



1 Preliminary

- 1.1 These standard terms and conditions apply to any order for the purchase of goods (“Goods”) or services (“Services”) entered into by the Western Sydney University ABN 53 014 069 881 (“University”) by issuing a purchase or work order (“Order”), and regardless of whether that Order is issued in the form of an offer or acceptance of an offer by the Supplier. The Supplier is taken to have accepted these standard terms and conditions when it acknowledges receipt (whether orally or in writing) of the Order, or does anything (including performance of any obligations) consistent with the existence of an agreement between the University and the Supplier in relation to the Order.
- 1.2 These terms and conditions cannot be changed unless both parties agree to those changes in writing.
- 1.3 The Supplier acts as an independent Supplier only, and has no authority to act for or bind the University except as authorised by this Agreement.
- 1.4 This Agreement does not confer on the Supplier any exclusive right to perform services or supply goods of the kind specified in this Agreement.
- 1.5 Risk in any Goods passes to the University as follows:
- 1.5.1 if the Supplier is to install the Goods, upon Acceptance; or
 - 1.5.2 if the Supplier is not to install the Goods, when the Goods are delivered to the delivery address specified by the University.
- 1.6 Title in any Goods passes to the University in accordance with clause 9.1.

2 Compliance

- 2.1 The Supplier must comply with the University's by-laws, rules and policies, which are available to view at or download from www.westernsydney.edu.au/policy.
- 2.2 If the Supplier performs any Services at any site owned or occupied by the University, then the Supplier must observe any directions or policies of the University relating to:
- 2.2.1 work, health and safety (including emergencies);
 - 2.2.2 parking and traffic; and
 - 2.2.3 security (including information security).
- 2.3 The University may, at its cost, require the Supplier to undertake induction training relating to work, health and safety requirements.

3 Site access and security

- 3.1 This clause applies when the Supplier is required to install any Goods.

- 3.2 The University will provide the Supplier with reasonable access to the Site and any other facilities or services reasonably necessary to enable the Supplier to install and test Goods.
- 3.3 The University is responsible, at its cost, for preparing the Site for installation of Goods, unless the Order specifies otherwise.
- 3.4 If installation or testing of any Goods is likely to interfere with the University's normal use of the Site or the University's business, the Supplier must first inform the University of the likely nature and extent of that interference, so that the parties can agree on a solution to minimise the impact of that interference.
- 3.5 The Supplier must not access or use the Site or any University facilities or services except to install and test Goods.
- 3.6 The Supplier must comply with any University security requirements or instructions about access to and use or operation of the Site.
- 3.7 The Supplier must notify the University promptly if it becomes aware of any actual or potential security breach in relation to the Site.

4 Performance

- 4.1 The Supplier must perform any Services and supply any Goods in accordance with:
- 4.1.1 the Order (including any deadlines or Milestones specified in that Order) and these terms and conditions;
 - 4.1.2 a professional manner and any generally accepted industry or professional standards for services or goods of this kind; and
 - 4.1.3 all applicable laws or regulations.
- 4.2 Unless the Specification states otherwise, all Goods supplied must:
- 4.2.1 be new or newly manufactured; and
 - 4.2.2 be free from defects or errors (including viruses) in materials, workmanship or installation;
 - 4.2.3 include, at no additional cost to the University, one electronic copy of the most recent version of any Documents applicable to those Goods at the time of (as the case may be) delivery or Acceptance.
- 4.3 Any Documents must be:
- 4.3.1 of a reasonable standard in presentation, accuracy and scope;
 - 4.3.2 the most up to date version available at the time of supply; and
 - 4.3.3 supplied in an English language version with all key terms, words and symbols adequately defined or explained.



4.4 If any Documents are revised or replaced before Acceptance, then the Supplier must supply the University with the revised or replaced version at no additional cost.

4.5 The Supplier must, as part of the Services, provide any training stipulated in the Order.

4.6 The Supplier must arrange for any manufacturer's warranty for any Goods to be acquired or assigned for the benefit of the University when title passes to the University.

