

MASTER AGREEMENT – EXECUTIVE SEARCH SERVICES

## **Date** The date of this Agreement is specified in item 1 of Schedule A.

**Parties University of Technology, Sydney** (ABN 77 257 686 961) of 15 Broadway, Ultimo, Sydney, NSW 2007 (**UTS**); and

**The Party named in item 2 of Schedule A** (**Executive Search Provider**).

**It is agreed**

# Agreement and Statements of Work

## In consideration of the appointment of the Executive Search Provider to the panel of service providers to UTS for the provision of executive search services (**the Panel**), which each party agrees provides good and valuable consideration, the parties agree to the terms and conditions set out in this Agreement.

## From time to time, the University may request that the Executive Search Provider provides certain Services, in which case the parties must follow the process set out in this clause 1.

## 

## The University may terminate this process at any time and without penalty.

## 

## If UTS requires the Contactor to perform certain Services, it will issue a draft Statement of Work and send it to the Executive Search Provider to review and complete.

## The Executive Search Provider must review and complete the draft Statement of Work and return it to UTS within 5 Business Days after receiving the draft Statement of Work or within such other timeframe agreed between the parties in writing.

## The Executive Search Provider must promptly make any changes to the Statement of Work reasonably requested by UTS.

## If the parties are satisfied with the completed draft Statement of Work:

## the parties will promptly sign the Statement of Work; and

## the Executive Search Provider must provide the Services in accordance with the Statement of Work and this Agreement.

## A Statement of Work will not be binding on the parties unless the Statement of Work has been signed by an authorised representative of each party.

## This Agreement (comprising clauses 1 to 22 of this document, the schedules to this document and the signature page) and each Statement of Work which is signed by the parties will form a single agreement between them consisting of the following documents, in the following order of priority, to the extent of any inconsistency:

## clauses 1 to 22 of this document, the schedules to this document and the signature page;

## the Statement(s) of Work; and

## documents attached to or incorporated by reference in the Statement of Work.

# Non-exclusivity

## The Executive Search Provider acknowledges that it will not be the exclusive provider to UTS of the Services and further acknowledges that UTS may procure such Services from other contractors at its sole discretion.

## Notwithstanding anything else in this Agreement, UTS makes no representation that it will procure a minimum quantity of the Services from the Executive Search Provider during the term of this Agreement or at all.

# Term

## This Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 16 (**Initial Term**).

## The Initial Term may be extended by UTS for a further period equivalent to the duration of the Initial Term, by giving written notice to the Executive Search Provider. Such notice must be given at least 30 days before the end of the Initial Term.

## If notice is given by UTS under clause 3.2, this Agreement will continue for the duration of the extended term, on the same terms and conditions, other than clause 3.2.

## If a Statement of Work is still on foot at the expiry of the Initial Term or extended term, the applicable term will be extended until the completion of the work under that Statement of Work, unless terminated earlier in accordance with clause 16.

# The Services

## The Executive Search Provider warrants, represents and agrees that it and its Personnel:

## must provide the Services in a proper, timely and professional manner, in compliance with applicable law, and with all due care, skill and diligence to the reasonable satisfaction of UTS;

## have the skills, qualifications, expertise and experience necessary to properly provide the Services;

## have obtained all licences, permissions and authorisations necessary to provide the Services; and

## in providing the Services, will not be in breach of any obligation owed to, or any right belonging to, any person.

## Without limiting the Executive Search Provider's status as an independent contractor, when providing the Services the Executive Search Provider agrees that it and its Personnel will comply with:

## all relevant laws including the *University of Technology, Sydney Act* 1989 (NSW) and associated by-laws and rules; and

## all UTS policies, procedures, instruments and directives which UTS may adopt or vary from time to time, in its absolute discretion, which are relevant to the Services, regardless of whether they expressly refer to contractors, including but not limited to:

## the UTS Code of Conduct;

## the Information Technology Security Policy;

## the Acceptable Use of Information Technology Facilities Policy;

## the Privacy and Protection of Personal Information Vice-Chancellor’s Directive;

## any UTS policy or procedure relating to compliance with an Australian Sanctions Law or Defence Trade,

## and any others specified in item 9 of Schedule A.

## The Executive Search Provider acknowledges that access to current UTS policies and other instruments is available through the UTS website as set out in item 9 of Schedule A.

## The Executive Search Provider acknowledges and agrees that:

## UTS’ policies, procedures, instruments and directives which UTS may adopt from time to time, do not form part of this Agreement and are not intended to be contractual in nature; and

## UTS may vary or rescind any policies, procedures, instruments and directives from time to time, in its absolute discretion and without any limitation on its capacity to do so.

## The Executive Search Provider Warrants that as at the date of this Agreement no conflict of interest exists or is likely to arise in respect of the Executive Search Provider or a Consultant in providing the Services, and that if such a conflict does arise during the term of this Agreement, the Executive Search Provider will notify UTS immediately and comply with any reasonable directions or instructions of UTS regarding the conflict.

## The Executive Search Provider warrants that it will not approach:

## a person it has recruited and who has been appointed to the Position at UTS pursuant to this Agreement, with a view to recruiting him or her to work elsewhere than UTS, for so long as that person remains employed at UTS; and

## any person who directly reports to the Position at UTS, with a view to recruiting such person for a position other than at UTS, for a period of 12 months from the Completion Date.

## The Executive Search Provider agrees that, in the event that:

## a candidate recruited by the Executive Search Provider and employed by UTS leaves the employment of UTS within 6 months of the date of the candidate’s employment; or

## UTS is not satisfied with the performance of the candidate recruited by the Executive Search Provider, and notifies the Executive Search Provider in writing within 6 months of the date of the candidate’s appointment,

the Executive Search Provider will carry out the Services at no cost to UTS until a replacement candidate, selected in UTS’ absolute discretion, is identified and appointed.

# 4A. Consultants

4A.1 The Executive Search Provider must employ or engage the Consultants to assist with the provision of the Services. Before each Consultant commences assisting with the Services, the Executive Search Provider must arrange for each Consultant to execute a deed in the form set out in Schedule D.

4A.2 Notwithstanding any other clause of this Agreement, the Executive Search Provider:

## is responsible and liable for the acts and omissions of the Consultants; and

## is responsible and liable for paying the Consultants and warrants that it has included the Consultants’ costs in the Services Fees.

4A.3 Notwithstanding any other clause of this Agreement, the Executive Search Provider acknowledges and agrees that:

## it will not be entitled to receive the Services Fees if at any time from the date the relevant Statement of Work is executed by the parties, a Consultant is incapacitated or otherwise unavailable or prevented from assisting with the provision of the Services for a period of longer than 3 months and no alternative consultant, which is acceptable to UTS, is available;

## subject to (c) below, the Executive Search Provider must return any amount of the Services Fees previously paid by UTS; and

## where the first instalment of the Services Fees has been paid to the Executive Search Provider in accordance with the milestones identified in the relevant Statement of Work prior to such incapacity or unavailability of a Consultant occurring, the Executive Search Provider may retain an amount of the Services Fees which is equal to its reasonable and actual costs, including Reimbursable Expenses, performed prior to the Consultant being unavailable to assist in the provision of Services under the Agreement.

# Work Health and Safety

## The Executive Search Provider must:

## comply with its work health and safety obligations at law;

## ensure the health and safety of its Personnel;

## to the extent it is reasonably practicable, ensure the health and safety of all UTS workers, students and other persons;

## ensure its Personnel are properly trained and supervised; and

## comply with all reasonable directions of UTS in relation to work health and safety; and

## co-operate with any reasonable policy or procedure of UTS relating to work health and safety,

## and must ensure its Personnel do the same.

## The Executive Search Provider must, if UTS reasonably requests the removal or evacuation of the Executive Search Provider or its Personnel from UTS’s premises, comply with, and ensure that its Personnel comply with, such request as soon as reasonably practicable.

