Contractor Agreement

Date
This Agreement is made at Melbourne on the date signed by the last of the Parties.

Parties
MONASH UNIVERSITY (ABN 12 377 614 012) of Wellington Road, Clayton, Victoria 3800, Australia (Monash)
The CONTRACTOR named in item 2 of Schedule 1 (Contractor)

Background
A. Monash requires the Services to be provided.
B. The Contractor has expertise in providing the Services and the resources to provide the Services.
C. The Contractor has agreed to provide the Services to Monash in accordance with and subject to the terms of this Agreement.

Operative provisions

1. Defined terms
In this Agreement:

Business Day means any day other than a Saturday, Sunday or public holiday under the Public Holidays Act 1993 (Vic).

Commencement Date means the date set out in item 3 of Schedule 1.

Confidential Information means the Contract Material and all information regarding the business interests, operations or affairs of Monash or the Contractor and includes, without limitation:

(a) the terms of this Agreement;
(b) product, service, price, financial, budgetary, marketing, research and business plan information;
(c) client, supplier and distributor lists and information;
(d) the terms of any contract, agreement or business arrangement with any third party;
(e) trade secrets, licences, know-how, intellectual property and related information;
(f) any information Monash designates as being confidential,

but does not include information which:

(g) is in the public domain at the time of disclosure;
(h) is published or otherwise becomes part of the public domain through no fault of the disclosing party;
(i) was in the possession of the disclosing party at the time of disclosure without an obligation of non-disclosure to the other party;
(j) is received from a third party without an obligation of non-disclosure;
(k) is independently created by or on behalf of the disclosing party by persons who had no knowledge of the disclosed information; or

[insert OGC file ref]
(i) is required to be disclosed by law.

Contract Material means all material including but not limited to documents, computer software, equipment, reports, information and data produced and stored by any means whatsoever (and any copies howsoever made of such materials) which is created or generated by the Contractor or by any Third Party for the purpose of, in the course of, or as a result of, performing the Services.

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Contractor, whether through ownership of voting securities, by contract or otherwise.

Fee means the fee set out in item 9 of Schedule 1.

GST means Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insurances means the insurance policies set out in item 12 of Schedule 1.

Intellectual Property Rights means all intellectual property rights subsisting in the Contract Material, including but not limited to rights in respect of:

(a) patents, copyright (including copyright in all Works), rights in circuit layouts, registered designs, trade marks (whether registered or unregistered) and the right to have confidential information kept confidential; and

(b) any application or right for registration of those rights.

Preferred Personnel means the personnel named in item 7 of Schedule 1 or other persons agreed by Monash pursuant to clause 4.

Parties means Monash and the Contractor, the parties to this Agreement, and a Party means any one of them.

Personal Information means ‘personal information’ as defined in the Privacy and Data Protection Act 2014 (Vic) and ‘health information’ as defined in the Health Records Act 2001 (Vic).

Policies means the policies, procedures, guidelines and codes of conduct of Monash available at https://www.monash.edu/policy-bank/a-to-z that apply to the performance of the Services, as in force and as amended by Monash from time to time.

Safety Laws means all work health and safety statutes, by-laws and regulations, codes of practice, advisory standards or relevant policies or procedures as in force from time to time in the relevant jurisdiction affecting or in any way relating to the Services.

Services means the services described in item 5 of Schedule 1.

Term means the period from the Commencement Date to the Termination Date.

Termination Date means the date set out in item 4 of Schedule 1.

Third Party means any employee, agent or sub-contractor that the Contractor engages to perform the Services, including any Preferred Personnel.

Work means any material that is created by the Contractor or by any Third Party in the course of, or as a result of, performing the Services and that is protected by copyright under the Copyright Act 1968 (Cth) (whether as a work or a subject matter other than a work).

2. Engagement

Monash engages the Contractor for the Term, or until this Agreement is otherwise terminated in accordance with clause 19. If the engagement continues after the Term, then unless and until the parties agree in writing to the terms to apply to any such further period of engagement, the terms of this Agreement will continue to apply.

