless such audit or inspection reveals that the Service Provider has:

- (a) overcharged the University; or
- (b) breached this agreement in any way other than in a minor or inconsequential way,

in which case the Service Provider must pay the University within 20 Business Days of completion of the audit or inspection any costs and expenses incurred by the University in conducting the audit or inspection (including any costs of a nominated auditor).

PART F. Payments

16. Payment

16.1 Services Fee

Provided that the Service Provider complies with its obligations under this agreement, the University will pay the Service Provider the Services Fee and any relevant Expenses in accordance with this clause 16

16.2 Rates fixed for Term

The basis upon which the Services Fee is calculated is fixed for the Term and not subject to rise and fall or any other adjustment, despite any change in the cost of performing the Services for the Service Provider.

16.3 Payment claim

The Service Provider must provide the University with a Valid Invoice for the Services.

16.4 Valid Invoice

An invoice delivered under clause 16.3 (Payment claim) must:

- (a) contain a description of the Services provided during the relevant payment period;
- (b) outline the basis for calculation of the amount set out in the invoice based on the Services Fee;
- (c) contain any further information stipulated in any applicable GST legislation, or by the University, so that the University will receive the benefit of any input tax credit in relation to the supply of the Services; and
- (d) include any other verification information that the University, acting reasonably, might require.

16.5 Payment

- (a) Subject to this clause 16, the University will pay the amount claimed by the Service Provider in its tax invoice within 30 days of the date that the University receives the Valid Invoice, unless otherwise agreed between the parties.
- (b) In addition to any other requirements contained in this agreement, the Service Provider's right to receive payment under this clause 16 is subject to the Service Provider:
 - (i) taking out and maintaining the relevant Insurance Policies as required by clause 233 (Insurance);
 - (ii) complying with all applicable laws in connection with the engagement of the Service Provider's Personnel; and

- (iii) delivering a Valid Invoice to the University.

16.6 Invoice dispute

- (a) If the University, in good faith, disputes any amount claimed by the Service Provider in an invoice (**Disputed Amount**), it must, within 5 days of receipt of the invoice, issue the Service Provider with a payment dispute notice specifying the reasons for the dispute.
- (b) Following receipt of the payment dispute notice, the Service Provider and the University will work together to ensure a mutually satisfactory outcome within 20 Business Days.
- (c) If the payment dispute cannot be resolved under clause 16.6(b) the matter will be referred for resolution or determination in accordance with clause 25 (Disputes).
- (d) In the event that the University disputes an amount claimed by the Service Provider, the University:
 - (i) may withhold the Disputed Amount until settlement of the dispute; and
 - (ii) must pay the undisputed portion of the invoice.

17. GST

17.1 Definitions

Expressions defined in the GST Act have the same meaning when used in this clause 7.

17.2 GST exclusive

Unless otherwise stated in this agreement, all amounts payable by one party to another party are exclusive of GST.

17.3 GST payment

If GST is imposed or payable on any supply made by a party under this agreement, the recipient of the supply must pay to the supplier the additional amount for GST at the same time and in the same manner as the consideration for the supply.

17.4 Tax invoice

A party's right to payment under clause 17.3 (GST payment) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

PART G. Information

18. Intellectual Property

18.1 University Background IP

The University retains the Intellectual Property Rights in the University Background IP.

18.2 Service Provider Background IP

The Service Provider retains the Intellectual Property Rights in the Service Provider Background IP.

18.3 Contract IP

- (a) The Service Provider agrees and acknowledges that all Contract IP immediately vests on creation in the University.
- (b) The Service Provider will do all acts and execute all documentation (and require its Personnel to do all acts and execute all documentation) required to immediately vest title in the Contract IP in the University.

18.4 University IP

- (a) The University grants to the Service Provider a non-exclusive, revocable, royalty-free licence for the Term to reproduce and use University Background IP and the Contract IP

only for the purposes of the Service Provider performing its obligations under this agreement.

