



MASTER CONTRACTOR AGREEMENT – CHANGE MANAGEMENT SERVICES

Ref: UR15/312

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 (Contractor).

It is agreed

1. Agreement and Statements of Work

- 1.1 In consideration of the appointment of the Contractor to the panel of service providers to UTS for the provision of change management 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.
- 1.2 From time to time, the University may request that the Contractor provides certain Services, in which case the parties must follow the process set out in this clause 1.
- 1.3 The University may terminate this process at any time and without penalty.
- 1.4 If UTS requires the Contractor to perform certain Services, it will issue a draft Statement of Work and send it to the Contractor to review and complete.
- 1.5 The Contractor 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.

- 1.6 The Contractor must promptly make any changes to the Statement of Work reasonably requested by UTS.
- 1.7 If the parties are satisfied with the completed draft Statement of Work:
 - (a) the parties will promptly sign the Statement of Work; and
 - (b) the Contractor must provide the Services in accordance with the Statement of Work and this Agreement.
- 1.8 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.
- 1.9 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:

- (a) clauses 1 to 22 of this document, the schedules to this document and the signature page;
- (b) the Statement(s) of Work; and
- (c) documents attached to or incorporated by reference in the Statement of Work.

2. Non-exclusivity

- 2.1 The Contractor 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.
- 2.2 Notwithstanding anything else in this Agreement, UTS makes no representation that it will procure a minimum quantity of the Services from the Contractor during the term of this Agreement or at all.

3. Term

- 3.1 This Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 16 (**Initial Term**).
- 3.2 The Initial Term may be extended by UTS for a further period equivalent to the

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duration of the Initial Term, by giving written notice to the Contractor. Such notice must be given at least 30 days before the end of the Initial Term.

- 3.3 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.
- 3.4 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.

4. The Services

- 4.1 The Contractor warrants, represents and agrees that it and its Personnel:
- (a) 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;
 - (b) have the skills, qualifications, expertise and experience necessary to properly provide the Services;
 - (c) have obtained all licences, permissions and authorisations necessary to provide the Services; and
 - (d) in providing the Services, will not be in breach of any obligation owed to, or any right belonging to, any person.
- 4.2 Without limiting the Contractor's status as an independent contractor, when providing the Services the Contractor agrees that it and its Personnel will comply with:
- (a) all laws relevant to the performance of the Services including the *University of Technology Sydney Act 1989* (NSW) and associated by-laws and rules; and
 - (b) 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:
 - (i) the UTS Code of Conduct;
 - (ii) the Information Technology Security Policy;

(iii) the Acceptable Use of Information Technology Facilities Policy;

(iv) the Privacy and Protection of Personal Information Vice-Chancellor's Directive;

(v) 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 or are otherwise notified to the Contractor.

4.3 The Contractor 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.

4.4 The Contractor acknowledges and agrees that:

- (a) 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
- (b) 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.

5. Work Health and Safety

5.1 The Contractor must:

- (a) comply with its work health and safety obligations at law;
- (b) ensure the health and safety of its Personnel;
- (c) to the extent it is reasonably practicable, ensure the health and safety of all UTS workers, students and other persons;
- (d) ensure its Personnel are properly trained and supervised; and
- (e) comply with all reasonable directions of UTS in relation to work health and safety; and
- (f) co-operate with any reasonable policy or procedure of UTS relating to work health and safety,

and must ensure its Personnel do the same.

5.2 The Contractor must, if UTS reasonably requests the removal or evacuation of the Contractor or its Personnel from UTS's

premises, comply with, and ensure that its Personnel comply with, such request as soon as reasonably practicable.

6. Sanctions and defence trade controls

6.1 The Contractor warrants that:

- (a) neither the Contractor nor any of its Personnel is a 'designated person or entity' for the purposes of an Australian Sanctions Law; and
- (b) unless the Contractor has informed UTS otherwise in writing, neither the Contractor 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.

6.2 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 Contractor is or will be engaged in connection with the provision of the Services, UTS may, at its absolute discretion:

- (a) require the Contractor 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
- (b) terminate this Agreement and/or any Statement of Work immediately without notice.

7. Payment for Services

7.1 The Services Fees specified in a Statement of Work must be based on, and must not be higher than, the rates set out in item 6 of Schedule A. Alternatively, if UTS agrees, the Contractor may propose a fixed lump sum amount for the Services Fees, which must not be higher than the amount that would result if the Services Fees were calculated on a time and material basis in accordance with the rates set out in item 6 of Schedule A.