# Sanctions and defence trade controls

## The Executive Search Provider warrants that:

## neither the Executive Search Provider nor any of its Personnel is a 'designated person or entity' for the purposes of an Australian Sanctions Law; and

## unless the Executive Search Provider has informed UTS otherwise in writing, neither the Executive Search Provider nor any of its Personnel is, or has been, a citizen or resident of, or otherwise connected with, a country in respect of which sanctions apply under an Australian Sanctions Law.

## If UTS determines, acting reasonably and after conducting any necessary investigations, that UTS is or may be exposed to a risk of breaching an Australian Sanctions Law or Defence Trade Controls Law as a result of any activity in which the Executive Search Provider is or will be engaged in connection with the provision of the Services, UTS may, at its absolute discretion:

## require the Executive Search Provider to comply with any reasonable directions issued by UTS in order to mitigate the risk, including a direction to cease undertaking the activity or to cease the involvement of any of its Personnel in the provision of the Services; or

## terminate this Agreement and/or any Statement of Work immediately without notice.

# Payment for Services

## UTS will pay the Services Fees to the Executive Search Provider for the Services in accordance with the Agreement.

## 

## No Services Fees or other amounts are payable to the Executive Search Provider for the preparation of a Statement of Work, unless UTS otherwise agrees in writing.

## To receive payment for providing the Services, the Executive Search Provider must issue UTS with an Invoice at the times and in accordance with the requirements set out in item 6 of Schedule A, or as otherwise agreed in a Statement of Work.

## The Executive Search Provider will not be entitled to receive the Services Fees referrable to any Services which were not provided in accordance with the quality standards and time frame reasonably determined by UTS, until these Services are provided to the satisfaction of UTS.

## If specified in a Statement of Work, UTS will reimburse any reasonable out of pocket expenses properly incurred by the Executive Search Provider or its Personnel in the course of providing the Services, for which the Executive Search Provider provides UTS with written receipts or vouchers if and when requested (**Reimbursable Expenses**). Otherwise, UTS will not reimburse out of pocket expenses incurred by the Executive Search Provider or its Personnel in the course of providing the Services.

## Subject to this clause 7 and clause 4A.3, UTS will pay the Services Fees and Reimbursable Expenses (if a Statement of Work specifies that UTS agrees to reimburse these) plus any applicable GST in satisfaction of the Invoice, within 30 days of receiving the Invoice.

## UTS may deduct from or set off against any moneys payable by UTS to the Executive Search Provider, any amounts owing by the Executive Search Provider to UTS from time to time.

## The Executive Search Provider must provide to UTS a statement in the form attached in Schedule B, for each period in which an Invoice is issued by the Executive Search Provider. UTS may withhold any payment due to the Executive Search Provider until the Executive Search Provider complies with this obligation.

# Insurance

## The Executive Search Provider must effect and maintain at its cost, on and from the date it commences providing the Services, the insurances specified in item 7 of Schedule A in a form and with an authorised, licensed and reputable insurer approved by UTS. Such insurance must be maintained until the date(s) specified in item 7 of Schedule A.

## The Executive Search Provider must immediately notify UTS of any event that could affect the Executive Search Provider’s insurance coverage or if any insurance required under clause 8.1 is cancelled, voided or allowed to lapse.

## The Executive Search Provider must on request provide UTS with satisfactory evidence that it has complied with the requirements in this clause 8.

# Indemnity

## To the extent permitted by law and notwithstanding anything else in this Agreement, the Executive Search Provider releases and indemnifies and will keep indemnified UTS and each UTS Entity and their respective agents, officers and employees against:

## all damage, liability, claims, demands, proceedings, actions, penalties, expenses and costs (including but not limited to GST and legal fees on a client and solicitor basis and costs of defence or settlement) (Loss) which is related to, arises out of, or is in any way associated with any breach of this Agreement or any negligent, wilful or wrongful act or omission of the Executive Search Provider or its Personnel in providing the Services under this Agreement. However, this indemnity does not apply to the extent that any Loss arises from any matters which have resulted from the negligent, wilful or wrongful acts or omissions of UTS or a UTS Entity; and

## any liability, costs or claims relating to the payment of any Employment Benefits made against UTS or any UTS Entity by the Executive Search Provider or any of its Personnel and any taxes, levies or costs in relation to those Employment Benefits.

## The Executive Search Provider indemnifies and will keep indemnified UTS and each UTS Entity and their respective officers, employees and agents against any Loss which is related to, arises out of, or is in any way associated with any obligation on UTS to provide Employment Benefits to and in respect of any of its Personnel.

## The Executive Search Provider must promptly provide written notice to UTS of any event or circumstances in relation to the provision of the Services that may result in a claim against the Executive Search Provider or UTS or a UTS Entity. The Executive Search Provider must provide UTS with all documents and information requested by UTS in relation to any such claims and keep UTS fully informed of all developments in connection with any such claims.

## Each indemnity in this Agreement survives its termination or expiry.

# Intellectual Property

## The Executive Search Provider assigns to UTS all Intellectual Property created by or on behalf of the Executive Search Provider or its Personnel, whether alone or with a third party in the course of, in connection with providing or arising out of the Services, including where created:

## using to any extent UTS property, computer systems, resources or Confidential Information; and/or

## outside working hours or outside the UTS premises,

## **(Contract Intellectual Property).**

## The Executive Search Provider agrees that to the extent that Contract Intellectual Property contains pre-existing Intellectual Property owned or licensed by the Executive Search Provider or its Personnel, which was not created in the course of, in connection with providing or arising out of the Services, the Executive Search Provider or its relevant Personnel (as the case may be) hereby provides UTS with a perpetual, irrevocable, transferable and royalty free licence (including the right to sublicense) to use, reproduce, publish, transmit, communicate, modify and adapt this pre-existing Intellectual Property for the purpose of obtaining the full benefit of the Contract Intellectual Property and the Services.

## The Executive Search Provider must ensure that it and its Personnel do not use any Intellectual Property licensed or otherwise supplied by UTS to the Executive Search Provider or its Personnel or Contract Intellectual Property for any purpose other than providing the Services to UTS.

## The Executive Search Provider warrants that any Intellectual Property supplied by the Executive Search Provider for the purpose of providing the Services and its use by UTS or any UTS Entity does not and will not infringe the Intellectual Property rights of any third party.

## The Executive Search Provider indemnifies and will keep indemnified UTS and each UTS Entity and their agents, officers and employees against all damage, liability, claims, demands, proceedings, actions, penalties, expenses and costs (including but not limited to GST and legal fees on a client and solicitor basis and costs of defence or settlement) which is related to, arises out of, or is in any way associated with any claim that any Intellectual Property assigned, licensed or otherwise supplied by the Executive Search Provider or its Personnel to UTS or any UTS Entity or its use by UTS or any UTS Entity infringes the Intellectual Property rights of any third party.

## The Executive Search Provider must execute and arrange for its Personnel to execute all documents and do all things required to give effect to this clause 10 and to enable UTS, or persons authorised by UTS, to exploit and further assure the rights assigned under clause 10.1.