4.7 Any Goods consisting of software must:

- 4.7.1 be free of any viruses, defects and errors;
- 4.7.2 not contain any built-in, random or automatic expiry dates;
- 4.7.3 be properly installed, integrated and compatible with the Site; and
- 4.7.4 perform in accordance with the Acceptance Criteria.

5 Changes to or cancellation of Orders

5.1 The University may, at any time before Services are performed or Goods delivered change or cancel the Order by notifying the Supplier to that effect. If this occurs, the University will:

- 5.1.1 pay the Supplier for any Services already completed or Goods delivered at the time of change or cancellation; and
- 5.1.2 reimburse the Supplier for reasonable costs and expenses in respect of any Services partially completed or for cancellation of any Goods not delivered at the time of change or cancellation.

5.2 If any change in an Order causes an increase or decrease in the costs, performance or delivery of Goods or Services then the parties shall agree to an equitable adjustment having regard to the nature and extent of the change.

6 Acceptance Testing

6.1 If the Order requires the Supplier to install any Goods then the Supplier must also perform Acceptance Tests for those Goods according to the Acceptance Criteria.

6.2 If, following Acceptance Testing, any Acceptance Criteria is not satisfied, the Supplier must repeat the Acceptance Tests at reasonable intervals until the Acceptance Criteria are fully satisfied.

6.3 Following satisfaction of all Acceptance Criteria, the Supplier must supply a certificate to the University confirming all Acceptance Criteria are fully satisfied. Acceptance is taken to have occurred 2 business days after the Supplier gives notice, unless the University gives notice under clause 6.2, before the deadline expires, that any Acceptance Criteria are not satisfied.

7 Warranties and liability

7.1 The Supplier represents and warrants to the University that:

- 7.1.1 it can perform Services and supply Goods in accordance with this Agreement, and has obtained all necessary approvals, consents, licences or other permissions necessary to enable it to do so; and
- 7.1.2 neither of these infringes the Intellectual Property Rights or Moral Rights of any person; and
- 7.1.3 all Goods will comply with the requirements in clauses 4.2, 4.3, 4.6 and 4.7 upon, as the case may be, delivery or Acceptance.

7.2 Subject to clause 7.3, the Supplier's total liability for any Loss arising from the Supplier's negligence or breach of this Agreement (including breach of a warranty) is limited to the total Fee (excluding GST) payable to the Supplier under this Agreement.

7.3 Clause 7.2 does not operate to limit the Supplier's liability for Loss in any one or more of the following circumstances:

- 7.3.1 any breach of clauses 9, 10 or 11;
- 7.3.2 arising from the death of or injury to any person or damage to or loss of any property to the extent that any death, injury or damage was caused by or contributed to by the Supplier;
- 7.3.3 any corrupt conduct, criminal act or fraud of the Supplier;
- 7.3.4 where that Loss is covered by a policy of insurance or indemnity or liability scheme that provides cover or indemnity for the Supplier, regardless of whether the Supplier claims or recovers the Loss; or
- 7.3.5 where, by law, the Supplier cannot contract out of liability for that Loss.

7.4 Neither party is liable to the other for Consequential Loss under any circumstances.

8 Fees and payment

8.1 The University agrees to pay the Fees to the Supplier in accordance with the Order as consideration for the performance of Services and supply of any Goods. All Fees are inclusive of GST unless the Order specifies otherwise.

8.2 If the Order indicates that Fees are exclusive of GST, and those Fees are consideration for a taxable supply for which GST is payable by the Supplier, then those Fees will be increased by an amount equal to the value of the GST that the Supplier is required to remit to the Australian Taxation Office for that taxable supply.