7.2 Nothing in this clause prevents the parties from negotiating Services Fees which are based on rates lower than those set out in item 6 of Schedule A.

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

7.4 To receive payment for providing the Services, the Contractor 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.

7.5 The Contractor will not be entitled to receive the Services Fees referable 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.

7.6 If specified in a Statement of Work, UTS will reimburse any reasonable out of pocket expenses properly incurred by the Contractor or its Personnel in the course of providing the Services, for which the Contractor 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 Contractor or its Personnel in the course of providing the Services.

7.7 Subject to this clause 7, 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.

7.8 UTS may deduct from or set off against any moneys payable by UTS to the Contractor, any amounts owing by the Contractor to UTS under this Agreement.

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

8. Insurance

8.1 The Contractor 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. Such insurance must be maintained until the date(s) specified in item 7 of Schedule A.

8.2 The Contractor must immediately notify UTS of any event that could affect the Contractor's insurance coverage or if any insurance required under clause 8.1 is

cancelled, voided or allowed to lapse.

- 8.3 The Contractor must on request provide UTS with satisfactory evidence that it has complied with the requirements in this clause 8.

9. Liability and Indemnity

- 9.1 The liability of each party arising out of or in connection with this Agreement (including under any indemnity) is, subject to clause 9.2, limited to \$ 1 million.

- 9.2 Any limit on the liability of each party under clause 9.1 does not apply in relation to liability relating to:

- (a) personal injury (including sickness and death);
- (b) loss of, or damage to, tangible property;
- (c) an infringement of Intellectual Property Rights;
- (d) a breach of any obligation of confidentiality, privacy or any security matter; or
- (e) any breach of statute or any wilfully wrong act or omission.

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

- (a) 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 Contractor or its Personnel in providing the Services under this Agreement. However, this indemnity does not apply to any Loss to the extent caused or contributed by the negligent, wilful or wrongful acts or omissions of UTS or a UTS Entity; and
- (b) any liability, costs or claims relating to the payment of any Employment Benefits made against UTS or any UTS Entity by the Contractor or any of its Personnel and any taxes, levies or costs in relation to those Employment Benefits.

- 9.4 The Contractor 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 the Contractor's Personnel.

- 9.5 The Contractor 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 Contractor or UTS or a UTS Entity. The Contractor 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.

- 9.6 Each indemnity in this Agreement survives its termination or expiry.

10. Intellectual Property

- 10.1 Unless otherwise specified in a Statement of Work, the Contractor assigns to UTS all Intellectual Property created by or on behalf of the Contractor 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:

- (a) using to any extent UTS property, computer systems, resources or Confidential Information; and/or
- (b) outside working hours or outside the UTS premises,

(Contract Intellectual Property).

- 10.2 For the avoidance of doubt, any of the Contractor's pre-existing Intellectual Property, which does not form part of the Contract Intellectual Property, will remain vested in the Contractor or its licensors. Unless otherwise specified in a Statement of Work, the Contractor agrees that to the extent that Contract Intellectual Property contains such pre-existing Intellectual Property, the Contractor hereby provides UTS with a perpetual, irrevocable 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.

- 10.3 The Contractor must ensure that it and its Personnel do not use any Intellectual Property licensed or otherwise supplied by UTS to the Contractor or its Personnel or

Contract Intellectual Property for any purpose other than providing the Services to UTS.

- 10.4 The Contractor warrants that any Intellectual Property supplied by the Contractor 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.
- 10.5 The Contractor 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 Contractor 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.
- 10.6 UTS indemnifies and will keep indemnified the Contractor 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 licensed or otherwise supplied by UTS or its Personnel to the Contractor for use in connection with providing the Services or its use by the Contractor for that purpose infringes the Intellectual Property rights of any third party.
- 10.7 The Contractor must execute and arrange for its Personnel and licensors (if applicable) 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.
- 10.8 This clause continues to apply after this Agreement ceases for any reason.

11. Moral Rights

- 11.1 Unless otherwise specified in a Statement of Work, the Contractor agrees, and will procure that its Personnel agree, 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:

- (a) to attribute or not attribute authorship of any "copyright" material within the meaning of the *Copyright Act 1968* (Cth); or
- (b) not to subject or authorise the subsection of any "copyright" material within the meaning of the *Copyright Act 1968* (Cth) to derogatory treatment.