3. Contractor’s Obligations

(a) The Contractor must perform the Services and must ensure that the Services are performed:

(i) in accordance with this Agreement;
(ii) in a proper, timely and efficient manner;

(iii) with due skill, diligence, prudence, foresight and care that would reasonably be expected from a prudent, expert and experienced provider of services which are similar to the Services;

(iv) to the best of the Contractor's knowledge and expertise; and

(v) in compliance with all applicable laws, regulations and standards.

(b) The Contractor must carry out its obligations and duties, and complete the performance of the Services, to the reasonable satisfaction of Monash and in accordance with the requirements of Monash.

(c) The Contractor must, and must ensure that any Third Parties will:

(i) act with all proper diligence and in good faith, in the best interests of Monash and in a manner which is consistent with the operations and standing of Monash;

(ii) comply with all reasonable directions and instructions of Monash; and

(iii) meet or comply with any milestones that are set by Monash for the purposes of performing the Services.

(d) If requested by Monash, the Contractor shall regularly inform and consult with Monash via the Monash Representative identified in item 8 of Schedule 1 (or other persons as advised by the Monash Representative from time to time) about all aspects of the Services including providing reports, recommendations and advice in relation to the performance of the Services. The Contractor shall report to Monash in the manner and at the times or by the date specified in item 13 of Schedule 1.

(e) The Contractor must keep Monash informed of all matters of which Monash ought reasonably be made aware or which affects in any manner the way in which Monash manages its affairs or conducts its business. The Contractor must also provide to Monash any information reasonably requested by Monash in connection with the Services, including, but not limited to, the engagement of a Third Party.

(f) The Contractor must keep records in relation to the performance of the Services and, if requested by Monash, must provide copies of those records to Monash both during and after the termination of this Agreement.

(g) The Contractor will supply its own facilities, plant and equipment as required for the performance of the Services, except as otherwise agreed between the Contractor and Monash.

(h) The Contractor must not, and must ensure that Third Parties do not, without the prior written consent of Monash, assume or attempt to assume or create, directly or indirectly, any obligation of or in the name of Monash.

(i) The Contractor must, and must ensure that Third Parties, perform the Services:

(i) at a location or locations specified by Monash as set out in item 6 of Schedule 1, which may be varied by Monash from time to time; and

(ii) during the hours that Monash may determine from time to time.

(j) The Contractor acknowledges that it is aware of and will comply with the Policies and undertakes that it will, prior to any Third Party commencing providing the Services on its behalf, procure that the Third Party is aware of and undertakes to comply with the Policies. Monash will facilitate access for the Contractor or any Third Party, to the Policies when access is requested.

(k) Monash is committed to the safety and protection of all children involved in Monash's activities. Accordingly, without limiting sub-clause (j) above, the Contractor is aware of and will comply with the Child Safe Standards Framework and Code of Conduct available at https://www.monash.edu/policy-bank/workplace-policy/integrity-and-respect/behaviour-expectations-at-monash.
Monash is committed to the prevention of sexual exploitation, abuse and harassment in the delivery of all its activities. Where the Services are being provided in connection with the Australian Government's Department of Foreign Affairs and Trade (DFAT) related work, the Contractor must, and must ensure that its Third Parties, comply with:

(i) Monash’s Framework for the Prevention of Sexual Exploitation, Abuse and Harassment in DFAT-Related Work and the DFAT Prevention of Sexual Exploitation, Abuse and Harassment Policy available at https://www.monash.edu/respectful-communities/resources/policy-compliance; and

(ii) Monash’s policies, procedures and reasonable directions in relation to the prevention of sexual exploitation, abuse and harassment.

The Contractor will perform the Services in a manner that will not cause Monash to be in breach of the Charter of Human Rights and Responsibilities Act 2006 (Vic).

If Monash notifies the Contractor that the Contractor must not use a particular Third Party to perform the Services, the Contractor must immediately withdraw that Third Party from performing the Services and provide another suitable Third Party, acceptable to Monash, to perform the Services.