## This clause continues to apply after this Agreement ceases for any reason.

# Moral Rights

## The Executive Search Provider agrees that UTS, its licensees and successors in title and any other persons authorised by the foregoing, are at all times entitled to use, reproduce, publish, transmit, communicate, modify and adapt the materials or deliverables provided in connection with the Services, in their sole discretion, devoid of any obligation (whether positive or negative) to any person including:

## to attribute or not attribute authorship of any "copyright" material within the meaning of the Copyright Act 1968 (Cth); or

## not to subject or authorise the subjection of any "copyright" material within the meaning of the Copyright Act 1968 (Cth) to derogatory treatment.

## In so far as he or she is able, the Executive Search Provider waives its Moral Rights in respect of any materials or deliverables provided in connection with the Services.

## The Executive Search Provider agrees that the consent provided under this clause is genuinely given and has not been induced by duress or any false or misleading statement.

## The Executive Search Provider must execute any other documents and do all other things required by UTS to give effect to this clause.

## This clause continues to apply after this Agreement ceases for any reason.

# Confidentiality

## The Executive Search Provider must take reasonable steps to maintain the confidentiality of the Confidential Information and must not directly or indirectly make use of, copy or disclose to any third party any Confidential Information otherwise than in the performance of the Services, without UTS’s prior written consent or as required by law.

## The Executive Search Provider must immediately notify UTS if he or she becomes aware of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information and provide such reasonable assistance as required by UTS to deal with such an event, including such assistance as may reasonably be required by UTS in relation to any proceedings UTS may take against any person or entity for unauthorised use, copying or disclosure of Confidential Information.

## The Executive Search Provider must ensure that it and its Personnel do not disclose the terms of this Agreement or any Statement of Work or any document incorporated by reference in either of the foregoing to any third party without UTS’s prior written approval or as reasonably necessary to obtain legal, financial or any other form of professional advice, or as required by law.

## The Executive Search Provider consents to UTS obtaining two references regarding the quality of the Executive Search Provider’s services, including references from the Executive Search Provider’s previous clients. UTS will keep confidential any information obtained in relation to the references.

## This clause continues to apply after this ceases for any reason.

# Privacy

## In relation to any Personal Information or Sensitive Information which the Executive Search Provider or its Personnel receive during the term of this Agreement, the Executive Search Provider must ensure that it and its Personnel comply with all obligations regarding the collection, use and disclosure of such information imposed on UTS by privacy and health laws including but not limited to the Privacy Act 1988 (Cth), the Privacy and Personal Information Protection Act 1998 (NSW), and all privacy policies, procedures instruments and directives which UTS may adopt or vary from time to time, in its absolute discretion.

## The Executive Search Provider acknowledges that as at the date of this Agreement, the relevant policies, procedures instruments and directives are published on the UTS website at the address set out in item 9 of Schedule A.

## This clause continues to apply after this Agreement ceases for any reason.

# Use of UTS name

## The Executive Search Provider must ensure that it and its Personnel do not:

## use the name or any trademark, logo, business or company name of UTS (whether with or without graphic or photographic or other visual material) without the prior written consent of UTS;

## apply for or register any trademark, business or company name or internet address containing the name of UTS; or

## make any inaccurate claims of association with UTS or any UTS Entity.

## If UTS consents to the Executive Search Provider using UTS’s name, trademark, logo, business or company name under clause 14.1, such consent is automatically revoked if UTS terminates this Agreement under clause 16.2.

## This clause 14 continues to apply after this Agreement ceases for any reason.

# Remedies for breach

## In the event that the Executive Search Provider breaches clauses 10, 11, 12 or 13, the Executive Search Provider agrees that damages would not be an adequate remedy and UTS or any other aggrieved party may in addition to obtaining any other remedies, obtain an injunction restraining any further violation and other equitable relief, without the necessity of showing actual damage, together with recovery of costs.

## Nothing in this clause is intended to limit any other remedy available to UTS.

# Termination

## UTS may terminate this Agreement or any Statement of Work at any time by giving to the Executive Search Provider at least the number of days’ written notice specified in item 8 of Schedule A.

## UTS may terminate this Agreement or any Statement of Work immediately by providing written notice to the Executive Search Provider if:

## the Executive Search Provider fails to fulfil any of its obligations under this Agreement and does not remedy this failure within one week of receiving written notice to do so, including but not limited to failing to effect and maintain insurance required under this Agreement or failing to follow any reasonable directions to resolve a conflict of interest;

## the Executive Search Provider or its Personnel commit any serious or persistent breach of the terms of this Agreement, including but not limited to the confidentiality provisions in clause 11 or the Intellectual Property provisions in clause 9;

## the Executive Search Provider or its Personnel commits any criminal offence, act of dishonesty, fraud, misrepresentation, falsification of research, or assault in the course of providing the Services or exposes UTS to prosecution or legal proceedings by a court, government agency or other third party;

## the Executive Search Provider or any of its Personnel is charged with any criminal offence which in the reasonable opinion of UTS is likely to bring the Executive Search Provider, its Personnel and/or UTS into serious disrepute;

## the Executive Search Provider becomes, or steps are taken by any person towards making the Executive Search Provider, an externally-administered body corporate under the Corporations Act; or

## a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Executive Search Provider or any steps are taken for the appointment of such a person; or

## the Executive Search Provider becomes insolvent or makes a composition or arrangement with creditors generally or takes advantage of any statute for the relief of insolvent debtors; or

## the Australian immigration status of any of the Executive Search Provider’s Personnel does not permit the Executive Search Provider’s Personnel to deliver the Services in the manner contemplated by this Agreement.

## The Executive Search Provider may terminate this Agreement or any Statement of Work by providing written notice to UTS if UTS fails to pay any undisputed invoice issued by the Executive Search Provider and does not remedy this within 30 days of receiving written notice to do so.

## If UTS terminates this Agreement or any Statement of Work pursuant to clause 16.1, then, subject to clause 7, UTS will either, in its absolute discretion as to which:

## pay the Executive Search Provider:

## the portion of the Service Fee that has not already been paid, which is referable to the Services provided up to the date of termination, calculated on a pro rata basis if necessary; or

## if the Service Fee is based on the completion of milestones, and those milestones have not already been paid for, the portion of the Service Fee referable to the milestones completed up to the date of termination, and for any partly completed milestone, a portion of the Service Fee referable to that milestone, calculated on a pro rata basis; or

## elect to make a payment to the Executive Search Provider of the Service Fees (as determined by UTS) which would have been payable during the applicable notice period or any unexpired part of such notice, in lieu of notice, in which case this Agreement and/or the applicable Statement of Work (as applicable) terminates when UTS notifies the Executive Search Provider of this election.

## If this Agreement or any Statement of Work is terminated:

## such termination will be without prejudice to any rights either party has accrued under this Agreement;

## all licenses and authorisations granted by or on behalf of UTS to the Executive Search Provider or its Personnel for the purpose of providing the Services will automatically terminate with respect to the terminated Statement of Work or the entire Agreement if it is terminated;

## the Executive Search Provider's obligations under clauses 8 to 13 (inclusive) continue; and

## the Executive Search Provider must ensure that it and its Personnel do not represent themselves as being in any way connected with or interested in the business of UTS or any UTS Entity.

# UTS Property

## The Executive Search Provider:

## must and must ensure that its Personnel maintain UTS Property in good working order; and

## is responsible for UTS Property (including any loss or damage to it) until the UTS Property is returned to UTS; and

## on the cessation of this Agreement, or when requested to do so by UTS (whichever occurs first), must immediately return to UTS all UTS Property in the possession, custody or control of it or its Personnel.

## Any equipment or other property (including UTS Property) which the Executive Search Provider or its Personnel use in the provision of the Services is at their own risk.

# Assignment, sub-contracting and delegation

## The Executive Search Provider may only assign, sub-contract or delegate its duties or obligations under this Agreement or any Statement of Work, in whole or part, to any third party with UTS’s prior written consent.