- (b) The Service Provider must not reproduce, use or otherwise deal with University Background IP or Contract IP, or allow any other person to do the same, for any other purpose.
- (c) The University has the right to revoke this licence at any time by notice in writing to the Service Provider.

18.5 Service Provider IP

The Service Provider grants to the University a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-licence) to reproduce and use Service Provider Background IP to make use of the Contract IP.

18.6 IP Warranty

The Service Provider warrants that:

- (a) the provision of the Services to the University and the licence granted by the Service Provider pursuant to clause 18.5 (Service Provider IP) does not infringe the Intellectual Property Rights (including Moral Rights) of any person; and
- (b) it is entitled, and will be entitled at all relevant times, to deal with the relevant Intellectual Property Rights as required under this clause 18.

18.7 Moral Rights

- (a) The Service Provider must procure from all of its Personnel who are authors of copyright material licensed, assigned or otherwise supplied to the University under this agreement a grant of consent and waiver in respect of any Moral Rights which enables the University to fully exercise, exploit and enjoy the rights granted to it under this agreement.
- (b) The Service Provider must produce all written consents to the University on request.

18.8 Notification

The Service Provider agrees to notify the University as soon as it becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the:

- (a) University Background IP;
- (b) Service Provider Background IP; or
- (c) Contract IP.

18.9 Assistance

The Service Provider agrees to provide all reasonable assistance that the University may request to protect the Intellectual Property Rights in the:

- (a) University Background IP; or
- (b) Contract IP.

18.10 Survival

This clause 18 survives the termination or expiry of this agreement.

19. Confidentiality

19.1 Non-disclosure

Subject to clause 19.2 (Representatives), the Service Provider agrees not to disclose Confidential Information to any person without the prior written consent of the University, unless and until:

- (a) such information becomes generally available to the public, through no action, default or other breach by the Service Provider; or

- (b) the Service Provider is required by law, an order of the court or the rules of any recognised stock exchange to make disclosure, and then only to such extent.

19.2 Representatives

The Service Provider may, despite clause 19.1 (Non-disclosure), disclose Confidential Information to such of its representatives who may need such information and only to the extent so needed, to enable such party to fulfil its obligations under this agreement.

19.3 Safe custody

The Service Provider agrees to keep documents and any other material containing or incorporating any Confidential Information in safe custody.

19.4 Ownership

All Confidential Information will remain the property of the University and all copies or other records containing the Confidential Information (or any part of it) must be returned by the Service Provider to the University if requested upon termination or expiry of this agreement.

19.5 Remedies upon breach

The Service Provider acknowledges that the University will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this clause 19 and without the need on the part of the University to prove any special damage.

19.6 Survival

The rights and obligations of the parties with respect to confidentiality survive any termination of this agreement.

20. Privacy

20.1 Compliance

The Service Provider agrees, in respect of Personal Information which it has collected or been given access to for the purposes of this agreement:

- (a) to comply with the Privacy Legislation;
- (b) to collect the Personal Information in the manner required by this agreement and as the University may direct from time to time;
- (c) to use the Personal Information only for the purposes of this agreement; and
- (d) to not transfer the Personal Information outside Australia without the University's prior written consent.

20.2 Breach

Where any party identifies actual or suspected unauthorised access or disclosure of Personal Information or loss of Personal Information provided by or held by the University and which has been accessed or held by the Service Provider for the purposes of this agreement (**Breach**) the Service Provider agrees:

- (a) to immediately take any measures necessary to prevent the recurrence or continuation of the Breach and notify the University of the Breach including:
 - (i) full details of the manner in which the Breach occurred;
 - (ii) the type of information affected by the Breach; and
 - (iii) any security measures applied to the Personal Information affected by the Breach;
- (b) to assist and cooperate with the University in investigating any Breach;
- (c) to provide all information reasonably requested by the University in connection with the Breach; and

- (d) that the University will be the sole person responsible for making any notification of that Breach required by law, unless otherwise agreed between the parties.