- 8.3 Unless the University first agrees otherwise in writing:
- 8.3.1 all Fees are fixed, are inclusive of all taxes, stamp duty, delivery, freight or other charges of any description and cannot be increased; and
 - 8.3.2 the Supplier cannot claim any other amounts (including reimbursement of expenses).
- 8.4 The University is under no obligation to pay any Fees until:
- 8.4.1 the Services or Goods to which those Fees relate are supplied in accordance with the requirements of this Agreement; and
 - 8.4.2 the Supplier submits a valid tax invoice that:
 - (a) identifies the contract number, purchase order number or any other identifying details specified by the University;
 - (b) provides sufficient detail about the Services or Goods supplied; and
 - (c) if applicable, includes copies of receipts for any expenses recoverable by the Supplier under this Agreement.
- 8.5 Subject to clause 8.4, the University agrees to pay all Fees within 30 days of receiving a valid tax invoice.

9 Ownership of Goods

- 9.1 Upon payment of Fees, all right, title and interest in any Goods (including any Intellectual Property Rights in them) are absolutely assigned to the University as sole owner, except to the extent these incorporate Background Materials.
- 9.2 If any Goods incorporate Background Materials, the Supplier grants to, or must procure for, the University a perpetual, irrevocable, royalty-free and non-transferable licence of those Background Materials to enable the University to make full use of the Goods as owner.
- 9.3 The Supplier must also procure for the University's benefit any Moral Rights waivers or consents to enable the University to make full use of the Goods as owner and give the University evidence of this if asked to do so.
- 9.4 If the supply of any Goods (such as software) incorporates anything supplied by a third party, the Supplier must, at no additional cost to the University:
- 9.4.1 procure from that third party a licence for the benefit of, and on acceptable terms to, the University to enable it to make full use of the Goods; and
 - 9.4.2 give the University details of that licence.
- 9.5 If either party is notified or becomes aware of any claim that the supply of Goods infringes the Intellectual Property Rights or Moral Rights of another person, the Supplier must, as appropriate (and after consultation with the University) and at its cost:

- 9.5.1 modify the Goods (and, if necessary, any Services affected) to avoid any continuing infringement;
 - 9.5.2 procure for the University the right to continue to use or possess the component of infringing Goods or Services (as applicable); or
 - 9.5.3 remove the infringing component of the Goods or Services (as applicable) and the Fees with respect to the removed component will be reduced to reflect such removal.
- 9.6 The Supplier may keep a copy of any Documents only for its internal record keeping purposes and audit purposes or in order to comply with any applicable professional obligations of the Supplier.

10 Confidential Information

- 10.1 This clause 10 applies if the University discloses any Confidential Information (including documents or systems) to the Supplier, or of which the Supplier becomes aware or otherwise has access, in the course of supplying Services. For the purposes of this clause, Confidential Information includes:
- 10.1.1 any Personal Information disclosed by the University or which the Supplier handles on behalf of the University under clause 11; and
 - 10.1.2 any information that is commercial-in-confidence to the University,
- 10.2 The Supplier must not access, use or disclose any Confidential Information other than to perform Services. The Supplier must take reasonable steps (including any specified by the University) to ensure the security and integrity of any Confidential Information, including their incorporation into Goods.
- 10.3 The Supplier may disclose Confidential Information to its employees or approved subcontractors, but only to the extent that there is a need for any of them to know for the purposes of performing Services. The Supplier must ensure that those persons are aware of the Supplier's obligations of confidentiality. The University may, as an added precaution, require those persons to enter into a separate non-disclosure agreement.
- 10.4 The Supplier may disclose Confidential Information to a third person if required by law to do so. However, the Supplier must, before doing so:
- 10.4.1 if possible before disclosure, notify the University and gives it a reasonable opportunity to take any steps to protect the confidentiality of that Confidential Information; and
 - 10.4.2 notify the third person that the information is Confidential Information of the University.
- 10.5 Any disclosure by the Supplier in accordance with clause 10.4 is not a breach of this Agreement.