## If UTS approves the sub-contracting any part of the Services this does not relieve the Executive Search Provider from any of its liabilities or obligations under this Agreement. Notwithstanding any approval of subcontracting, the Executive Search Provider will be liable to UTS for the acts, defaults and omissions of any sub-contractor or any officer, employee, servant or agent of the sub-contractor as fully as if they were the acts, defaults, or omissions of the Executive Search Provider or the officers, employees, servants, or agents of the Executive Search Provider.

## UTS may assign or novate this Agreement, or any of its rights or obligations under it or under any Statement of Work, in whole or part to any third party upon providing written notice to the Executive Search Provider.

# Provision of information and audit

## The Executive Search Provider must:

## provide to UTS all documentation and do all things reasonably requested by UTS in order for it to satisfy any legal or regulatory requirement; and

## notify UTS immediately if it becomes aware of any fact or circumstance that may adversely impact on the Services or UTS’s ability to satisfy any legal or regulatory requirement.

# Civil Liability Act

## All rights, obligations and liabilities under or in connection with this Agreement are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)), unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities.

# Miscellaneous

## This Agreement contains the entire agreement and understanding between the parties regarding its subject matter and supersedes any prior agreement or understanding regarding its subject matter.

## The relationship between the parties is that of principal and independent contractor and that nothing in this Agreement creates an employment relationship, joint venture, partnership, relationship of agency or any other relationship between the Executive Search Provider and UTS or any UTS Entity.

## Any implied term of good faith and fair dealing or co-operation owed by UTS to the Executive Search Provider is expressly excluded from forming part of this Agreement.

## Each party:

## has entered into this Agreement without relying on any representation by the other party or any person purporting to represent that party;

## has had the opportunity to obtain independent legal advice regarding the provision of the Services under this Agreement; and

## agrees that that this Agreement is not harsh or unfair in any way.

## A variation to this Agreement is not effective unless it is in writing and signed by or on behalf of all parties.

## If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

## The failure of either party at any time to insist on performance of any provision of this Agreement is not a waiver of its rights at any later time to insist on performance of that or any other provision of this Agreement.

## This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and all of which constitute one and the same instrument.

## Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

## A party giving notice under this Agreement must do so in writing and must address the notice to the person and address provided for each party in item 3 of Schedule A, or such other person and address as a party may advise in writing. A notice given in accordance with this clause is taken to be received:

## if hand delivered, on delivery;

## if sent by prepaid post, three days after the date of posting; or

## if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight hours after that transmission, the recipient informs the sender that it has not received the entire notice.

## The law of New South Wales governs this Agreement. The parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

# Definitions and Interpretation

## **Definitions**

## In this document:

## **Agreement** means the agreement between UTS and the Executive Search Provider consisting of the following documents, in the following order of priority, to the extent of any inconsistency:

## clauses 1 to 22 of this document, the Schedules to this document and the signature page;

## the Statement(s) of Work; and

## documents attached to or incorporated by reference in the Statement of Work,

## and all variations made in accordance with clause 21.5.

## **Australian Sanctions Law** means any Australian law under which sanctions are imposed on specified individuals, entities or countries, including each of the *Charter of the United Nations Act* 1945(Cth) and the *Autonomous Sanctions Act* 2011(Cth) and the *Autonomous Sanctions Regulations 2011* (Cth).

## **Commencement Date** means the date specified as such in item 5 of Schedule A.

## **Completion Date** means the date specified as such in item 5 of Schedule A.

## Confidential Information means confidential information, including but not limited to:

## information which is specifically designated as confidential by any individual providing the information on behalf of UTS;

## information which by its nature may be reasonably understood to be confidential;

## UTS’s trade secrets, know-how and Intellectual Property;

## information regarding UTS’s financial or business affairs;

## UTS’s marketing plans, and marketing and sales techniques;

## UTS’s student, employee and contractor information;

## UTS’s business systems, and operating procedures or manuals;

## the terms of this Agreement; and

## any note, calculation, conclusion, summary or other material incorporating or derived or produced partly or wholly from the information in (a) to (h) above,

## excluding information which is in the public domain other than as a result of a breach of confidentiality by the Executive Search Provider or its Personnel.

## **Consultants** means the consultants identified in item 10 of Schedule A.

## **Contract Intellectual Property** has the meaning provided under clause 10.1.

## **Corporations Act** means the *Corporations Act* 2001 (Cth) as amended from time to time.

## **Defence Trade Controls Law** means any Australian law restricting or regulating the export, transfer or trading of specified defence-related or weapons-related goods, services or technologies, including each of the *Defence Trade Controls Act* 2012 (Cth), *Customs Act* 1901 (Cth), *Weapons of Mass Destruction (Prevention of Proliferation) Act* 1995 (Cth), *Nuclear Non-Proliferation (Safeguards) Act* 1987 (Cth) and *Chemical Weapons (Prohibition) Act* 1994 (Cth).

## **Employment Benefits** means any benefits which employees are ordinarily entitled to at law including, but not limited to, wages, salary, annual leave, personal/carer’s leave, leave loading, severance pay, long service leave, superannuation and workers compensation benefits and any taxes related to those benefits including PAYG or payroll taxes. **GST** means the goods and services tax prescribed under the *New Tax System (Goods and Services Tax) Act* 1999 (Cth) and any other laws relating to GST, as amended from time to time.

## Intellectual Property means all intellectual property rights, including any:

## copyright;

## designs (as embodied in but not limited to drawings, computer software, solid models and algorithms), patents, patentable ideas, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);

## trade, business, company or domain name;

## know-how, inventions, processes, research materials including biological materials, and Confidential Information (whether in writing or recorded in any form); and

## any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, whether registrable or not,

## that presently exists or may arise in the future anywhere in Australia or anywhere else in the world, whether registered or unregistered, including any application or right to apply for registration of any of those rights.

## **Invoice** means a tax invoice in compliance with the requirements in the *New Tax System (Goods and Services Tax) Act* 1999 (Cth) and any other laws relating to GST, as amended from time to time.

## **Moral Rights** means the following rights in respect of any Intellectual Property rights: the right of integrity of authorship, right of attribution of authorship and right not to have authorship falsely attributed, which are created by the *Copyright Act* 1968 (Cth), and any similar right capable of protection under the laws of any relevant jurisdiction.

## **Personal Information** means information or an opinion about a person whose identity is apparent or can reasonably be ascertained from that information or opinion.

## **Personnel** means any officer, employee, agent or sub-contractor of a party, including the Consultants.

## **Position** means the position identified in the Statement of Work.

## **Sensitive Information** means information or an opinion about a person’s racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association or trade union, sexual preferences or practices, criminal record or health, where the identity of the person is apparent or can reasonably be ascertained from that information or opinion.

## **Services** means the services and/or deliverables as set out in item 4 of Schedule A and as further specified in a Statement of Work.

## **Services Fees** means the fees as set out in a Statement of Work.

## **Statement of Work** means a statement of work based on the form set out in Schedule C, and which may contain additional information reasonably requested by UTS and is otherwise in a form approved by UTS.

## **UTS Entity** means UTS Union Ltd, INSEARCH Ltd, accessUTS Pty Limited, UTS Global Pty Ltd, Sydney Educational Broadcasting Ltd, UTS Child Care Inc. and any other related bodies corporate of UTS as defined in the Corporations Act 2001 or any other entity related to UTS.

## **UTS Property** means all property provided to the Executive Search Provider or its Personnel by UTS during the term of this Agreement including but not limited to Intellectual Property, Confidential Information, keys, identity cards, equipment and texts.