- 11.2 Unless otherwise specified in a Statement of Work, in so far as it is able, the Contractor will procure that its Personnel waive their Moral Rights in respect of any materials or deliverables provided in connection with the Services.
- 11.3 The Contractor agrees that the consent provided under this clause is genuinely given and has not been induced by duress or any false or misleading statement.
- 11.4 The Contractor must execute any other documents and do all other things required by UTS to give effect to this clause.
- 11.5 This clause continues to apply after this Agreement ceases for any reason.

12. Confidentiality

- 12.1 The Contractor 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.
- 12.2 The Contractor 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.
- 12.3 The Contractor 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.

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

13. Privacy

- 13.1 In relation to any Personal Information or Sensitive Information which either party or its Personnel receive from the other during the term of this Agreement, each party 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.
- 13.2 The parties acknowledge 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.
- 13.3 This clause continues to apply after this Agreement ceases for any reason.

14. Use of UTS name

- 14.1 The Contractor must ensure that it and its Personnel do not:
- (a) 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;
 - (b) apply for or register any trademark, business or company name or internet address containing the name of UTS; or
 - (c) make any inaccurate claims of association with UTS or any UTS Entity.
- 14.2 If UTS consents to the Contractor 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.
- 14.3 This clause 14 continues to apply after this Agreement ceases for any reason.

15. Remedies for breach

- 15.1 In the event that the Contractor breaches clauses 10, 11, 12 or 13, the Contractor agrees that damages may not be an adequate remedy and UTS or any other aggrieved party may in addition to obtaining any other remedies, seek to obtain an injunction restraining any further violation and other equitable relief, without the necessity of showing actual damage, together with recovery of costs.
- 15.2 Nothing in this clause is intended to limit any other remedy available to UTS.

16. Termination

- 16.1 UTS may terminate this Agreement or any Statement of Work at any time by giving to the Contractor at least the number of days' written notice specified in item 8 of Schedule A.
- 16.2 UTS may terminate this Agreement or any Statement of Work immediately by providing written notice to the Contractor if:
- (a) the Contractor breaches any of the terms of this Agreement and does not remedy this breach within 14 days of receiving written notice to do so (or such longer period as the parties may agree in writing), 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;
 - (b) the Contractor 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;
 - (c) the Contractor 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;
 - (d) the Contractor or any of its Personnel is charged with any criminal offence which in the reasonable opinion of UTS is likely to bring the Contractor, its Personnel and/or UTS into serious disrepute;
 - (e) the Contractor becomes, or steps are taken by any person towards making the

Contractor, an externally-administered body corporate under the Corporations Act; or

- (f) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Contractor or any steps are taken for the appointment of such a person; or
- (g) the Contractor becomes insolvent or makes a composition or arrangement with creditors generally or takes advantage of any statute for the relief of insolvent debtors; or
- (h) the Australian immigration status of any of the Contractor's Personnel does not permit the Contractor's Personnel to deliver the Services in the manner contemplated by this Agreement.

16.3 The Contractor may terminate this Agreement or any Statement of Work by providing written notice to UTS if UTS breaches any term of this Agreement and does not remedy this breach within 14 days of receiving written notice to do so or such longer period as the parties may agree in writing).

16.4 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:

- (a) pay the Contractor:
 - (i) 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
 - (ii) 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
- (b) elect to make a payment to the Contractor 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 Contractor of this election.

16.5 If UTS terminates this Agreement or any Statement of Work pursuant to clause 16.2, then, subject to clause 7, if UTS elects in its absolute discretion to retain all or part of the deliverables provided as a result of the performance of the Services, UTS will pay the Contractor:

- (a) 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, less the value of any deliverables which UTS elects not to retain, calculated on a pro rata basis if necessary; or
- (b) 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, less the value of any deliverables which UTS elects not to retain, a portion of the Service Fee referable to that milestone, calculated on a pro rata basis.

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

- (a) such termination will be without prejudice to any rights either party has accrued under this Agreement;
- (b) all licenses and authorisations granted by or on behalf of UTS to the Contractor 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;
- (c) the Contractor's obligations under clauses 8 to 13 (inclusive) continue; and
- (d) the Contractor 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.