11 Data protection and security

- 11.1 This clause applies where the Supplier has custody or control of, or accesses, transmits, stores or otherwise handles Data on behalf of the University (collectively “handles”) any data, on behalf of the University as part of its performance of Services.
- 11.2 The Supplier must:
- 11.2.1 only use the Data for the purpose of performing its obligations under this Agreement and for no other purpose;
 - 11.2.2 not assert any lien, charge or other encumbrance or interest over or in respect of Data; and
 - 11.2.3 not transfer Data outside of Australia, or allow a person or organisation located outside Australia to access that Data, without the University’s prior written consent;
 - 11.2.4 ensure that the University has and is granted access to Data as and when required by the University;
 - 11.2.5 take reasonable and prudent measures to ensure that all Data is protected at all times from unauthorised access or handling and damage or destruction (including without limitation, cyber attacks);
 - 11.2.6 implement and maintain effective systems, controls and other measures (including data protection plans) that comply with all relevant laws and accepted industry standards regarding handling, protection, security and integrity of data and complaint handling;
 - 11.2.7 where applicable, comply with any policies of the University notified to the Supplier from time to time; and
 - 11.2.8 allow the University, at its cost to review and audit those systems, controls and other measures
- 11.3 In respect of any Data consisting of Personal Information, the Supplier must, in addition to its other obligations under clause 11.2:
- 11.3.1 only permit any employees or subcontractors access to it only if and to the extent that there is a need to know for the purposes of performing services;
 - 11.3.2 not transfer or disclose it outside of New South Wales, or allow any person located outside New South Wales to access that information without the University’s prior written consent;
 - 11.3.3 if notified by the University to do so, after, correct or delete it;

- 11.3.4 if it receives a request from an individual to access, alter, correct or delete it, promptly notify the University and provide details about that request

- 11.4 In respect of any Data Threat, the Supplier must:
- 11.4.1 notify the University immediately when it becomes aware of the Data Threat, and provide full details of its nature and extent and details of steps it has taken or proposes to take to preserve and protect any Data or minimise the impact of that Data Threat
 - 11.4.2 comply with the University’s reasonable directions with respect to preservation or protection of Data or minimising the impact of that Data Threat
 - 11.4.3 provide to the University copies of any mandatory notifications that the Supplier is required by law to make in respect of that Data Threat

12 Insurance

- 12.1 The Supplier must effect and maintain:
- 12.1.1 all insurance cover that the Supplier is required to effect and maintain under any law (including worker’s compensation insurance);
 - 12.1.2 public liability insurance for a minimum of \$20 million per claim in connection with liability where Services are supplied on any site owned or under the control of the University; and
 - 12.1.3 if applicable, any Specified Insurance Policy.
- 12.2 The Supplier must, if the University asks it to do so:
- 12.2.1 provide certificates of currency or other evidence that those insurance policies are current; and
 - 12.2.2 cooperate and provide reasonable assistance to the University if it claims under any of the Supplier’s insurance policies.
- 12.3 The Supplier always remains responsible for insuring its own property (including equipment or vehicles) used to perform its obligations under this Agreement.
- 12.4 The Supplier must ensure that any of its subcontractors comply with these insurance requirements.

13 Default and termination

- 13.1 Essential terms of this Agreement are that:
- 13.1.1 an Insolvency Event does not occur in connection with the Supplier; and

- 13.1.2 the Supplier observes its obligations under clauses 4.6, 4.7, 6, 9, 10 and 11.
- 13.2 The University may terminate this Agreement for breach of an essential term at any time by notifying the Supplier to that effect. Unless the notice specifies a later date, the termination date for the purposes of this clause is:
- 13.2.1 in the case of an Insolvency Event, immediately when the University gives notice of termination; or
- 13.2.2 in the case of breach of another essential term, 7 days after the University gives notice.
- 13.3 Either party (“first party”) may terminate this Agreement if the other party (“defaulting party”) fails to rectify a breach of a non-essential term within the time specified in a notice given by the first party, which must be a reasonable length of time, taking into account the nature and extent of the alleged breach.