4. Preferred Personnel

(a) The Contractor will ensure that the Services are performed by the Preferred Personnel, where the Preferred Personnel are specified. If the Preferred Personnel become unavailable and/or are unable to perform the Services, the Contractor will, within 3 days of notifying Monash, propose alternative personnel with at least equivalent skills to perform the Services. Monash may, at its sole discretion, agree to such personnel, in which case the alternative personnel shall become the Preferred Personnel, or to terminate this Agreement under clause 19.

(b) Monash may, at any time, require that the Services be performed by personnel other than the Preferred Personnel, in which case the Contractor will propose alternative personnel. Monash may, at its sole discretion, agree to such personnel, in which case the alternative personnel shall become the Preferred Personnel, or to terminate this Agreement under clause 19.

5. Conflict of Interest

(a) The Contractor warrants that, at the Commencement Date, no conflict of interest exists or is likely to arise in performing its obligations under the Agreement.

(b) The Contractor must procure any Preferred Personnel to complete the Conflict of Interest Declaration at Schedule 2 to this Agreement and return it to the Monash Representative prior to, or as soon as reasonably practicable after, the Commencement Date.

(c) If, during the Term, any actual, perceived or potential conflict of interest arises, the Contractor must, and must ensure any Third Parties will, immediately declare it to the Monash Representative.

(d) At any time during the Term, the Contractor and any Third Parties must provide any information requested by Monash, and provide any additional declaration, in order to satisfy Monash that no conflict of interest exists or is likely to arise or otherwise to satisfy any probity requirements.

(e) Failing to disclose a potential conflict of interest could result in the termination of this Agreement. If a conflict of interest arises and is not able to be resolved to the satisfaction of Monash, Monash may terminate this Agreement.

6. Supply of Services to Others

(a) Subject to clause 6(b), this Agreement does not prevent or restrict the Contractor or a Third Party supplying services of any kind to any other person.
(b) Despite clause 6(a), while engaged by Monash the Contractor must not, and must ensure that Third Parties do not, supply services to another person if, in the reasonable opinion of Monash, doing so will:

(i) adversely affect the Contractor's ability to supply the Services to Monash in accordance with this Agreement; or

(ii) result in an actual or perceived conflict of interest or duty for the Contractor or a Third Party, or

(iii) be competitive with Monash, or adversely impact upon Monash's interests or reputation.

7. Invoices and Payment

(a) The Contractor must provide to Monash invoices (Invoices) for the fee specified in item 9 of Schedule 1 (plus any applicable GST), at the times specified in item 9 of Schedule 1 and calculated from the date on which the Contractor commences providing the Services. The invoices must include the Contractor Agreement Number in item 1 of Schedule 1, the purchase order number and the Contractor's ABN.

(b) Each Invoice must be generated in accordance with any conditions specified in Item 10 of Schedule 1.

(c) Monash must pay the Contractor the Fee for the Services, within the number of days set out in item 11 of Schedule 1 unless the Invoice is disputed by Monash. The Fee is inclusive of all costs and fees incurred by the Contractor in providing the Services but excludes any applicable GST. Where GST is charged, a tax invoice must be supplied by the Contractor before payment will be made.

(d) Notwithstanding the foregoing, tax may be deducted by Monash from any payment to be made to the Contractor if required pursuant to any federal or state legislation, regulation or ordinance in force from time to time.

(e) The Contractor will not be entitled to any compensation should it not be able to perform, or should the Contractor be prevented from performing, the Services for any reason whatsoever, whether on a temporary or permanent basis.

8. Australian Business Number

The Contractor warrants that:

(a) it has and will maintain an Australian Business Number (ABN) and has provided the ABN to Monash;

(b) it will quote its ABN on each Invoice provided to Monash;

(c) it will immediately advise Monash in writing if its ABN changes or its ABN is cancelled; and

(d) it will indemnify Monash for any loss or damage suffered by Monash or any tax, charge, fine, penalty or other impost which Monash incurs or becomes liable to pay, as a result of the Contractor's breach of any of the warranties contained in this clause 8.