17. UTS Property

17.1 The Contractor:

- (a) must and must ensure that its Personnel maintain UTS Property in good working order; and
- (b) is responsible for UTS Property (including any loss or damage to it) until the UTS Property is returned to UTS; and

- (c) 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.

- 17.2 Any equipment or other property (including UTS Property) which the Contractor or its Personnel use in the provision of the Services is at their own risk.

18. Assignment, sub-contracting and delegation

- 18.1 The Contractor may only assign, sub-contract or delegate his or her 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.
- 18.2 If UTS approves the sub-contracting any part of the Services this does not relieve the Contractor from any of its liabilities or obligations under this Agreement. Notwithstanding any approval of subcontracting, the Contractor 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 Contractor or the officers, employees, servants, or agents of the Contractor.
- 18.3 A party 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 with the prior written consent of the other party (not to be unreasonably withheld).

19. Provision of information and audit

- 19.1 The Contractor must:
- (a) 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
 - (b) 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.

20. Civil Liability Act

- 20.1 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.

21. Miscellaneous

- 21.1 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.
- 21.2 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 Contractor and UTS or any UTS Entity.
- 21.3 Each party:
- (a) has entered into this Agreement without relying on any representation by the other party or any person purporting to represent that party;
 - (b) has had the opportunity to obtain independent legal advice regarding the provision of the Services under this Agreement; and
 - (c) agrees that that this Agreement is not harsh or unfair in any way.
- 21.4 A variation to this Agreement is not effective unless it is in writing and signed by or on behalf of all parties.
- 21.5 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 21.6 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.
- 21.7 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.
- 21.8 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.

21.9 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:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, three days after the date of posting; or
- (c) 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.

21.10 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.

22. Definitions and Interpretation

22.1 Definitions

In this document:

Agreement means the agreement between UTS and the Contractor consisting of the following documents, in the following order of priority, to the extent of any inconsistency:

- (a) clauses 1 to 22 of this document, the Schedules to this document and the signature page;
- (b) the Statement(s) of Work; and
- (c) documents attached to or incorporated by reference in the Statement of Work,

and all variations made in accordance with clause 21.4.

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 6 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:

- (d) information which is specifically designated as confidential by any individual providing the information on behalf of UTS;
- (e) information which by its nature may be reasonably understood to be confidential;
- (f) UTS's trade secrets, know-how and Intellectual Property;
- (g) information regarding UTS's financial or business affairs;
- (h) UTS's marketing plans, and marketing and sales techniques;
- (i) UTS's student, employee and contractor information;
- (j) UTS's business systems, and operating procedures or manuals;
- (k) the terms of this Agreement; and
- (l) 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 Contractor or its Personnel.

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,

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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:

- (a) copyright;
- (b) 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);
- (c) trade, business, company or domain name;
- (d) know-how, inventions, processes, research materials including biological materials, and Confidential Information (whether in writing or recorded in any form); and
- (e) 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.

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, subject to clauses 7.1 and 7.2.

Statement of Work means a statement of work based on the form set out in **Error! Reference source not found.**, and which may contain additional information reasonably requested by UTS or agreed by the parties 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 Contractor 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.

22.2 Interpretation

- (a) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) 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;

- (vi) 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
- (vii) money is in Australian dollars, unless otherwise stated.
- (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.
- (d) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (e) 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.
- (f) 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 A – Agreement Details

Item 1: Date of Agreement

[Insert date of Agreement.]

Item 2: Contractor Details

Name: [Insert Contractor's name]

ABN: [Insert Contractor's ABN]

Address: [Insert Contractor's address]

Item 3: Address for notices

Contractor

Name/title of contact person: [insert details]

Address: [insert details]

Fax number: [insert number]

UTS

Name/title of contact person: Kathleen Redenbach

Address: Attn: HR Unit, P.O. Box 123, Broadway NSW 2007

Fax number: 02 9514 1088

Item 4: Services (clause **Error! Reference source not found.**)

Change management consultancy services, as specified in the applicable Statement of Work.

Item 5: Commencement and Completion Dates (Clause 3)

Commencement Date: [insert date]

Completion Date: [insert date]

Item 6: Services Fees (Clause **Error! Reference source not found.**)

(a) Services Fees

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

The services fees are exclusive of GST and will be calculated in accordance with the following schedule of rates (subject to clause **Error! Reference source not found.**).