14 Requirements when this Agreement ends

- 14.1 When this Agreement ends:
- 14.1.1 the Supplier must:
- (a) as directed by the University, return any Confidential Information (including copies) in the Supplier’s possession, custody or control or destroy them within 7 days of being notified by the University to do so, and provide written confirmation of that fact;
- (b) do all things reasonably necessary to wind up or transfer the responsibility for Services or supply of Goods in a timely and orderly fashion; and
- 14.1.2 the University must pay to the Supplier all amounts owing under this Agreement up to and including the termination or expiry date of this Agreement, but unpaid.
- 14.2 Unless this Agreement states otherwise, any accrued rights or remedies of a party remain unaffected despite termination or expiry of this Agreement.

15 Disclosure under GIPA Act

- 15.1 The Supplier acknowledges that the University:
- 15.1.1 is subject to GIPA Act; and
- 15.1.2 may be required to disclose certain details about this Agreement in compliance with its obligations under Part 3 Division 5 of the GIPA Act, where the total value of Goods or Services supplied under this Agreement exceeds \$150,000.

16 Dispute resolution

- 16.1 A party must not commence any legal action or arbitration proceedings in connection with this Agreement unless the party first complies with this clause 16. This does not prevent a party from seeking urgent interlocutory relief for any actual or apprehended breach.
- 16.2 For the purposes of this clause 16, “dispute” means any dispute, difference of opinion, problem or concern that cannot be resolved informally between the parties.
- 16.3 Either party can claim a dispute has arisen by notifying the other in writing to that effect (“dispute notice”).
- 16.4 If a party sends a dispute notice, then each party must appoint a suitable representative to try and resolve the dispute through negotiation.
- 16.5 If the parties cannot resolve the dispute by negotiation within 10 business days after negotiations commence, or a longer time mutually agreed, then either party can refer the dispute to a mediator by notifying the other to that effect.
- 16.6 If the parties cannot agree upon a mediator, then they must request the LEADR Association of Dispute Resolvers to nominate a suitable mediator, whose nomination shall be binding on both parties.
- 16.7 Any documents or information prepared and disclosed for mediation are confidential and may not be used for any purpose other than attempting to resolve the dispute.
- 16.8 The parties must pay their own costs in connection with the dispute, and must also pay the mediator’s costs and expenses in equal shares.
- 16.9 A party who complies with clauses 16.1 to 16.8 inclusive may terminate any mediation if the dispute being mediated is not resolved within 10 business days of mediation commencing.
- 16.10 If a party breaches this clause 16, then the other party need not comply with those clauses in relation to the dispute.
- 16.11 Each party must continue to perform its obligations under this Agreement relating to any issue in dispute or otherwise, despite and during any process being conducted under this clause 16.

17 Conflicts of interest

- 17.1 The Supplier warrants that, as at the Commencement Date and to the best of its knowledge, it is not aware of any actual or potential conflict of interest in relation to supply of Goods or Services.