PART H. Indemnities and Insurance

21. Indemnities

21.1 Service Provider's indemnities

Subject to clause 222 (Liability), the Service Provider is liable for and agrees to indemnify the University against any liability and any loss or damage of any kind whatsoever arising out of:

- (a) any wrongful acts or omissions of the Service Provider or its Personnel in relation to the performance of the Services; or

- (b) the breach of this agreement by the Service Provider,

except to the extent that any loss, liability or claim is caused by the negligence or default of the University.

21.2 Survival

This clause 21 survives the termination or expiry of this agreement.

22. Liability

22.1 Consequential Loss

Neither party will be liable to the other party in any circumstances for any Consequential Loss which the other party suffers as a result of any act or omission by the other party under this agreement.

22.2 Proportionate reduction

The Service Provider's liability to indemnify the University under clause 21.1 (Service Provider's indemnities) will be reduced proportionally to the extent that the act or omission of the University or the employees, agents or other contractors of the University contributed to the loss, liability or claim.

22.3 Limitation of liability

Subject to clause 22.4 (Insurance failure), the Service Provider's total liability to the University under or in connection with any claim relating to the Services or this agreement which is:

- (a) covered by an Insurance Policy will not exceed the amount of that Insurance Policy; or
(b) not covered by an Insurance Policy will not exceed the Liability Cap Amount.

22.4 Insurance failure

If the Service Provider:

- (a) fails to take out and maintain the relevant Insurance Policies; or
(b) takes out the Insurance Policies but through any act or omission prejudices the cover under those Insurance Policies,

then the Liability Cap Amount is deemed to increase by the amount of insurance that would have been available if the Service Provider had taken out and maintained the Insurance Policy or had not prejudiced the Insurance Policy (as the case may be).

22.5 Exclusion

Clause 22.3 (Limitation of liability) does not apply to the Service Provider's liability:

- (a) in respect of any statutory fine or civil penalty arising from any breach of law by the Service Provider;
(b) in respect of a breach of clause 9 (Workplace health and safety) or 18.6 (IP Warranty);

- (c) arising from any loss or damage to third party property or injury to, illness or death of a natural person; or
- (d) arising from fraud, wilful misconduct or criminal conduct by the Service Provider or its Personnel.

22.6 Survival

This clause 222 survives the termination or expiry of this agreement.

23. Insurance

23.1 Insurances

- (a) The Service Provider must, at its own cost, take out and maintain for the Term the Insurance Policies.
- (b) The Service Provider must provide certificates of currency for such Insurance Policies to the University prior to the Start Date, on renewal and otherwise on the University's request.

23.2 Insurance of subcontractors

The Service Provider must ensure that any subcontractors engaged to perform any part of the Services are insured to a level commensurate with the insurance obligations of the Service Provider under this clause 23.

23.3 Notice

With respect to any Insurance Policy, the Service Provider must notify the University in writing as soon as practicable:

- (a) if any Insurance Policy lapses, is cancelled or is materially altered;
- (b) if the Service Provider claims, or becomes entitled to claim, under any Insurance Policy for something related to providing the Services; or
- (c) if any event occurs which gives rise to, or may give rise to a claim under any Insurance Policy, or which could potentially prejudice any such policy.

23.4 General obligation

The Service Provider must not do anything and must not allow anything to be done while providing the Services which affects the University's rights under any insurance policy held by the University.

23.5 Survival

This clause 233 survives the termination or expiry of this agreement.

PART I. Termination and disputes

24. Termination

24.1 Default

Either party (**Non-Defaulting Party**) may terminate this agreement by giving the other party (**Defaulting Party**) notice if:

- (a) the Defaulting Party does not comply with an obligation under this agreement and, in the Non-Defaulting Party's reasonable opinion:
 - (i) the non-compliance can be remedied, but the Defaulting Party does not remedy it within 14 days after the Non-Defaulting Party gives the Defaulting Party notice to remedy it; or
 - (ii) the non-compliance cannot be remedied; or
- (b) subject to Chapter 5 of the Corporations Act, an Insolvency Event occurs in respect of the Defaulting Party.