## **Interpretation**

## Reference to:

## one gender includes the others;

## the singular includes the plural and the plural includes the singular;

## a person includes a body corporate;

## a party includes the party’s executors, administrators, successors and permitted assigns;

## legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

## any law, policy or other document includes any amendments or modifications to that law, policy or other document as made from time to time; and

## money is in Australian dollars, unless otherwise stated.

## ‘Including’ and similar expressions are not words of limitation.

## 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.

## Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

## A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

## 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.

# – Agreement Details

## Item 1: **Date of Agreement**

[Insert date of Agreement.]

## Item 2: **Executive Search Provider Details**

Name: [Insert Executive Search Provider’s name]

ABN: [Insert Executive Search Provider’s ABN]

Address: [Insert Executive Search Provider’s address]

## Item 3: **Address for notices**

Executive Search Provider

Name/title of contact person: [insert details]

Address: [insert details]

Fax number: [insert number]

UTS

Name/title of contact person: [insert details]

Address: [insert details]

Fax number: [insert number]

## Item 4: **Services** (clause 1)

Executive search recruitment services, as specified in the applicable Statement of Work.

## Item 5: **Commencement and Completion Dates** (Clause 3)

**Commencement Date:** [insert date]

**Completion Date:** the date 6 months from the Commencement Date.

## Item 6: **Services Fees** (Clause 7)

## **Services Fees**

The services fees are specified in the applicable Statement of Work.

## Item 7: Insurance (clause 8)

(a) **Public liability insurance:** with a limit of indemnity of not less than $[5 million] dollars. Such insurance must be maintained from the Commencement Date until the Executive Search Provider ceases to provide the Services.

(b) **Workers compensation insurance**: in accordance with the *Workers Compensation Act* 1987 (NSW) and the *Workplace Injury Management and Workers Compensation Act* 1998 (NSW).

(c) **Professional indemnity insurance:** with a limit of indemnity of not less than $[1 million] dollars and a deductible of not more than $[20 thousand] dollars. Such insurance must be maintained from the Commencement Date until 7 years after the date the Executive Search Provider ceases to provide the Services

## Item 8: **Termination notice** (clause 16.1)

Notice required by UTS: 30 days.

## Item 9: **UTS Website – location of policies and other instruments** (clause 1 and 13.2)

**Policies and other instruments:** <http://www.gsu.uts.edu.au/policies>

**Health and safety responsibilities:** <http://www.safetyandwellbeing.uts.edu.au/responsibilities/index.html>

**Item 10: Consultants** (clause 4A)

1. [insert name of consultant];
2. [insert names of further consultants as necessary]

# - Subcontractor’s Statement Regarding Worker’s Compensation, Payroll Tax and Remuneration

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work. **(Note1 – See End of Form)**

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act* 1987, Schedule 2 Part 5 *Payroll Tax Act* 2007, and s127 *Industrial Relations Act* 1996 where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR’S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: …………………………………………………........ ABN: ………………………….

(Business name)

of …………………………………………………………………………………………………….…..

(Address of subcontractor)

has entered into a contract with the University of Technology, Sydney ABN: 77 257 686 961

(Business name of principal contractor) **(Note 2)**

Contract number/identifier: N/A **(Note 3)**

This Statement applies for work between: ……./……./……. and ……./……./……. inclusive,

(**Note 4)**

subject of the payment claim dated: ……./……./……. **(Note 5)**

I, …………………………………………………………………………. a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

**(a)** The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick **[ ]** if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick **[ ]** and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**

**(b)** All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ……/……/…… **(Note 7)**

**(c)** All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

**(d)** Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. **(Note 9)**

**(e)** Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

**(f)** Signature ………………………………………… Full name………………………………………………

**(g)** Position/Title ……………………………………………………………………… Date ……./……./…….

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

**Notes**

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007 and section 127 of the Industrial Relation Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor’s business.

2. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration ‘as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.’

Section 127(11) of the Industrial Relations Act 1996 states ‘to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.’

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor’s Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor’s Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor’s Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business ‘in turn’ engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor’s Statements from your subcontractors.

**Statement Retention**

The principal contractor receiving a Subcontractor’s Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

**Offences in respect of a false Statement**

In terms of s127(8) of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

(a) the person is the subcontractor;

(b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or

(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the Workers Compensation Act and clause 18 of Schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

**Further Information**

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au , or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au . Copies of the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

# – Statement of Work

This Statement of Work is entered into on the date specified below between the University of Technology, Sydney (ABN 77 257 686 961) of 15 Broadway, Ultimo NSW 2007 (**UTS**) and [*insert name of the Executive Search Provider*] (ABN [*insert*]) of [*insert Executive Search Provider’s address*] (**Executive Search Provider**).

This Statement of Work is made pursuant to the Master Agreement between UTS and the Executive Search Provider dated [*insert date*] (**Master Agreement**) and forms a binding agreement between the parties consisting of the Master Agreement, this Statement of Work and any documents attached to or incorporated by reference in the Statement of Work. Terms which are capitalised in this Statement of Work have the meanings provided in the Master Agreement, or, if not defined there, have the meanings provided in this Statement of Work.

1. **Date of Statement of Work: [*insert date*]**
2. **Services**

The Executive Search Provider will carry out the Services to recruit a suitable candidate for the position of [insert] (**Position**), including assisting UTS by providing its expertise in global and domestic executive search and appointment.

The Executive Search Provider must provide the following services and/or deliverables:

1. **Consultants**

The Executive Search Provider must select, engage and manage the Consultants (if any) in accordance with this Agreement.

1. **Key Selection Criteria & Position Description**

The Executive Search Provider will assist UTS to finalise the key selection criteria and a position description for the appointment of the Position.

1. **Remuneration and Terms**

The Executive Search Provider will select potential candidates who would accept the role within the total remuneration package, duration and terms specified unless otherwise agreed by UTS.

1. **Briefings**

The Executive Search Provider will facilitate discussions with UTS to obtain a comprehensive briefing and a clear understanding of UTS’s requirements to ensure the Executive Search Provider fully understands the future strategy and direction of UTS. The Executive Search Provider will also discuss with UTS stakeholders any particular challenges that the successful candidate will face. The Executive Search Provider will ensure that it develops an appreciation of the personal attributes, professional experience and management style which UTS requires of the appointee to the Position.

1. **Information package**

The Executive Search Provider will assist in the development following consultant with UTS, of an information package which will provide potential candidates with essential information on UTS and the Position.

1. **Advertising**

The Executive Search Provider will determine an appropriate advertising strategy for UTS’s approval in relation to this search and recruitment, following consultation with UTS.

The Executive Search Provider will respond to all enquiries, and receive, screen and qualify applications received through any advertising or other channels.

1. **Approaching Candidates**

On completion of the briefing process and information package, The Executive Search Provider will approach sources and potential candidates. Concurrent with the Executive Search Provider approaching potential candidates, research work will continue to support these approaches, identify further candidates and develop additional information on those under consideration. Candidates who express an initial interest will be sent the agreed package of information and will be asked to provide a response to the information package so that the Executive Search Provider can continue discussions with a view to encouraging candidates to submit a formal application within UTS’s required timeframe.

1. **Communications, short-listing and timing**

Throughout the search, the Executive Search Provider will have regular contact with UTS to review progress, discuss potential and actual candidates, and refine the list of names under consideration with a view to developing a final short-list of candidates for interview.

In addition to formal meetings with the selection committee at key milestones throughout the search, the Executive Search Provider will provide regular less formal updates regularly as required by UTS to ensure that the search runs smoothly and that all key stakeholders are well informed.