9. Goods and Services Tax

The total Fee payable by Monash under this Agreement is expressed exclusive of GST (if any). Monash will on the receipt of a tax invoice, in addition to the amount of the Fee, pay the Contractor an amount equal to the GST liability (if any) payable by the Contractor on the supply.

10. Relationship

(a) The Contractor acknowledges that the Contractor will provide the Services to Monash as an independent contractor.

(b) Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent or partnership between Monash and the Contractor or Monash and any Third Party.
(c) Apart from, in the Contractor's case, the Fee for the Services, neither the Contractor nor any Third Party is entitled to fees, payments, commissions, bonuses, wages, superannuation, annual leave, long service leave, personal/parental leave, redundant pay or any similar entitlements from Monash. The Contractor is responsible for providing any Third Party (including any Preferred Personnel) with any of those entitlements and must do so in accordance with all applicable laws, regulations and industrial instruments (including awards and agreements).

(d) If the circumstances of the Contractor and/or any Third Party change such that the Contractor or any Third Party may be considered to be an employee of Monash, the Contractor must inform Monash immediately in writing of such changes in circumstances and the provisions of clause 19 will apply. The Contractor will indemnify and keep Monash indemnified against any claims, losses and damages which may be made against or incurred by Monash in relation to the Contractor's failure to inform Monash of such changed circumstances.

11. Warranties

The Contractor warrants that:

(a) the Contractor and any Third Party possess the necessary qualifications, skills and expertise to complete the Services;

(b) Third Parties will perform the Services with due care, skill and diligence and in accordance with the standard of care acceptable to the members of the profession to which the Contractor and/or the Third Party belongs;

(c) the Contractor will not infringe the Intellectual Property Rights of any third party or otherwise breach any law, regulation or industrial instrument (including awards and agreements) in the relevant jurisdiction or obligation to any third party in the performance of the Contractor's obligations pursuant to this Agreement or while completing the Services;

(d) the Contractor has informed Monash of any criminal convictions held by the Contractor, and any Third Party;

(e) the Contractor has informed Monash in writing of any pre-existing medical conditions which, taking into account the nature of the Services, may adversely affect any Third Party's ability to carry out the Services or pose a risk of injury to others; and

(f) the Contractor has freely entered into this Agreement after having the opportunity to carefully consider its contents and obtain advice on the matters in this Agreement.

12. Contractor's Liability and Indemnities

(a) The Contractor acknowledges that, as an independent contractor, it is responsible for providing the Services and, subject to this Agreement, any loss or damage to Monash or any third party arising from any breach of this Agreement or negligence of the Contractor, the Preferred Personnel or any other Third Party.

(b) The Contractor indemnifies and releases Monash against all liabilities, losses, costs (including legal costs), expenses, claims, demands, judgments or actions which may be brought against Monash or suffered or incurred by Monash whatsoever or howsoever arising, regardless of their form, whether in contract, tort (including in negligence), breach of statutory duty or otherwise, arising out of or in connection with the Contractor's performance of the Services, or failure to perform the Services in accordance with this Agreement, except to the extent that the liability, loss, cost, expense, claim, demand, judgment or action was caused by a wilful or negligent act or omission of Monash or any of its officers, servants or agents.

(c) The Contractor will pay on demand money due to Monash under an indemnity provided by this Agreement.

13. Insurances

The Contractor warrants that it will take out, and maintain at its own cost, the Insurances as set out in item 12 of Schedule 1. In the event that the Contractor is to take out and maintain any Insurances under this clause 13, the Contractor must provide to Monash any documentation and information as required by Monash in relation to details of the Insurances, including but not limited to copies of the policies, certificates of currency and any other evidence of renewal of the policies.

(a) Unless otherwise stated in this Agreement, Monash owns all Contract Material and all Intellectual Property Rights and the Contractor must not, and will procure that any Third Party must not, use the Contract Material for any purpose other than for providing the Services pursuant to this Agreement.