24.2 Termination for convenience

This agreement may be terminated at any time upon the giving of not less than 30 days' notice for the convenience of the University, in which case:

- (a) the Service Provider must stop work in accordance with the notice, comply with all reasonable directions given by the University and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected subcontracts;
- (b) the University must pay the Service Provider:
 - (i) for any Services provided by the Service Provider in accordance with this agreement up to the date of termination; and
 - (ii) any direct costs actually and reasonably incurred by the Service Provider as a consequence of the termination, but excluding any amount for lost profit.

24.3 Rights not prejudiced

If this agreement is terminated under clause 24.1 (Default) or clause 24.2 (Termination for convenience):

- (a) the parties are relieved from future performance of this agreement, without prejudice to any right of action that has accrued prior to the date of termination; and
- (b) rights to recover damages are not affected by the termination.

24.4 Return of materials

Upon termination of this agreement for any reason the Service Provider will return all material, including the University's documents and other information, received from the University in relation to this agreement.

24.5 Survival

This clause 24 survives the termination or expiry of this agreement.

25. Disputes

25.1 Notice

If a party has a dispute or complaint against the other, that party (**Notifying Party**) must notify the other party in one of the ways described in clause 266 (Notices). The Notifying Party must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.

25.2 Best endeavours to resolve

Within 10 Business Days of the delivery of a dispute notice, one or more senior executives from both parties will meet at least once to endeavour to resolve the dispute or complaint to the mutual satisfaction of both parties. Unless the parties agree otherwise, the meeting must take place in Hobart, Tasmania.

25.3 Arbitration

- (a) If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than 20 Business Days after the date of receipt of the notice of the complaint or dispute), then the dispute or complaint must be submitted for arbitration in accordance with, and subject to, the Resolution Institute Arbitration Rules.
- (b) For disputes which involve a claim for less than \$50,000, arbitration will take place by way of written submissions supported by relevant documents alone unless the parties agree otherwise.

25.4 Exceptions

Nothing in this clause 255 prevents either party from seeking urgent interlocutory relief from a Court of competent jurisdiction.

25.5 Continuing obligations

The parties agree to perform their obligations under this agreement, despite the existence of a dispute.

PART J. General

26. Notices

26.1 Notices

Any notice or other communication to be given under or in connection with this agreement (**Notice**) must be in writing and:

- (a) marked for the attention of the recipient as set out or referred to in the Details (or in the way last notified by the recipient); and
- (b) sent to the email address or left at or sent by prepaid post to the address, in the Details (or such other email address or address notified by the recipient).

26.2 Timing

- (a) A Notice takes effect from the time it is received unless a later time is specified in the Notice.
- (b) A Notice received after 5 pm in the place of receipt or on a non-Business Day is taken to be received at 9 am on the next Business Day.

26.3 Receipt

Subject to 26.2 (Timing), a Notice is regarded as being received by the recipient if delivered:

- (a) in person, when delivered to the addressee;
- (b) by post, on delivery to the addressee; or
- (c) by email at the time the email is sent unless the sender receives an automated notification:
 - (i) that the email transmission has failed or has been delayed (within 12 hours of sending the email); or
 - (ii) to the effect that the recipient is not likely to receive the notice until a later date (which will then become the deemed date of receipt).

27. Miscellaneous

27.1 Amendments

This agreement may be altered only in writing signed by each party.

27.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior written consent of each other party.

27.3 Change in Control

- (a) The Service Provider may only undertake a Change in Control with the prior written consent of the University (which will not be unreasonably withheld).
- (b) If the Service Provider proceeds to undertake a Change in Control without obtaining the consent of the University, the University may immediately terminate this agreement.

27.4 Conflicting provisions

If there is any conflict or inconsistency between the main body of this agreement and any schedules or annexures comprising it, then the provisions of the main body of this agreement prevail.