All short-listed candidates (and also many of those not ultimately short-listed) will be interviewed in the first instance by the Executive Search Provider, at least by telephone, Skype or video-conference. The Consultants will interview all candidates recommended for short listing. The Executive Search Provider will provide UTS with curriculum vitaes and a written assessment report evaluating each candidate against the role’s selection criteria as it is relevant to each short-listed candidate.

1. **UTS Selection Panel Interviews**

The Executive Search Provider will make Consultants available to be present at the first round panel interviews, either in person or via video-link. They will not, unless asked by UTS, take any direct part in the interviews but will assist the UTS selection panel with introductions and subsequent deliberations. The Executive Search Provider will prepare a list of suggested interview questions and presentation topics to help the committee cover the necessary ground as required by UTS, including providing recommendations on the interview agenda and format.

If requested to do so by UTS, The Executive Search Provider will make available to UTS interview rooms with all the necessary facilities at no additional cost, to interview potential candidates and catering charges along with hire of video conferencing facilities at candidate end will be charged to UTS at cost.

1. **Psychological Profiling & Testing Services**

Should UTS require applicants to undertake psychological profiling and/or testing these services will be arranged and managed by the Executive Search Provider. Any psychological profiling or testing services must be conducted by professionally accredited providers/consultants. All reports and test results will be made available to UTS and contextualised by appropriately accredited individual(s). These services will be invoiced to UTS at cost as Reimbursable Expenses.

1. **Probity Checking**

A minimum of three in-depth verbal reference checks will be conducted by the Executive Search Provider with nominated candidate referees. For the preferred or any subsequent preferred candidate, this will include a reference from the current employer and also previous employer where the candidates have been in their current position for less than five years.

Informal intelligence will be sought and provided to UTS by the Executive Search Provider in relation to all short listed candidates and a written assessment report will be provided to UTS.

Additional probity checks will be conducted by the Executive Search Provider on the preferred candidate or any subsequent preferred candidate including:

1. **Direct confirmation of employment history (roles and dates of employment)** for at least the previous ten years, in addition to references from line managers and/or other referees;
2. **Validation of Academic qualifications by the conferring institution** (highest qualification and all tertiary qualifications directly relevant to the role);
3. **Confirmation of all Professional Memberships** by the professional body;
4. **Details of all Directorships and other company/business interests**
5. **Disqualified Directors and Company Officers** - this includes banned and disqualified person and companies, banned securities representatives, banned futures representatives, Australian Financial Services banned/disqualified persons;
6. **Criminal record** – Australian Federal Police check and/or the equivalent authority in the relevant countries of residence over the prior 10 year period;
7. **Bankruptcy Check;**
8. **Consolidated List check** – Check the list described as such and provided on the website of the Australian Government department of Foreign Affairs and Trade and currently found at <http://www.dfat.gov.au/sanctions/consolidated-list.html> and ensure that no applicant passed to UTS is on the consolidated list and has not previously worked for an institution listed on the consolidated list.

These probity checks will be arranged and managed by the Executive Search Provider. The number and level of probity checks shall be agreed with UTS and the cost of such checks will be invoiced to UTS at cost as Reimbursable Expenses.

1. **Negotiation and appointment**

The Executive Search Provider will assist UTS with negotiations on terms and conditions of employment, including contemporary remuneration advice, and to act generally as an intermediary between UTS and the candidates, if requested to do so by UTS.

1. **Managing internal applicants**

The Executive Search Provider will ensure that all internal candidates are included in the same process as all other candidates. The Executive Search Provider will receive, acknowledge, screen and qualify the applications of internal candidates and welcome those candidates into the Executive Search Provider’s evaluation process. The source of any candidate, including internal candidates, will not affect the payment of the Services Fee.

1. **Logistics management**

The Executive Search Provider will be responsible for co-ordinating, managing and executing the agreed recruitment project plan in accordance with the indicative timeframe set out in clause 4 below which may be adjusted and updated from time to time by mutual written agreement of the parties.

In addition to being responsible for candidate management and care, if requested to do so by UTS, the Executive Search Provider will assist with logistics management including but not limited to organising the selection panel, arranging candidate interviews, travel and accommodation, conducting candidate orientation tours, and preparing and circulating any information required in meetings/interviews (e.g. candidate shortlist reports, interview schedules, evaluation sheets, agendas).

1. **Services Fees and Reimbursable Expenses**

**Services Fees**

The Services Fees are the fixed lump sum of $AUD [*Insert amount*] exclusive of any GST.

The Service Fees are payable on the completion of the milestones set out below:

|  |  |
| --- | --- |
| **Milestone** | **Amount** |
| [Describe first milestone] | [insert amount] |
| [Describe second milestone] | [insert amount] |
| [Describe third milestone] | [insert amount] |
| [insert any additional milestones] | [insert amount] |
| Total | [insert total amount] |

## Each invoice must be issued on the completion of each milestone specified above, and must set out the amount of Services Fees and any applicable Reimbursable Expenses claimed for the completion of the relevant milestone plus any applicable GST.

**Reimbursable Expenses**

UTS [will/will not] reimburse the Executive Search Provider’s out of pocket expenses for [*insert items UTS will cover*] [*up to a maximum of AUD $[insert]*].

1. **Indicative Timeframe for the Delivery of Services**

|  |  |
| --- | --- |
| **Week beginning**  **/ date** | |
| **Stage One – Preparation** | |
| Agree work plan and book online and print media | [#Insert date] |
| Prepare ad/s and PDF Candidate Information Book | [#Insert date] |
| Briefings and finalise search strategy with UTS | [#Insert date] |
| Stakeholder interviews and briefings with our overseas colleagues | [#Insert date] |
| **Stage Two - Research and Search** | |
| Original research to build list of potential candidates and sources | [#Insert date] |
| UTS Advertisement appears  Additional online advertisement appears | [#Insert date] |
| Contacting of people on the list begins | Week beginning [#Insert date] |
| Interviews with candidates begin | Week beginning [#Insert date] |
| Closing date for applications | [#Insert date] |
| **Stage Three – List Presentation** | |
| Conclusion of interviews by the Executive Search Provider |  |
| Presentation of list and candidate reports |  |
| **Stage Four – Shortlisting and interview** | |
| Shortlisting meeting (date to be confirmed by the University and inserted in the information book) | [#Insert date] |
| Interviews (date to be confirmed by the University dependent on Selection Panel availability) | Week beginning [#Insert date] |
| **Stage Five – Appointment confirmation** | |
| Negotiation of the offer in tandem with gaining referee reports | Week beginning [#Insert date] |
| Referee reports submitted | Week beginning [#Insert date] |
| Announcement | As soon as practicable after referee reports submitted. |

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** by the **UNIVERSITY OF TECHNOLOGY, SYDNEY (ABN 77 257 686 961)** by its authorised representative in the presence of: |  |  |  |
| Signature of Witness | Signature of Authorised Representative |
| Full Name of Witness | Full Name of Authorised Representative |

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** by **[*insert name of Executive Search Provider*] (ABN [*insert*])** by its authorised representative: |  |  |  |
| Signature of Witness | Signature of Authorised Representative |
| Full Name of Witness | Full Name of Authorised Representative |

# Schedule D – Consultant’s Deed

**Introduction**

This deed poll (**Deed**) is made on [insert date] by [insert name] of [insert address] (**Consultant**) for the benefit of the University of Technology, Sydney (ABN 77 257 686 961) of 15 Broadway, Sydney, NSW 2007 (“**UTS**”).

The Consultant is employed or engaged by [insert name of the Executive Search Provider] (**Executive Search Provider**) to provide certain services in accordance with an Agreement between UTS and the Executive Search Provider dated [insert date] (**Agreement**). The Consultant has agreed to enter into this Deed.

