**INDEPENDENT CONTRACTOR**

**SERVICES AGREEMENT**

BETWEEN:

Flinders UniversityABN 65 542 596 200, a body corporate established pursuant to the provisions of the Flinders University Act 1966, of Sturt Road, Bedford Park SA 5042, Australia (**“Flinders”**);

and

The Contractor whose name and address are specified in Schedule 1 (**“the Contractor”**).

together **“the Parties”**.

BACKGROUND

1. Flinders has selected the Contractor to provide the Services to Flinders.
2. The Contractor agrees to provide the Services to Flinders for the Fee in accordance with the terms of this Independent Contractor Services Agreement (“**Agreement**”).

THE PARTIES AGREE AS FOLLOWS

1. engagement of Contractor
2. Flinders engages the Contractor, and the Contractor accepts that engagement, to provide the Services described in Schedule 1 (“**the Services**”) in accordance with this Agreement.
3. The Services will be provided by the Contractor during the Term specified in Schedule 1. The Contractor must not commence the provision of the Services unless and until the Contractor signs this Agreement.
4. deliverables
5. As part of the Services the Contractor must provide the Deliverables (if any) described in Schedule 1 within the timelines and in accordance with the format and content requirements also described in that Schedule.
6. Ownership of any Deliverables will pass to Flinders on their delivery to Flinders.
7. Contractor’s warranties

The Contractor warrants that the Services will be provided:

1. in full, cost effectively, safely, and on time;
2. in a professional and competent manner with due care and skill;
3. by suitably qualified and experienced personnel;
4. in conformance with all accepted industry, and applicable Australian standards;
5. to be fit and acceptable for the purposes for which those type of Services are commonly provided and free from defects; and
6. without infringing any person’s Intellectual Property rights.
7. contractor’s Failure

For major failures of the Services the Contractor agrees that Flinders is entitled to terminate this Agreement, pay the Contractor for any Services satisfactorily provided by it up until the date of termination, and to recover any reasonably foreseeable loss or damage suffered by Flinders. If a failure does not amount to a major failure Flinders will be entitled to have problems with the Services rectified by the Contractor at the Contractor’s cost in a reasonable time and if this is not done then to exercise the same rights that Flinders has for major failures.

1. Contractor’s personnel
2. The Contractor agrees to use the specific personnel named in Schedule 1 to perform the Services and otherwise to use adequate numbers of qualified and experienced individuals to perform the Services (**“the Personnel”**).
3. The Contractor must ensure that the Personnel observe and comply with the provisions of this Agreement and have all required permits, licences, certifications and visas necessary to enable them to lawfully perform the Services.
4. If the Services or any part of the Services requires the Contractor (if a natural person) or the Personnel to work with children then the Contactor must prior to commencing the Services ensure that such Personnel obtain a working with children check under the Child Safety (Prohibited Persons) Act 2016 SA and provide a copy of that check to Flinders upon request.
5. At the request of Flinders the Contractor must ensure that each of its Personnel engaged in providing the Services obtains a police check and will provide a copy of that check to Flinders.
6. If Flinders gives the Contractor notice in writing requiring any one or more of the Personnel to be withdrawn from providing the Services the Contractor must immediately comply with that notice and provide replacements acceptable to Flinders.
7. Contractor’s conduct and performance

The Contractor must:

1. obtain at its cost all licences approvals and consents necessary to perform this Agreement;
2. unless otherwise agreed in writing provide at its own cost and expense all appropriate personnel, plant, tools and equipment reasonably required for the safe and proper performance of the Services;
3. ensure that all plant tools and equipment used by it in the performance of the Services are well maintained, in good and safe working order;
4. perform the Services in a manner that complies with all laws, and with all policies and procedures of Flinders applicable to the Contractor’s performance of the Services;
5. perform the Services in compliance with all reasonable directions of Flinders notified to it and in accordance with the Key Performance Indicators (if any) specified in Schedule 1;
6. not behave or perform the Services in a manner that damages or may damage the reputation of Flinders; and
7. conduct itself in a manner that does not lead or invite directly or indirectly, Flinders’ officers, employees or agents to behave corruptly or unethically to prefer private interests over Flinders’ interests, or to otherwise be placed in a conflict of interest.
8. safety AND SITE ACCESS
9. The Contractor must perform the Services safely and in a way which prevents injuries or death of persons and damage to or destruction or property and in compliance with all common law and statutory obligations relating to work health and safety including without limitation the Work Health and Safety Act 2012 (SA) and its regulations.
10. The Contractor must if performing the Services on a University owned or controlled location (**“Site”**) do so in compliance with Flinders’ work health and safety requirements notified to it.
11. The Contractor must ensure that before commencing the Services on the Site (if applicable) it has satisfied all of Flinders’ requirements to be a Flinders University Registered Contractor and has had all of its personnel Site inducted in accordance with Flinders’ requirements.
12. Flinders will give the Contractor non-exclusive access to the Site at which the Services are to be performed during times agreed by the Parties and subject to the Site access arrangements if any directed by Flinders.
13. university’s obligations