(b) The Contractor assigns to Monash all existing and future Intellectual Property Rights throughout the world in all materials or things created or generated by the Contractor or by a Third Party in the course of, or as a result of, providing the Services and must do, and ensure that each Third Party does, all things reasonably requested by Monash (including executing all and any documents) to enable Monash to assure further the rights assigned under this Agreement, including after termination or expiry of this Agreement.

(c) The Contractor warrants that it is entitled to grant the rights that are granted under this clause 14.

(d) This Agreement does not affect any pre-existing Intellectual Property Rights in material that was not created as part of the Services (Background Intellectual Property). The Contractor hereby grants to Monash a perpetual, irrevocable, non-exclusive, royalty-free licence to use, modify, reproduce and exploit the Background Intellectual Property (including the right to sub-licence) to the extent necessary so as to enable Monash to enjoy the full benefit of the Services.

15. Confidential Information

(a) The Contractor shall, and will procure that any Third Parties will:

(i) keep all Confidential Information confidential;

(ii) use Confidential Information solely for the purpose of performing the Services;

(iii) disclose Confidential Information only to persons who are aware and agree that the Confidential Information must be kept confidential or have signed any confidentiality agreement required by Monash from time to time and either have a need to know (and only to the extent that each has a need to know) or have been approved by the person or persons nominated by Monash from time to time; and

(iv) destroy, or upon request by Monash immediately return, all Confidential Information upon termination or expiration of this Agreement.

(b) The Contractor must, and must ensure that any Third Parties will, immediately notify Monash of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

(c) The Contractor must, and must ensure that any Third Parties will, provide assistance reasonably requested by Monash in relation to any proceedings Monash may take against any person for unauthorised use, copying or disclosure of Confidential Information.

16. Restraint

(a) The Contractor acknowledges that, by reason only of performing the Services, the Contractor (and where applicable, any Third Party) will be exposed to Monash's Confidential Information, and as a result, the restrictions specified in this clause are reasonable and necessary in the circumstances to protect Monash's legitimate interests.

(b) During the period of this Agreement and 6 months after this Agreement terminates for any reason, the Contractor or any Third Party must not, within Australia:

(i) solicit either directly or indirectly, employ or otherwise engage any employee of Monash; and/or

(ii) knowingly solicit, entice or offer services to a client of Monash to whom the Contractor provided the Services in the 12 months preceding the termination of the Agreement; and/or
(iii) offer services to, be engaged by or have any interest in any client of Monash, or any person, company or other entity, if to do so would compete or conflict with or derogate from Monash's business.

(c) Monash may require the Contractor to provide evidence confirming to the satisfaction of Monash that neither the Contractor nor any Third Party are in breach of sub-clause (b).

17. Privacy

(a) This clause applies to all Personal Information which the Contractor receives from Monash (for any reason, whether directly or indirectly) or receives, creates or holds in connection with this Agreement. The Contractor agrees to:

(i) handle all Personal Information in accordance with any reasonable and lawful direction of Monash and all privacy principles which govern, or would govern, the handling of such information by Monash, including without limitation the Information Privacy Principles prescribed by the Privacy and Data Protection Act 2014 (Vic) and the Health Privacy Principles prescribed by the Health Records Act 2001 (Vic);

(ii) comply with all applicable guidelines, determinations or recommendations made by a commissioner or any other regulatory body which administers the applicable privacy principles and shall submit to investigations and enforcement procedures by those commissioners and regulatory bodies; and

(iii) handle Personal Information in accordance with any reasonable and lawful direction given by Monash.

(b) To the extent that:

(i) the European Union’s General Data Protection Regulation (2016/679) (GDPR) is applicable to Monash or the Contractor (or both) in the context of this Agreement; and

(ii) GDPR provisions impose obligations on Monash or the Contractor (or both) which are additional to the obligations in clause 17(a), in respect of personal data as that term is defined in the GDPR,

the Contractor shall comply with those GDPR provisions in addition to its obligations under clause 17(a).