27.5 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

27.6 Costs

Each party must bear its own costs arising out of the preparation, execution and performance of this agreement.

27.7 Counterparts

This agreement may be entered into in any number of counterparts, and counterparts may be exchanged by electronic transmission, each of which will be deemed an original, but all of which, taken together, constitute one and the same instrument.

27.8 Electronic signatures

Each party acknowledges and agrees that if this agreement is signed electronically that:

- (a) prior to the execution of this agreement that it consented to the agreement being electronically signed;
- (b) the delivery of a counterpart of this agreement bearing an electronic signature rather than a wet ink signature is deemed to bind the party whose signature is so represented;
- (c) no witnessing of a party's signature is required; and
- (d) it will be bound by, have complied with and will comply with the relevant electronic transactions legislation in relation to the execution of this agreement.

27.9 Entire agreement

- (a) This agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, negotiations and understandings between the parties in relation to its subject matter.
- (b) The Service Provider's standard or usual terms and conditions of service (if any) are expressly excluded with the effect that this agreement exclusively applies and constitutes the entire agreement between the parties.

27.10 Operation of indemnities

Unless this agreement expressly provides otherwise:

- (a) each indemnity in this agreement survives the expiry or termination of this agreement; and
- (b) a party may recover a payment under an indemnity in this agreement before it makes the payment in respect of which the indemnity is given.

27.11 Relationships

- (a) Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency, fiduciary or partnership between the parties.
- (b) The parties acknowledge and agree that, unless this agreement expressly provides otherwise, the Service Provider is appointed as an independent contractor and not as an employee or agent of the University.
- (c) The Service Provider must not represent itself, and must ensure that its Personnel do not represent themselves, as being employees or agents of the University.
- (d) The Service Provider acknowledges that it is liable for payment of all allowances, taxes, premiums and costs, including leave entitlements, holding and sick pay, payroll tax, PAYG tax, costs of insurance or other non-reimbursable costs which arise in connection with the performance of the Services.

27.12 Severance

A term or part of this agreement that is illegal or unenforceable is severed from this agreement and the rest of this agreement continues in force.

27.13 Subcontracting

- (a) The Service Provider must not subcontract the performance of its obligations under this agreement without first obtaining the consent of the University, which may be withheld in the University's sole discretion.
- (b) A decision by the University to grant approval under clause 27.13(a), or the subsequent entry into a subcontract by the Service Provider, does not relieve the Service Provider of the responsibility to perform its obligations under this agreement.
- (c) The Service Provider will be liable for all acts, errors and omissions of its subcontractors or suppliers despite any other terms of this agreement or any direction or approval given by the University under this agreement.
- (d) The Service Provider will make any subcontract subject to the conditions of this agreement to the extent that they may be applicable.

27.14 Governing law

This agreement is governed by the laws of Tasmania and each party submits to the non-exclusive jurisdiction of the courts of Tasmania.

PART K. Defined terms and interpretation

28. Defined terms

In this agreement:

Business Day means any weekday on which banks are generally open for business in Hobart, Tasmania.

Change in Control means a change in the Control of an entity from that which existed at the date of this agreement.

Confidential Information means this agreement, any information (regardless of form) disclosed or otherwise made available by the University to the Service Provider, for, or in connection with this agreement, including information which:

- (a) is marked as being proprietary or confidential to the University;
- (b) in the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith be treated as confidential;
- (c) is confidential to a third party to whom the University owes a duty of confidence,

whether the information was:

- (d) disclosed or created before, or after the date of this agreement; or
- (e) disclosed as a result of discussions between the parties concerning or arising out of this agreement.

Consequential Loss includes special indirect loss or damage and any loss of profits, loss or production, loss of revenue, loss of use, loss of goodwill and loss of opportunity whatsoever, whether direct or indirect.

Contract IP means Intellectual Property Rights discovered or coming into existence solely as a result of, for the purposes of or in connection with the performance of obligations under this agreement, but does not include Service Provider Background IP or University Background IP.