- 17.2 The Supplier must:
- 17.2.1 disclose any actual or potential conflict of interest as soon as it becomes aware of it; and
 - 17.2.2 comply with the University's reasonable requirements for managing or avoiding any conflicts of interest.
- 18 **Delays, problems and force majeure**
- 18.1 If the Supplier becomes aware of problem or delay ("problem") likely to affect the performance of Services or supply of Goods, then it must promptly notify the University in writing specifying at least:
- 18.1.1 the nature, extent and any known causes of the problem (including if the problem is caused by a Force Majeure Event);
 - 18.1.2 (if known) the length of any actual or likely delay;
 - 18.1.3 the obligations ("affected obligations") that the Supplier is unable to perform as a result of that problem;
 - 18.1.4 the proposed means to resolve or minimise the effects of, or work around, the problem.
- 18.2 If the problem is caused by a Force Majeure Event, then the Supplier must:
- 18.2.1 keep the University informed on a continuing basis of its plans to resolve the problem; and
 - 18.2.2 comply with all reasonable requests by the University in order to work around, resolve or minimise the impact of the problem.
- 18.3 If the Supplier complies with clauses 18.1 and 18.2, the Supplier's obligations to perform the affected obligations, and the University's obligations to perform any obligations dependent on the affected obligations, will be suspended for the duration of the actual delay ("actual delay") arising directly as a result of the Force Majeure Event.
- 18.4 If the actual delay continues for a period of 60 days (calculated from either the date on which the actual delay commences or the date on which the Supplier gives notice under clause 18.1; whichever is the earlier date), then either party may terminate this Agreement with immediate effect.
- 18.5 If a party terminates this Agreement under clause 18.4:
- 18.5.1 then the provisions of clause 5 (changes to or cancellation of Orders) shall apply with respect to:
 - (a) winding down any Services or cancelling any Goods; and
 - (b) calculating final amounts payable to the Supplier; and
- 18.5.2 the Contactor cannot claim, and waives any right to claim, any additional amount by way of Loss arising out of that termination.
- 19 **Notices**
- 19.1 A notice given under or about this Agreement must be:
- 19.1.1 in writing;
 - 19.1.2 signed by the authorised officer of the party giving the notice; and
 - 19.1.3 delivered by hand or sent by prepaid post, facsimile or email to the address, facsimile number or email of the addressee set out in the Order (as the case may be), or as notified by the addressee to the sender from time to time.
- 19.2 A notice given alleging a breach of, or to terminate, this Agreement, may not be given by email, and may only be given by one of the other methods specified in clause 19.1.3.
- 19.3 A notice given under or about this Agreement is taken to be received as follows, or if that day is not a business day, then the next following business day:
- 19.3.1 if delivered by hand, upon delivery;
 - 19.3.2 if sent by prepaid post, 2 business days after posting;
 - 19.3.3 if sent by facsimile, when the sender receives a transmission confirming the facsimile has been sent to the addressee's facsimile number in its entirety; or
 - 19.3.4 if sent by email, the earlier of:
 - (a) when the sender receives from the addressee an acknowledgement or reply to that email; or
 - (b) when the sender sends that email, but provided that the sender does not subsequently receive a message that the email is undeliverable to the addressee's email address or reasonably suspects that that the email was not delivered to the addressee's email address.
- 20 **Assignment, novation or change in control**
- 20.1 The Supplier cannot assign, novate or otherwise deal with a right or an obligation under the Agreement without the University's prior consent.
- 20.2 The Supplier must notify the University in writing of any change in Control of the Supplier (or the ultimate holding company of the Supplier) within 7 days after that change occurs.



20.3 The University may, in its absolute discretion, and at any time in the succeeding 6 months following receipt of a notice under clause 20.2, terminate this Agreement by notifying the Supplier to that effect. The required minimum notice for termination under this clause is 14 days.

21 Miscellaneous

- 21.1 A party's non-exercise or delay in exercise of a right, power or remedy does not prevent a future exercise of that right, power or remedy by that party.
- 21.2 A right or an obligation created under this Agreement cannot be waived unless and until the party entitled to waive that right or obligation first agrees in writing.
- 21.3 An obligation under this Agreement does not merge on termination or expiry and, to the extent it remains incomplete, continues beyond termination or expiry until completion.
- 21.4 An indemnity or a warranty given under this Agreement is an independent and continuing obligation of the party giving it, survives termination or expiry of this Agreement and includes any reasonable legal costs of the party entitled to the benefit of that indemnity or warranty.
- 21.5 An approval or consent of a party required or obtained under this Agreement must be in writing and signed by the authorised officer of the party specified in the Order. An approval or consent can be given with or without conditions.
- 21.6 If a payment or other obligation under this Agreement falls due on a day that is not a business day, then the due date for payment or performance of that obligation is the next business day.
- 21.7 Each party must, at its own cost, do all things and sign any documents reasonably necessary to give effect to the terms of this Agreement. This includes using that party's best endeavours to secure the agreement of any third party to do likewise.
- 21.8 This Agreement constitutes the entire agreement between the parties about the subject matter, and supersedes any previous agreements, discussions, understandings or negotiations.
- 21.9 No term of this Agreement may be construed or interpreted to the disadvantage of a party because that party prepared this Agreement or negotiated the inclusion of that term in this Agreement.
- 21.10 If all or any part of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction, the remainder of this Agreement has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected.
- 21.11 The laws in force in New South Wales govern the terms of this Agreement. The parties submit to the non-exclusive jurisdiction of any courts or tribunals exercising jurisdiction (including appeals) in that State.