(c) Where the Contractor discloses any Personal Information to a Third Party, the Contractor agrees to ensure that the Third Party is subject to enforceable obligations requiring compliance with the obligations in this clause 17, as if the Third Party were the Contractor, and to enforce these obligations against the Third Party in accordance with such reasonable directions as Monash may give.

18. Compliance with Safety Laws and Labour Hire Laws

(a) The Contractor shall, and shall procure that any Third Party will comply with the Safety Laws and will not do anything or fail to do anything that would cause Monash to be in breach of its obligations under the Safety Laws.

(b) The Contractor and Monash acknowledge the Victorian labour hire licensing scheme as established by the Labour Hire Licensing Act 2018 (Vic). The Contractor warrants that it is in compliance with the Victorian labour hire licensing scheme on the basis that it does not provide labour hire services, a relevant exception applies to it, or it holds a valid license to supply labour hire services.

19. Termination of the Agreement

(a) This Agreement terminates on the Termination Date.

(b) Notwithstanding clause 19(a), Monash may terminate this Agreement at any time and for any reason by giving the Contractor 30 days' notice in writing. Where the Contractor receives such notice it shall stop work as specified in the notice and take all available steps to minimise loss arising from the termination of this Agreement.
(c) Where this Agreement is terminated in accordance with clause 19(b), Monash will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Contractor, which are directly attributable to the termination of this Agreement.

(d) Monash may, instead of giving the Contractor notice under clause 19(b), pay to the Contractor an amount equivalent to the Fee for 30 days and calculated on the average of the Fees paid to the Contractor under clause 7 of this Agreement in the six months preceding the date of the termination, or if the date of termination is less than six months from the Commencement Date, the average of the Fees paid to the Contractor under clause 7 of this Agreement since the Commencement Date.

(e) Notwithstanding clauses 19(a) and 19(b), Monash may (but is not obliged to) terminate this Agreement at any time with immediate effect without further payment upon written notice to the Contractor if:

(i) the Contractor breaches any material provision of this Agreement (including without limitation clauses 3, 5, 6, 11, 12, 14, 15, 16, 18 and 21(b));

(ii) the Contractor repudiates this Agreement;

(iii) the Contractor or any Third Party, in the reasonable opinion of Monash, is guilty of fraud, dishonesty or any other serious misconduct;

(iv) the Contractor ceases to carry on business;

(v) there is a change in the identity of the person who controls the Contractor from that which was in effect on the Commencement Date;

(vi) the Contractor ceases to be able to pay its debts as they become due;

(vii) any step is taken to enter into any arrangement between the Contractor and its creditors;

(viii) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Contractor’s assets or business; or

(ix) the Contractor’s, or any Third Party’s, conduct may, in the reasonable opinion of Monash, bring Monash into disrepute.

(f) The Contractor agrees that it will notify Monash immediately if any of the events in sub-clauses (e)(iv) to (viii) occur and Monash agrees that it will only enforce the right to terminate if permitted under Australian law.

(g) Upon termination of this Agreement, Monash must pay the Contractor any amount Monash reasonably considers is due to the Contractor under this Agreement for performance of the Services up to the date of termination of this Agreement.

(h) On termination of this Agreement, the Contractor must, and must ensure that the Preferred Personnel and any Third Parties will, forthwith return to Monash all resources and property of Monash.

20. Dispute Resolution Procedure

(a) The Parties will attempt to resolve any dispute arising under this Agreement by negotiation in good faith, initiated by one Party giving written notice of the dispute to the other Party.

(b) If a dispute remains unresolved within thirty (30) Business Days of a Party receiving written notice of the dispute, the Parties will refer the dispute to mediation. The mediator will be appointed jointly by the Parties or, where the Parties cannot agree, nominated by the then President of the Law Institute of Victoria or if not then in operation, a like organisation to be agreed between the parties. All costs of the mediation shall be borne equally by the Parties, and the Parties shall bear their own legal costs.

(c) In the event the dispute is not resolved by mediation within twenty (20) Business Days after the appointment of the mediator, or such further time as the Parties agree in writing, a Party may then commence proceedings in relation to the dispute.
(d) Notwithstanding the existence of a dispute, the Parties must continue to perform their obligations under this Agreement.