Control has the meaning given to that term by section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Details means the section of this agreement headed 'Details'.

End Date means the date specified in the Details.

Expenses means any reasonable third-party expenses incurred by the Service Provider in providing the Services that have been approved in advance in writing by the University.

Government Agency means any government or any public, statutory, governmental or judicial body, entity, department or authority.

GST has the meaning given in the GST Act.

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

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (g) any analogous event or circumstance under the laws of any jurisdiction; or
- (h) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other parties (which approval is not to be unreasonably withheld or delayed).

Insurance Policies means the insurance policies specified in the Details.

Intellectual Property Rights includes all present and future intellectual and industrial property rights conferred by statute, at civil, common law or equity including:

- (a) copyright;
- (b) design, patent, trademark, semiconductor, circuit layout, database rights or plant breeder rights (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know how, inventions or processes (whether in writing or recorded in any form); and
- (e) any right to license and sub-license any of the above.

Modern Slavery means slavery, forced labour, bonded labour, human trafficking, child labour, debt bondage and any other slavery like practices prohibited under any Modern Slavery Laws.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth), and any other laws or regulations prohibiting or regulating Modern Slavery in force in Australia.

Moral Rights means moral rights within the meaning of Part IX of the *Copyright Act 1968* (Cth) and any analogous rights arising under statute that exist, or may come to exist anywhere in the world.

Personal Information has the meaning given in the Privacy Act.

Personnel in relation to a party means the officers, employees, secondees, agents, consultants, contractors and subcontractors of that party.

Policies means each of the policies set out in the Details which may be reasonably amended from time to time at the University's discretion and notified to the Service Provider.

Premises means any premises owned, leased, or otherwise controlled by the University.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Legislation means the Privacy Act, the *Personal Information Protection Act 2004* (Tas) and other legislation regarding privacy in force from time to time that is applicable to the parties.

Record means all records required by any law and as are reasonably required to demonstrate the Service Provider's compliance with this agreement including any details of how the Services Fee has been calculated.

Service Provider Background IP means Intellectual Property Rights owned by or licensed to the Service Provider (including know how and technical information) which exist prior to the date of this agreement but does not include University Background IP or Contract IP.

Services means the services required to be provided by the Service Provider as described in the **Key Deliverables table**.

Services Fee means the amount described in the Details.

Sexual Misconduct means an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances and any sexual offence.

Start Date means the date specified in the Details.

University Background IP means Intellectual Property Rights owned by or licensed to the University (including know how and technical information) which exist prior to the date of this agreement but does not include Service Provider Background IP or Contract IP.

Valid Invoice means a tax invoice that complies with clause 16.4 (Valid Invoice).

Variation means any variation to the Services including by way of:

- (a) omitting certain services from the Services;
- (b) adjusting the timeframe for delivery of the Services; or
- (c) adding other services which are not included in the scope of the Services.

29. Interpretation

29.1 Documents

- (a) A reference to a clause, annexure, part or schedule is a reference to a clause, annexure, part in or schedule to this agreement.
- (b) Headings are for convenience only and do not form part of this agreement or affect its interpretation.
- (c) A reference to a document (including this agreement) includes all amendments, replacements or supplements to that document.

29.2 Law

A reference to law means a reference to:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and

- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law.

29.3 Legislation

A statute, ordinance, code or other legislation includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

29.4 Linguistic choices

- (a) A reference to the singular includes the plural and the plural includes the singular.
- (b) “Including” and similar expressions are not words of limitation.
- (c) 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.

29.5 Money

A reference to money is to Australian dollars, unless otherwise stated.

29.6 Persons

- (a) The word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency.
- (b) A particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

29.7 Time periods

- (a) All references to time are to the time in Hobart, Tasmania.
- (b) A period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day.
- (c) If an act under this agreement to be done by a party on or by a given day is done after 5 pm on that day, it is taken to be done on the next day.
- (d) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

Schedule 1. Rates

Item name		Rate
1.	Service Fee	\$60,000 excl GST