21.12 This Agreement may be signed in any number of counterparts.

22 Definitions and interpretation

- 22.1 In this Agreement, the following words have these meanings when they commence with a capital letter:
- 22.1.1 Acceptance means when Goods are taken to be accepted under clause 6.3;
- 22.1.2 Acceptance Criteria means those standards or requirements that a system or software must meet in order to function properly as prescribed by the Specification or, if the Specification does not stipulate any Acceptance Criteria, the manufacturer's operating instructions for that system or software;
- 22.1.3 Acceptance Test means a test performed to determine that a system or software is functioning properly according to the Acceptance Criteria;
- 22.1.4 Background Materials means any materials that the Supplier creates:
- (a) before the Commencement Date and independently of the Services; or
 - (b) except to the extent they form part of any Goods, to record methods or processes followed, evidence or information analysed or conclusions developed (for example, file notes and working papers) in relation to the Services;
- 22.1.5 Commencement Date means the date stipulated in the Order when this Agreement begins;
- 22.1.6 Confidential Information means all information treated by the University as confidential or disclosed to the Supplier in circumstances where the Supplier ought to be aware that the information is confidential (including any information referred to in clause 10.1), but does not include information that:
- (a) is or later becomes public knowledge other than because of any breach of this clause by the Supplier, its employees or subcontractors;
 - (b) the Supplier creates (alone or with another person) independently of the University; or
 - (c) the Supplier must disclose to a third person in order to comply with any law or order of a court or a tribunal.



- 22.1.7 Consequential Loss means any Loss recoverable at law (other than a Loss arising in the usual course of things) which is:
- (a) consequential upon other Loss;
 - (b) a loss of opportunity or goodwill;
 - (c) a loss of profits;
 - (d) a loss of anticipated savings or business; or
 - (e) loss of value of any equipment;
- 22.1.8 Control means, in relation to a body corporate, the ability of a person directly or indirectly to exercise effective control over that body corporate (including the ability to determine the outcome of decisions about the financial and operating and other policies of that body corporate) by virtue of the holding of voting shares, units or other interests in that body corporate, or by any other means;
- 22.1.9 Data means any data or information organised or formatted in a manner capable of being communicated, analysed, interpreted or processed by any means and includes, without limitation, metadata and Personal Information and Confidential Information;
- 22.1.10 Data Threat means any actual or suspected threat to the security or integrity of any Data of any kind or by any means including without limitation, unauthorised access, corruption of data or computer codes or scripts designed to create vulnerabilities in or damage to systems;
- 22.1.11 Documents means any documents supplied as part of the Services or any Goods in any format, including any reports, guides, specifications or drawings;
- 22.1.12 Fees means those amounts payable to the Supplier under clause 8;
- 22.1.13 Force Majeure Event means any event or circumstance beyond the reasonable control of the Supplier and which, even with the exercise of reasonable care, the Supplier is unable to avoid, minimise or resolve;
- 22.1.14 GIPA Act means the Government Information (Public Access) Act 2009 (NSW);
- 22.1.15 Goods means those goods specified in the Order;
- 22.1.16 GST means any tax payable in respect of a taxable supply of goods or services pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 22.1.17 Insolvency Event means the occurrence of any one or more of these events:
- (a) an application is made to a court for an order, or an order is made, that a body corporate be wound up;
 - (b) a body corporate would be presumed to be insolvent by a court within the meaning of section 95A(2) of the Corporations Act 2001 (Cth);
 - (c) a meeting is convened, or a resolution is passed, to appoint an official administrator in respect of a body corporate;
 - (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (e) a body corporate resolves to wind itself up, or dissolve itself, or notifies its intention to do so, except to reconstruct or amalgamate while solvent, or is otherwise wound up or dissolved;
 - (f) a body corporate is or states that it is unable to pay all its debts as and when these fall due; or
 - (g) a person becomes insolvent under administration as defined under section 9 of the Corporations Act 2001 (Cth) or action is taken that could result in that event;
- 22.1.18 Intellectual Property Rights means all intellectual property rights including patents, copyright, rights in circuit layouts, plant breeder's rights, registered designs, trademarks and the right to have confidential information kept confidential and any application or right to apply for registration of any of those rights;
- 22.1.19 Loss means any loss, liability, damage, fine, cost, expense or other amount (including reasonable legal costs and expenses on a solicitor and client basis) and excludes Consequential Loss;