[Insert applicable hourly and/or daily rates]

Item 7: Insurance (clause **Error! Reference source not found.**)

- (a) **Public liability insurance:** with a limit of indemnity of not less than \$5 million dollars per occurrence and in the aggregate. Such insurance must be maintained from the Commencement Date until the Contractor 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 Contractor ceases to provide the Services

Item 8: Termination notice (clause **Error! Reference source not found.**)

Notice required by UTS: 30 days.

Item 9: UTS Website – location of policies and other instruments (clause **Error! Reference source not found.** and **Error! Reference source not found.**)

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

Health and safety responsibilities:

<http://www.safetyandwellbeing.uts.edu.au/responsibilities/index.html>

SAMPLE ONLY – DO NOT COMPLETE

Schedule B should be completed by you when you submit an invoice for payment to UTS and is provided here for your information only. It is not to be completed when signing the Master Contractor Agreement. For the purposes of Schedule B, UTS is the ‘contractor’ and your company is the ‘subcontractor’.

Schedule B - 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.

SAMPLE ONLY – DO NOT COMPLETE

Schedule C will be completed upon engagement for a specific assignment and is provided here for your information only. It is not to be completed when signing the Master Contractor Agreement.

Schedule C – Statement of Work Template

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 Contractor] (ABN [insert]) of [insert Contractor's address] (**Contractor**).

This Statement of Work is made pursuant to the Master Contractor Agreement between UTS and the Contractor dated [insert date] (**Master Contractor Agreement**) and forms a binding agreement between the parties consisting of the Master Contractor 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 Contractor 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 Contractor will provide the following services and/or deliverables [insert project plan and/or project schedule if applicable]:

	Service/deliverables	Date	[Duration]
(a)	[insert service/deliverables to be provided]	[insert date that service/deliverable must be provided on or by, or unknown insert "as agreed with UTS in writing".]	[insert time that service/deliverable must be completed in hours/days, if applicable.]
(b)	[insert service/deliverables to be provided]	[insert date that service/deliverable must be provided on or by, or unknown insert "as agreed with UTS in writing".]	[insert time that service/deliverable must be completed in hours/days, if applicable.]
(c)	[insert service/deliverables to be provided]	[insert date that service/deliverable must be provided on or by, or unknown insert "as agreed with UTS in writing".]	[insert time that service/deliverable must be completed in hours/days, if applicable.]

3. Intellectual Property

The Contract Intellectual Property will be owned by UTS.

Please note: exceptions to this may be negotiated with UTS dependant on the work commissioned. Please discuss any proposed changes to ownership of IP or Moral Rights with the HR Unit prior to completing this section.

4. Services Fees and Reimbursable Expenses

a) Services Fees

The services fees are exclusive of GST and will be calculated in accordance with the following schedule of rates *[Insert applicable hourly and/or daily rates]*.

When invoicing monthly (delete if invoicing on achievement of milestones)
Each invoice must be issued at the beginning of each month and must set out the amount of Services Fees and Reimbursable Expenses (if applicable) claimed for the previous month, plus any applicable GST. If the Contractor is charging on an hourly or daily basis, the invoice must provide an itemised time sheet.

[OR]

When invoicing on achievement of milestones (delete if invoicing monthly)
The services fees are \$AUD *[Insert amount]* exclusive of any GST. The service fees are payable on the completion of the milestones set out below:

Milestone	Amount
<i>[Describe first milestone]</i>	<i>[insert amount]</i>
<i>[Describe second milestone]</i>	<i>[insert amount]</i>
<i>[Describe third milestone]</i>	<i>[insert amount]</i>
<i>[insert any additional milestones]</i>	<i>[insert amount]</i>
Total	<i>[insert total amount]</i>

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.

Where work performed is via a company or other legal entity, each invoice must include the *Subcontractor’s Statement Regarding Worker’s Compensation, Payroll Tax and Remuneration*.

b) Reimbursable Expenses

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

SIGNED by **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 Contractor]* (ABN *[insert]*) by its authorised representative:

Signature of Witness

Signature of Authorised Representative

Full Name of Witness

Full Name of Authorised Representative

Execution page

Executed as an agreement

SIGNED by 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

Date

Date

SIGNED by [INSERT CONTRACTOR'S NAME] Pty LIMITED (ABN [INSERT ABN]) by two Directors or a Director and a Secretary in 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

Date

Date