It is agreed

* 1. **No Conflict of Interest**
     1. The Consultant warrants that as at the date of this Deed no conflict of interest exists or is likely to arise in respect of the Consultant assisting of the Executive Search Provider to provide the Services, and that if such a conflict does arise during the term of the Agreement, the Consultant will notify UTS immediately and will comply with any reasonable directions or instructions of UTS regarding the conflict.
  2. **Relationship between the parties**
     1. The Consultant acknowledges that nothing in the Agreement or this Deed creates an employment relationship, joint venture, partnership, relationship of agency or any other relationship between UTS and the Consultant.
     2. The Consultant must not mislead any person in respect of the relationship between UTS and the Consultant and the Consultant acknowledges that he or she is not an agent of and has no authority to bind UTS in contract or to otherwise hold himself or herself out as being authorised to deal as agent of UTS, except to the extent that the Consultant is from time to time expressly authorised to do so by UTS.
  3. **Right to work in Australia**
     1. The Consultant warrants that he or she is a Citizen of Australia or holds Australian immigration status permitting him or her to perform the Services in accordance with the Agreement.
     2. The Consultant must immediately notify UTS if he or she:
        1. becomes aware that a change will or may be effected; or
        2. plans to effect any change that will result in his/her loss of Citizenship of Australia, or
        3. plans to make any changes to his/her Australian immigration status; or
        4. becomes aware that a change will or may be effected to his/her Australian immigration status.
  4. **Sanctions** 
     1. The Consultant warrants that:
        1. he or she is not a 'designated person or entity' for the purposes of an Australian Sanctions Law; and
        2. unless the Consultant has informed UTS otherwise in writing, the Consultant is not, and has not been, a citizen or resident of, or otherwise connected with, a country in respect of which sanctions apply under an Australian Sanctions Law.
     2. The Consultant must comply with, and do all things reasonably necessary to ensure that UTS complies with, Australian Sanctions Laws and must provide to UTS any documentation and information requested by UTS to ensure such compliance.
     3. If UTS determines, acting reasonably and after conducting any necessary investigations, that UTS is or may be exposed to a risk of breaching an Australian Sanctions Law as a result of any activity in which the Consultant is or will be engaged in connection with the provision of the Services, UTS may, at its absolute discretion:
        1. require the Consultant be no longer involved in the provision of the Services; or
        2. require the Consultant to comply with any reasonable directions issued by UTS in order to mitigate the risk, including a direction to cease undertaking the activity.
  5. **Intellectual Property** 
     1. The Consultant warrants that any Intellectual Property supplied by the Consultant for the purpose of providing the Services does not infringe the Intellectual Property rights of any third party, including the Executive Search Provider.
     2. This clause continues to apply after this Deed ceases for any reason.
  6. **Confidentiality**
     1. The Consultant must take reasonable steps to maintain the confidentiality of the Confidential Information and must not directly or indirectly make use of, copy or disclose any of UTS’s Confidential Information otherwise than in the provision of the Services, without UTS’s prior written consent, or as obliged by law.
     2. The Consultant must immediately notify UTS of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information and provide such reasonable assistance to UTS as is required by UTS to deal with such an event, including such assistance as is reasonably required by UTS in relation to any proceedings UTS may take against any person or entity for unauthorised use, copying or disclosure of Confidential Information.
     3. The Consultant must not disclose the terms of this Deed or the Agreement without UTS’s prior written consent or as reasonably necessary to obtain legal, financial or any other form of professional advice, or as required by law.
     4. This clause continues to apply after this Deed ceases for any reason.
     5. UTS will keep confidential to UTS any information obtained through the process of obtaining the above reference.
  7. **Privacy**
     1. The Consultant consents to UTS:
        1. collecting, using and storing any Personal Information or Sensitive Information relating to the Consultant provided by the Executive Search Provider or the Consultant himself or herself for any lawful purpose relating to the provision of the Services;
        2. disclosing of Consultant Personal Information and Sensitive Information to other persons for any lawful purpose relating to the provision of the Services; and
        3. transferring Consultant Personal Information and Sensitive Information outside of Australia for any lawful purpose relating to the provision of the Services.
     2. In relation to any Personal Information or Sensitive Information which the Consultant receives during the term of the Agreement, the Consultant agrees to comply with all obligations regarding the collection, use and disclosure of such information imposed on UTS by privacy and health laws including but not limited to the *Privacy Act* 1988 (Cth), *Privacy and Personal Information Protection Act 1998* (NSW), and all privacy policies, procedures instruments and directives which UTS may adopt, vary or rescind from time to time, in its absolute discretion. As at the date of this Agreement the relevant policies, procedures instruments and directives are available at <http://www.gsu.uts.edu.au/policies/>
  8. **Workplace Surveillance**

The Consultant acknowledges and agrees that during the term of the Agreement he or she will be subject to:

* + - 1. monitoring, recording and surveillance of all communications carried on or received through UTS’s communications and technology systems and all other use of University’s software, information technology and electronic resources (including but not limited to internet use and email); and
      2. continuous and ongoing camera surveillance whilst on UTS’s premises.
  1. **Miscellaneous**
     1. This Deed will continue to apply after the Agreement has been terminated.
     2. The law of New South Wales governs this Deed. The Consultant submits to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.
  2. **Definitions**
     1. In this Deed:

**Australian Sanctions Law** means any Australian law under which sanctions are imposed on specified individuals, entities or countries, including each of the *Charter of the United Nations Act* 1945(Cth) and the *Autonomous Sanctions Act* 2011(Cth) and the *Autonomous Sanctions Regulations 2011* (Cth).

**Confidential Information** includes but is not limited to:

* + - 1. information which is specifically designated as confidential by any individual providing the information on behalf of UTS;
      2. information which by its nature may be reasonably understood to be confidential;
      3. UTS’s trade secrets, know-how and Intellectual Property;
      4. information regarding UTS’s financial or business affairs;
      5. UTS’s marketing plans, and marketing and sales techniques;
      6. UTS’s student, employee and contractor information;
      7. UTS’s business systems, and operating procedures or manuals; and
      8. any note, calculation, conclusion, summary or other material incorporating or derived or produced partly or wholly from the information in (a) to (g) above,

excluding information which is in the public domain other than as a result of a breach of confidentiality by the Executive Search Provider or the Consultant.

**Intellectual Property** includes any:

* + - 1. copyright;
      2. designs (as embodied in but not limited to drawings, computer software, solid models and algorithms), patents, patentable ideas, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
      3. trade, business, company or domain name;
      4. know-how, inventions, processes, research materials including biological materials, and Confidential Information (whether in writing or recorded in any form); and
      5. any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, whether registrable or not,

that presently exists or may arise in the future anywhere in Australia or anywhere else in the world.

**Personal Information** means information or an opinion about a person whose identity is apparent or can reasonably be ascertained from that information or opinion.

**Position** means the position for which the Executive Search Provider has been engaged by UTS to identify and recruit candidates.

**Sensitive Information** means information or an opinion about a person’s racial or ethnic origin, political opinion, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association or trade union, sexual preferences or practices, criminal record or health, where the identity of the person is apparent or can reasonably be ascertained from that information or opinion.

**Services** means the services and/or deliverables which the Executive Search Provider will provide to recruit a suitable candidate for the Position, including the following:

1. **Consultants**

The Executive Search Provider must select, engage and manage consultants in accordance with the Agreement.

1. **Key Selection Criteria & Position Description**

The Executive Search Provider will assist UTS to finalise the key selection criteria and a position description for the appointment of the Position.