Flinders shall make available to the Contractor all reasonable information, materials, and personnel assistance, and shall provide to the Contractor an appropriate level of access to Flinders Site and systems, to facilitate the Contractor to provide the Services.

1. fee
2. In consideration for the provision of the Services and satisfactory production of the Deliverables and achievement of fee milestones if any, Flinders will pay the fee to the Contractor specified in Schedule 1 (“the Fee”). Satisfaction as to any Deliverables produced or of any Fee payment milestones specified in Schedule 1 shall be as determined by Flinders acting reasonably.
3. Subject to clause 10, the Fee is fixed and all inclusive of all taxes, duties or government charges imposed or levied in Australia or overseas and of all the Contractor’s costs outgoings and expenses (including but not limited to income tax, payroll tax, sales tax, superannuation guarantee charge, workcover charges, annual and other leave payments and entitlements) incurred in relation to the performance of the Services by the Contractor.
4. GST
5. In this clause words that are defined in the A New Tax System (Goods and Services) Act 1999 (Cth), (**“GST Law”**) have the same meaning as in that Act.
6. Except as otherwise provided in this Agreement the Fee is exclusive of GST. If GST is payable in respect of the supply of the Services made by the Contractor under this Agreement then Flinders will pay GST in addition to the Fee if that supply constitutes a taxable supply.
7. payment arrangements
8. Subject to clause 10 Flinders will pay the Contractor the Fee within thirty (30) days after the receipt of a properly rendered invoice from the Contractor. Invoices are to be issued monthly and sent to invoices@flinders.edu.au.
9. An invoice is properly rendered if it is issued in respect of fully described Services for which the Contractor is entitled to invoice under this Agreement, reflects the correct Fee for the Services under this Agreement, and is a valid tax invoice within the meaning of the GST Law.
10. The Parties agree that the making of a payment is payment on account only and is not intended to be an acknowledgement that the Services have been performed in accordance with this Agreement.
11. If Flinders disputes an invoice amount Flinders will notify the Contractor and pay any amounts not in dispute.
12. Flinders may deduct from amounts otherwise payable to the Contractor any claim for money which Flinders may have against the Contractor on any account whatsoever.
13. variations

Flinders may direct in writing a variation to the scope of the Services and the Contractor shall promptly comply with that variation. The Contractor shall submit to Flinders a revised Fee for that variation within 7 days of that direction. The Fee for the variation shall be subject to agreement of the Parties.

1. representatives
2. Each person specified in Schedule 1 (**“Representative”**) has authority to exercise all of the powers and functions of his or her respective Party under this Agreement and to bind his or her Party in relation to any matter arising out of or in connection with this Agreement.
3. Either Party may change its Representative, by giving written notice to the other.
4. indemnity and insurance
5. The Contractor indemnifies, and shall keep indemnified, Flinders from and against any and all actions, claims, demands, costs, losses, damages, and expenses whatsoever suffered by Flinders in any way related to any negligence, wrongful act or omission or breach of duty by the Contractor, any breach of a warranty or term of this Agreement by the Contractor, or any injury to or death of any person or loss of or damage to Flinders or third party property, caused or contributed to by the Contractor or any of its Personnel except to the extent caused by the negligence or default of Flinders.
6. Neither Party will be liable to the other Party for any indirect or consequential loss or damage or for any loss of revenue or profit or loss of use or production.
7. The Contractor must effect and maintain at all times all the insurance policies set out in Schedule 1 and must provide Flinders with certificates of currency for those policies on request.
8. confidential information
9. The Contractor shall not disclose to any third party any Confidential Information without Flinders’ prior written consent. This clause shall survive termination or expiry of this Agreement.
10. For the purpose of this clause **“Confidential Information”** means all information relating directly or indirectly to Flinders to which the Contractor has access, and includes information that is by its nature confidential, information that is designated by Flinders as confidential, and information that the Contractor knows or ought to know is confidential. It does not include information that is or becomes public knowledge and has been confirmed publicly by Flinders, or that is required by law to be disclosed.
11. intellectual property

The ownership of all intellectual property rights created by the Contractor in the course of the provision of the Services or otherwise under this Agreement shall vest in accordance with the requirements specified in Schedule 1.