- 22.1.20 Milestone means a deadline for completion of Services or supply of Goods described in the Specification;
- 22.1.21 Moral Rights means any rights conferred under Part IX of the Copyright Act 1968 (Cth);
- 22.1.22 Personal Information means personal information as defined in the Privacy and Personal Information Protection Act 1988 (NSW) and the Privacy Act 1988 (Cth) and includes health information as defined in the Health Records and Information Privacy Act 2002 (NSW);
- 22.1.23 Order means the purchase or goods order issued by the University and accepted by the Supplier under clause 1.1;
- 22.1.24 Site means the physical and non-physical environment where Services or Goods are to be supplied or installed, including hardware platforms and operating systems;
- 22.1.25 Services means those services specified in the Order;
- 22.1.26 Specification means the description (including any technical requirements or Milestones) of Services and Goods as described in the Order or annexed to this Agreement;
- 22.1.27 Specified Insurance Policy means an insurance policy listed in the Order that the Supplier must effect under clause 12.1.3;
- 22.1.28 Supplier means the person listed in the order to supply goods and/or services;
- 22.1.29 University means the Western Sydney University ABN 53 014 069 881, a statutory corporation established under the Western Sydney University Act 1997 (NSW).
- 22.2 In this Agreement unless the contrary intention appears:
- 22.2.1 the singular includes the plural and vice versa;
- 22.2.2 other grammatical forms of defined words and expressions have corresponding meanings;
- 22.2.3 a reference to a clause, paragraph or annexure is a reference to a clause or paragraph of, or an annexure to, this Agreement and a reference to this Agreement includes its schedules and annexures;
- 22.2.4 a reference to a person includes a firm, body corporate, a partnership, an unincorporated association or authority;
- 22.2.5 a reference to a person includes that person's executors, administrators, successors, substitutes and assigns;
- 22.2.6 where relevant, a reference to a party includes that party's directors, officers, employees, agents and contractors or subcontractors;
- 22.2.7 a reference to a law includes any amendment or replacement of that law, and including any delegated legislation (such as regulations, bylaws or rules) or codes, guidelines or standards made under any law;
- 22.2.8 an agreement, representation, warranty, undertaking, covenant or indemnity given by or in favour of two or more persons binds them and is given or is for their benefit jointly and severally;
- 22.2.9 headings are for ease of reference only and do not affect the interpretation of this Agreement;
- 22.2.10 if any day appointed or specified by this Agreement for the payment of any money falls on a day which is not a business day the day appointed or specified is deemed to be the next business day;
- 22.2.11 anything after the words "includes", "including", "for example" or other similar expressions does not limit what else is included;
- 22.2.12 a reference to a business day means Mondays to Fridays inclusive between the hours of 8.00 am and 6.00 pm, except public holidays gazetted in New South Wales;
- 22.2.13 a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney even if the obligation is to be performed elsewhere.
- 22.3 A reference to "this Agreement" means the following documents, which shall be read in the following order of preference to the extent necessary to resolve any conflict in interpretation:
- 22.3.1 the Order;
- 22.3.2 these terms and conditions.