(e) Nothing in this clause 20 shall be taken as preventing a Party from commencing a proceeding for urgent interlocutory relief or from terminating this Agreement in accordance with clause 19.

21. General

(a) Audits: Both during the term of this Agreement and after the termination of this Agreement, the Contractor must, upon request, provide Monash with reasonable access to all records and information relating to the Services including for the purposes of auditing and verifying invoices.

(b) Assignment: The Contractor must not assign or otherwise transfer, or attempt to assign or otherwise transfer, any right or obligation arising out of this Agreement, without the written consent of Monash. Monash may assign part or all of its rights or obligations arising out of this Agreement with immediate effect by giving written notice to the Contractor.

(c) Notices: Any notice under this Agreement will be effective if made in writing and delivered by email, hand or post to the representative of the other Party. A notice under this Agreement is deemed to be received by the addressee:

(i) in the case of an email, on the Business Day on which it is sent or, if it is sent on a non-Business Day, the next Business Day;

(ii) in the case of hand delivery, when delivered; and

(iii) in the case of postal delivery, on the third Business Day after posting.

(d) Severability: Part or all of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and the remaining provisions of this Agreement continue in force.

(e) Governing Law: This Agreement is governed by the laws of Victoria, Australia. Subject to clause 20, each party irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

(f) Entire Agreement: This Agreement, including any schedules, constitutes the entire agreement between the parties as to its subject matter and supersedes all prior understandings or agreements between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party in connection with that subject matter.

(g) Alteration: This Agreement may only be altered or varied in writing signed by the parties.

(h) Survival: Any provision which expressly or by implication is intended to survive termination or expiry of this Agreement, including clauses 12, 14, 15, 16 and 21(a), shall survive the termination or expiry of this Agreement.

(i) Confidential Agreement: Subject to clause 21(i), the terms of this Agreement and any subsequent amendments are confidential and may not, without the written approval of the other party, be disclosed by Monash or the Contractor to any other person other than for the purpose of obtaining professional legal or accounting advice or as required by law.

(j) Procurement Services: The Contractor agrees that Monash may disclose information about the Services and this Agreement to its procurement advisors for the purpose of reviewing and advising on Monash’s procurement of services, provided that any procurement advisor is also contractually obliged to maintain the confidentiality of any Confidential Information.

(k) Electronic Signing & Counterparts:

(i) Each party agrees that this Agreement may be executed by electronic signature (regardless of the form of electronic signature utilised) and that this method of signature is conclusive of the parties’ intention to be bound by this Agreement as if physical signing had occurred.
This Agreement may be executed in any number of counterparts and by the parties on separated counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each party may communicate its execution of this Agreement by successfully transmitting an executed copy of the Agreement by an electronic method to each party.
EXECUTED as an agreement

SIGNED for and on behalf of MONASH UNIVERSITY by its authorised officer:

Print Name

Title

Signature

Date

SIGNED for and on behalf of the CONTRACTOR by its authorised officer:

DOMINIC SWINN

Print Name

Title

Signature

Date 21-10-2020
Schedule 1

<table>
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<tr>
<th></th>
<th><strong>Contractor Agreement Number:</strong></th>
<th>Nil</th>
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<tbody>
<tr>
<td>2.</td>
<td><strong>Contractor Name and Details:</strong></td>
<td>BigPulse Voting Pty Ltd (ABN 96 627 072 664) 12/Sa Prosperity Parade Warnwood, NSW 2102</td>
</tr>
<tr>
<td>3.</td>
<td><strong>Commencement Date:</strong></td>
<td>1 October 2020</td>
</tr>
<tr>
<td>4.</td>
<td><strong>Termination Date:</strong></td>
<td>31 December 2020, subject to earlier termination under this Agreement.</td>
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<tr>
<td>5.</td>
<td><strong>Services:</strong></td>
<td>Provide online voting services for three (3) elections for the 2020 Academic Board elections within a 3-month subscription period for up to 64,000 voters.</td>
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<td>6.</td>
<td><strong>Location of Services:</strong></td>
<td>Australia</td>
</tr>
<tr>
<td>7.</td>
<td><strong>Preferred Personnel:</strong></td>
<td>Katherine Langford 0452 102 039 <a href="mailto:katherine.langford@bigpulse.com">katherine.langford@bigpulse.com</a></td>
</tr>
<tr>
<td>8.</td>
<td><strong>Monash Representative:</strong></td>
<td>Roslyn Chaffey Executive Services 0407 872 018 <a href="mailto:roslyn.chaffey@monash.edu">roslyn.chaffey@monash.edu</a></td>
</tr>
<tr>
<td>9.</td>
<td><strong>Fee:</strong></td>
<td>Lump Sum (in AUD and exclusive of GST) A fixed fee of $17,709.09 payable upon satisfactory completion of the Services.</td>
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<td>10.</td>
<td><strong>Invoice Requirements:</strong></td>
<td>Each invoice must be generated through a supplier purchasing portal approved by Monash or via a link in the purchase order emailed to the Contractor.</td>
</tr>
<tr>
<td>11.</td>
<td><strong>Time of Payment:</strong></td>
<td>Within 30 days from the end of the month of the tax invoice.</td>
</tr>
<tr>
<td>12.</td>
<td><strong>Insurances:</strong></td>
<td>Subject to clause 13 of this Agreement, the Contractor will maintain the following insurance as a minimum:</td>
</tr>
<tr>
<td></td>
<td>(a) <strong>Public Liability:</strong></td>
<td>AUD $20,000,000.00 for any one claim and unlimited in the number of claims</td>
</tr>
<tr>
<td></td>
<td>(b) <strong>Products Liability:</strong></td>
<td>AUD $20,000,000.00 for any one claim and in the aggregate during each period of insurance</td>
</tr>
<tr>
<td></td>
<td>(c) <strong>Professional Indemnity:</strong></td>
<td>AUD $10,000,000.00 for any one claim and in the aggregate during each period of insurance.</td>
</tr>
<tr>
<td></td>
<td>(d) <strong>Workers’ Compensation:</strong></td>
<td>As required by law in respect of all Third Parties.</td>
</tr>
<tr>
<td></td>
<td><em>Products Liability Insurance is only required if the Services include the development of a product.</em></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td><strong>Reporting:</strong></td>
<td>Nil</td>
</tr>
</tbody>
</table>
Schedule 2

CONFLICT OF INTEREST DECLARATION

I DECLARE THAT:

1. As at the Commencement Date, no conflict of interest exists or is likely to arise in my performance of the Contractor's obligations under this Agreement.

2. If, during the Term, any actual, perceived or potential conflict of interest arises, I will immediately declare such actual, perceived or potential conflict of interest to Monash.

3. At any time during the Term, I will provide any information requested by Monash, and provide any additional Declaration required, in order to satisfy Monash that no conflict of interest exists or is likely to arise in relation to the performance of the Services.

Date: 21-10-2020

Signature: ________________
Signature of the Preferred Personnel

Name: DOMINIC SHIANN
Name of the Preferred Personnel

Notes:

- The term 'conflict of interest' refers to a situation where a conflict arises for an individual between two competing interests, which are often, but not exclusively, interests of public duty versus private interests. Conflicts of interest may be reasonably perceived, potential or actual. Conflicts of interest can involve financial or non-financial interests of the Contractor and/or the Preferred Personnel and the interests of a business partner or associate, family member, friend or person in, or has had a close personal relationship with the Contractor or the Preferred Personnel.

- If the Services to be performed under this Agreement involve a company or entity unrelated to Monash, the Contractor is required to declare any ownership, or direct or indirect financial interest that it may have in that company, business or entity, or that the Preferred Personnel or any business partner, associate, family member, friend or person that is in, or has had a close personal relationship with the Contractor or the Preferred Personnel may have in that company, business or entity.