1. force majeure event

If the Contractor experiences an event or circumstance beyond its reasonable control which prevents it from complying with any of its obligations under this Agreement then it must notify Flinders as soon as it becomes aware of that event. The Contractor’s rights and obligations will be suspended to the extent and for so long as the performance of its rights and obligations are prevented or delayed by that event.

1. termination
2. Flinders may terminate this Agreement immediately, by written notice if the Contractor is in breach of this Agreement and has not rectified such breach within 5 business days of Flinders giving notice in writing to the Contractor requiring the rectification of such breach.
3. Flinders may terminate this Agreement at any time in its discretion and for its convenience by giving the Contractor 10 day’s notice in writing in which case the Contractor shall be entitled to be paid a Fee for Services satisfactorily completed up until the date of termination.
4. Upon termination of this Agreement the Contractor must deliver back to Flinders all property and equipment owned by Flinders and must at the direction of Flinders either delete/destroy, or return any Confidential information from any documents or computers of the Contractor or its personnel unless there is a legitimate reason for retaining it.
5. assignment and subcontracting
6. The Contractor must not assign this Agreement or engage any sub-Contractor to perform any part of this Agreement without the prior approval of Flinders which approval shall not be unreasonably withheld.
7. The Contractor must ensure that its sub-Contractors are competent and appropriately qualified, trained inducted and insured and hold all required approvals certificates and licences required to perform the Services.
8. The Contractor remains responsible and liable for obligations performed by sub-Contractors to the same extent as if such obligations were performed by the Contractor.
9. publicity

The Contractor must not make any public announcement or media release in respect of any aspect of this Agreement or the Services nor use the name or logo of Flinders in any of its publicity or marketing material without the prior written approval of Flinders.

1. specific legislative requirements

Without limiting the generality of clause 6 the Contractor agrees to provide the Services in accordance with the Privacy Act 1988 (Cth) and in the course of providing the Services take all actions to ensure its and Flinders’ compliance with all obligations arising under the Ombudsman Act 1972 (SA), Independent Commissioner Against Corruption Act 2012 (SA) the Freedom of Information Act 1991 (SA), and the Public Finance and Audit Act 1987 (SA).

1. dispute
2. Any dispute between the Parties shall in the first instance be sought to be resolved by negotiation between each Party’s Representatives. If the dispute is not resolved within 5 business days then either Party will be at liberty to litigate the dispute.
3. Notwithstanding the existence of a dispute, the Parties shall continue to perform their obligations under this Agreement.
4. miscellaneous
5. This Agreement may be executed on one or more counterparts, and each signed copy will be considered as the same Agreement.
6. This Agreement incorporates the Schedules including any documents referred to or contained in Schedule 2.
7. This Agreement contains the entire Agreement between the Parties with respect to its subject matter and supersedes any prior Agreement, understanding or representation of the Parties on the subject matter. No Contractor terms conditions or offers apply to or form part of this Agreement. All prior representations by Flinders its agents and employees are excluded
8. The Special Conditions (if any) set out in Schedule 1 prevail over the balance of this Agreement to the extent of any inconsistency and the Schedule and the terms of this Agreement prevail over the Purchase Order. All capitalised terms are as defined in either the body of this Agreement or in the Schedules.
9. This Agreement may be amended or modified by the Parties, but changes will not be binding upon the Parties unless they are in writing and signed by each Party or its representative authorised for that purpose.
10. A Party’s failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right.
11. Any notice relating to this Agreement must be in writing signed by the Representative of the sender and given to the other Party’s Representative by hand or delivery by prepaid mail to the address specified in Schedule 1.
12. The Contractor is an independent Contractor and nothing in this Agreement constitutes any relationship of employer and employee, joint venture, agency or partnership between the Parties.
13. No Party has any authority to bind the other Party in any manner without the prior consent of the other Party.
14. This Agreement is governed by the laws in the State of South Australia and the courts of South Australia.