1. **Remuneration and Terms**

The Executive Search Provider will select potential candidates who would accept the role within the total remuneration package, duration and terms specified unless otherwise agreed by UTS.

1. **Briefings**

The Executive Search Provider will facilitate discussions with UTS to obtain a comprehensive briefing and a clear understanding of UTS’s requirements to ensure the Executive Search Provider fully understands the future strategy and direction of UTS. The Executive Search Provider will also discuss with UTS stakeholders any particular challenges that the successful candidate will face. The Executive Search Provider will ensure that it develops an appreciation of the personal attributes, professional experience and management style which UTS requires of the appointee to the Position.

1. **Information package**

The Executive Search Provider will assist in the development, following consultation with UTS, of an information package which will provide potential candidates with essential information on UTS and the Position.

1. **Advertising**

The Executive Search Provider will determine an appropriate advertising strategy for UTS’s approval in relation to this search and recruitment, following consultation with UTS.

The Executive Search Provider will respond to all enquiries, and receive, screen and qualify applications received through any advertising or other channels.

1. **Approaching Candidates**

On completion of the briefing process and information package, the Executive Search Provider will approach sources and potential candidates. Concurrent with the Executive Search Provider approaching potential candidates, research work will continue to support these approaches, identify further candidates and develop additional information on those under consideration. Candidates who express an initial interest will be sent the agreed package of information and will be asked to provide a response to the information package so that the Executive Search Provider can continue discussions with a view to encouraging candidates to submit a formal application within UTS’s required timeframe.

1. **Communications, short-listing and timing**

Throughout the search, the Executive Search Provider will have regular contact with UTS to review progress, discuss potential and actual candidates, and refine the list of names under consideration with a view to developing a final short-list of candidates for interview.

In addition to formal meetings with the selection committee at key milestones throughout the search, the Executive Search Provider will provide regular less formal updates regularly as required by UTS to ensure that the search runs smoothly and that all key stakeholders are well informed.

All short-listed candidates (and also many of those not ultimately short-listed) will be interviewed in the first instance by the Executive Search Provider, at least by telephone, Skype or video-conference. The Consultant will interview all candidates recommended for short listing. The Executive Search Provider will provide UTS with curriculum vitaes and a written assessment report evaluating each candidate against the role’s selection criteria as it is relevant to each short-listed candidate.

1. **UTS Selection Panel Interviews**

The Executive Search Provider will make the Consultant available to be present at the first round panel interviews, either in person or via video-link. She will not, unless asked by UTS, take any direct part in the interviews but will assist the UTS selection panel with introductions and subsequent deliberations. The Executive Search Provider will prepare a list of suggested interview questions and presentation topics to help the committee cover the necessary ground as required by UTS, including providing recommendations on the interview agenda and format.

If requested to do so by UTS, the Executive Search Provider will make available to UTS interview rooms with all the necessary facilities at no additional cost, to interview potential candidates and catering charges along with hire of video conferencing facilities at candidate end will be charged to UTS at cost.

1. **Psychological Profiling & Testing Services**

Should UTS require applicants to undertake psychological profiling and/or testing these services will be arranged and managed by the Executive Search Provider. Any psychological profiling or testing services must be conducted by professionally accredited providers/consultants. All reports and test results will be made available to UTS and contextualised by appropriately accredited individual(s). These services will be invoiced to UTS at cost as Reimbursable Expenses.

1. **Probity Checking**

A minimum of three in-depth verbal reference checks will be conducted by the Executive Search Provider with nominated candidate referees. For the preferred or any subsequent preferred candidate, this will include a reference from the current employer and also previous employer where the candidates have been in their current position for less than five years.

Informal intelligence will be sought and provided to UTS by the Executive Search Provider in relation to all short listed candidates and a written assessment report will be provided to UTS.

Additional probity checks will be conducted by the Executive Search Provider on the preferred candidate or any subsequent preferred candidate including:

1. **Direct confirmation of employment history (roles and dates of employment)** for at least the previous ten years, in addition to references from line managers and/or other referees;
2. **Validation of Academic qualifications by the conferring institution** (highest qualification and all tertiary qualifications directly relevant to the role);
3. **Confirmation of all Professional Memberships** by the professional body;
4. **Details of all Directorships and other company/business interests;**
5. **Disqualified Directors and Company Officers** - This includes banned and disqualified person and companies, banned securities representatives, banned futures representatives, Australian Financial Services banned/disqualified persons.
6. **Criminal record** – Australian Federal Police check and/or the equivalent authority in the relevant countries of residence over the prior 10 year period;
7. **Bankruptcy Check;**
8. **Consolidated List check** – Check the list described as such and provided on the website of the Australian Government department of Foreign Affairs and Trade and currently found at <http://www.dfat.gov.au/sanctions/consolidated-list.html> and ensure that no applicant passed to UTS is on the consolidated list and has not previously worked for an institution listed on the consolidated list.

These probity checks will be arranged and managed by the Executive Search Provider. The number and level of probity checks shall be agreed with UTS and the cost of such checks will be invoiced to UTS at cost as Reimbursable Expenses.

1. **Negotiation and appointment**

The Executive Search Provider will assist UTS with negotiations on terms and conditions of employment, including contemporary remuneration advice, and to act generally as an intermediary between UTS and the candidates, if requested to do so by UTS.

1. **Managing internal applicants**

The Executive Search Provider will ensure that all internal candidates are included in the same process as all other candidates. The Executive Search Provider will receive, acknowledge, screen and qualify the applications of internal candidates and welcome those candidates into the Executive Search Provider’s evaluation process. The source of any candidate, including internal candidates, will not affect the payment of the Services Fee.

1. **Logistics management**

The Executive Search Provider will be responsible for co-ordinating, managing and executing the agreed recruitment project plan in accordance with the indicative timeframe set out in Item 5A below which may be adjusted and updated from time to time by mutual written agreement of the parties.

In addition to being responsible for candidate management and care, if requested to do so by UTS, the Executive Search Provider will assist with logistics management including but not limited to organising the selection panel, arranging candidate interviews, travel and accommodation, conducting candidate orientation tours, and preparing and circulating any information required in meetings/interviews (e.g. candidate shortlist reports, interview schedules, evaluation sheets, agendas).

* + 1. Interpretation

Reference to:

* + - * 1. one gender includes the others;
        2. the singular includes the plural and the plural includes the singular;
        3. a person includes a body corporate;
        4. a party includes the party’s executors, administrators, successors and permitted assigns;
        5. legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
        6. any law, policy or other document includes any amendments or modifications to that law, policy or other document as made from time to time; and
        7. money is in Australian dollars, unless otherwise stated.
        8. ‘Including’ and similar expressions are not words of limitation.
        9. 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.
        10. Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
        11. A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
        12. 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.

Executed as a deed poll

|  |  |  |  |
| --- | --- | --- | --- |
| in the presence of: |  |  |  |
| Signature of Witness | Signature of Consultant |
| Full name of Witness | Full name of Consultant |

# Execution page

### Executed as an agreement

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** by the **UNIVERSITY OF TECHNOLOGY, SYDNEY (ABN 77 257 686 961)** by its authorised representative in the presence of: |  |  |  |
| Signature of Witness | Signature of Authorised Representative |
| Full Name of Witness | Full Name of Authorised Representative |

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** by **[INSERT EXECUTIVE SEARCH PROVIDER’S NAME] Pty LIMITED (ABN [INSERT ABN])** by two Directors or a Director and a Secretaryin accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
| Signature of Director/Secretary | Signature of Director |
| Full Name of Director/Secretary | Full Name of Director |