**EXECUTED** as an agreement

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| **SIGNED** by an authorised officer for Flinders University |
| Signature of authorised officer |
| Name and Title (print) |
| Date |

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| **SIGNED** by an authorised officer of the CONTRACTOR |
| Signature of authorised officer |
| Name and Title (print) |

SCHEDULE 1 – AGREEMENT DETAILS

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| **CONTRACTOR NAME, ABN AND ADDRESS** | Name; *[Insert full name of the individual or company providing the Services]*  ABN*; [Insert ABN of the Contractor]*  Address; *[insert full address of the Contractor]* |
| **TERM**  (clause 1) | Commencement Date; *[Insert Commencement Date – can be a specified date or “date of this Agreement”]*  Completion Date; *[Insert Completion Date]* |
| **SERVICES**  **Description:**  (clause 1) | *[Insert general type and description of Services being provided/performed]*  *[Then insert detailed specification of Services to be provided – if this specification is lengthy then refer to that Specification here and insert a copy of it by way of Annexure to this Agreement. This Specification must describe as fully as possible what Services Flinders wants the Contractor to perform and/or what Services the Contractor has agreed to perform]* |
| **DELIVERABLES**  **Description:**  (clause 2) | *[Insert description of the Deliverables (if any) that the Contractor has to deliver as part of the provision of the Services together with all deliverables form and content requirements and delivery timelines – these Deliverables could be in the form of written reports or products and equipment]* |
| **PERSONNEL**  (clause 5) | *[Insert the names of the Contractor’s personnel who will be principally responsible for performing the Services on behalf of or as the Contractor]* |
| **KEY PERFORMANCE INDICATORS**  (clause 6) | *[Insert details (if any) of the KPI requirements which Flinders requires the Contractor to meet/comply with together with the applicable measure, value and weighting to be allocated to that KPI requirement]* |
| **FEE**  (clause 9) | *[Insert $ fee (GST exclusive) –* ***note that this fee should be a lump sum or sums for the provision of the Services – Flinders should not engage contractors on an hourly rates basis for their labour****]*  *[Insert any GST to be paid in addition to the Fee]*  *[Insert any Fee milestone payment arrangements]* |
| **REPRESENTATIVES** (clause 13)  Flinders’’ Representative:  Contractor’s Representative: | Name, Position:  Address:  Telephone:  Name, Position  Address:  Telephone: |
| **INSURANCE** (clause 14)  **Public Liability Insurance:**  **Professional Indemnity Insurance:**  **Workers Compensation insurance** | A minimum of $10m any one occurrence unlimited in the aggregate  A minimum of $1m any one occurrence and in the aggregate  As required by law. |
| **INTELLECTUAL PROPERTY** (clause 16) | *[Select below which of the two alternative IP ownership options will apply to this Agreement – the first option is preferred by Flinders]*  *EITHER*  “The ownership of all intellectual property rights created by the Contractor in the course of the provision of the Services or otherwise under this Agreement shall vest solely in Flinders immediately on their creation. The Contractor grants to Flinders a non-exclusive, non-transferable, royalty free, worldwide, unrestricted and perpetual licence to use the Contractor’s pre-existing intellectual property rights in the Services and/or Deliverables to the extent needed to enable Flinders to enjoy the full benefit of the Services and the Deliverables.”  *OR*  “The ownership of all intellectual property rights created by the Contractor in the course of the provision of the Services or otherwise under this Agreement shall remain vested in the Contractor on their creation. The Contractor grants to Flinders a non-exclusive, non-transferable, royalty free, worldwide, unrestricted and perpetual licence to use reproduce and publish the Contractor’s intellectual property rights (including pre-existing intellectual property rights in the Services and/or Deliverables) to the extent needed to enable Flinders to enjoy the full benefit of the Services and the Deliverables.” |
| **SPECIAL CONDITIONS**  (clause 23) | *[Insert any new additional conditions to be inserted into the Agreement. This section can also be used to set out any deletions or amendments required to be made to the Agreement.* ***Advice should be sought from Legal & Risk Branch about the wording of all Special Conditions proposed to be included****]* |

**SCHEDULE 2 – OTHER DOCUMENTS FORMING PART OF THE AGREEMENT**

*[If any aspect of the Agreement is described in another document which is required to form part of the Agreement and bind the Parties then identify that document here and attach a copy of it to the Agreement.]*