



**Australian  
National  
University**

## **Consultancy Agreement**

**between**

**Australian National University**

**and**

**Nous Group (ABN 66 086 210 344)**

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## PARTIES

**AUSTRALIAN NATIONAL UNIVERSITY ABN 52 234 063 906** an educational and research institute and body corporate pursuant to the *Australian National University Act 1991* (Cth) and represented by the Office of the Chief Operating Officer, of Acton in the Australian Capital Territory, 2601 (**University**)

AND

**NOUS GROUP PTY LTD ABN [66 086 210 344]** of 9/121 Marcus Clarke St, Canberra ACT 2601 (**Consultant**)

## BACKGROUND

- A. The University wishes to engage the Consultant to provide the Services on the terms and conditions of this Agreement.
- B. The Consultant has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.

## AGREED TERMS

### 1 Definitions and Interpretations

#### 1.1 In this Agreement:

**Agreed Terms** means clauses 1 to 33 of the Agreement which set out terms and conditions agreed by the Parties.

**Agreement** means this agreement and includes all Schedules and annexures.

**Background Intellectual Property** means Intellectual Property of a party existing prior to the Commencement Date or acquired or created by a party after the Commencement Date independently of this Agreement.

**Business Day** means, for the purposes of this Agreement, a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory, and which is not during the University shut-down period from 25 December to 1 January inclusive.

**Commencement Date** means the date on which this Agreement commences, as specified in Item 1 of Schedule 1.

**Confidential Information** means information disclosed by a party (the **discloser**) to the other party (the **recipient**) that:

- (a) is by its nature confidential;
- (b) is designated by the discloser as confidential;
- (c) the recipient knows or ought to know is confidential;
- (d) is comprised in or relates to University Material or Contract Material;
- (e) is included in the terms of this Agreement,

but does not include information which:

- (f) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (g) has been independently developed or acquired by the Consultant, as established by written evidence.

**Consultant** means the party named above and its Personnel.

**Contract Manager** means the person or position nominated in Item 4 of Schedule 1 by each party, who has responsibility for supervision of the Services performed pursuant to this Agreement.

**Contract Material** means all Material created or required to be developed or created as part of, or for the purpose of performing, the Services.

**Control** of a person, partnership, trust, joint venture, corporation or other entity (**Entity**) means:

- (a) control of the composition of the board of directors or the management of the Entity;
- (b) the ability to cast or control the casting of more than 50% of the maximum number of votes that might be cast at any general meeting (or equivalent) of the Entity; or
- (c) the holding of more than 50% of the issued ordinary share capital, the equity, or other ownership interest, in the Entity.

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended.

**Data Breach** means:

- (a) unauthorised access to, or unauthorised disclosure of, Personal Information; or
- (b) information lost in circumstances where unauthorised access to, or unauthorised disclosure of, Personal Information is likely to occur.

**Deliverable** means any Contract Material or other item or element of a Service specified in Part 2 of Schedule 2 or otherwise to be provided by the Consultant under this Agreement.

**Fees** means the fees payable by the University to the Consultant in accordance with clause 10 and Schedule 3.

**Force Majeure Event** means any event which is not within the reasonable control of the party affected, for example an epidemic, act of God, fire, lightning, earthquake, explosion, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind, but does not include any act or omission of the party affected (including any of their subcontractors).

**GST** has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Initial Term** means the period of time for which this Agreement is intended to continue, as specified in Item 2 of Schedule 1.

**Insolvency Event** means the happening of any 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) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company 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;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;

- (e) a body corporate is or states that it is insolvent; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction,

but does not include any events which under the Corporations Act are unenforceable indefinitely after the expiration of a stay period.

**Intellectual Property or IP** means all rights, anywhere in the world, whether or not registered or registrable (and including rights of registration and applications for registration) including, but not limited to:

- (a) copyright;
- (b) inventions and scientific discoveries;
- (c) trademarks;
- (d) designs;
- (e) circuit layouts and the like;
- (f) trade secrets;
- (g) plant breeder's rights; and
- (h) any other rights as defined in Article 2 of the Convention (dated 14th July 1967) establishing the World Intellectual Property Organisation (as amended from time to time).

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes all applicable University statutes and rules, the common law and rules of equity as applicable from time to time.

**Loss** means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Material** includes property, information, data, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property.

**Milestone Date** means any fixed date to be met by the Consultant in performing any of its obligations under this Agreement as specified in Part 2 of Schedule 2.

**Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

**Moral Right** has the same meaning as in the *Copyright Act 1968* (Cth).

**Notifiable Incident** has the meaning in the *Work Health and Safety Act 2011* (Cth) or a corresponding work health and safety law (within the meaning of the *Work Health and Safety Act 2011* (Cth)).

**Performance Criteria** means the requirements set out in Part 3 of Schedule 2 for each Service and Deliverable.

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).

**Personnel** means in relation to a party, any employee, officer, agent, or professional adviser of that party, and in the case of the Consultant, any subcontractor.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Schedule** means a schedule to this Agreement.

**Services** means the services to be provided by the Consultant as specified in Schedule 2 and includes the provision of the Deliverables.

**Specified Personnel** means the personnel specified in Item 5 of Schedule 1.

**Tax Invoice** means a tax invoice complying with the requirements in Schedule 3.

**Term** means the Initial Term plus any extension in accordance with clause 3.2.

**University** means Australian National University.

**University Material** means any Material, including confidential information, provided by or on behalf of the University to the Consultant in connection with this Agreement including, without limitation, the Material listed in Item 6 of Schedule 1.

1.2 In this Agreement, except where the contrary intention is expressed:

1.2.1 words importing a gender include any other gender;

1.2.2 words in the singular number include the plural and words in the plural number include the singular;

1.2.3 a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;

1.2.4 a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;

1.2.5 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

1.2.6 if a day on or by which an obligation (other than the provision of Services) must be performed or an event (other than the provision of Services) must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Agreement

1.4 This clause 1 will survive the expiration or termination of this Agreement.

## **2 Priority of documents**

2.1 If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

2.1.1 Agreed Terms;

2.1.2 Schedules;

2.1.3 any annexures or attachments to the Schedules; and

2.1.4 documents incorporated by reference in this Agreement.

## **3 Term**

3.1 This Agreement begins on the Commencement Date and will continue for the Term unless terminated earlier in accordance with clauses 23 or 24.

### 3.2 Option to extend Term

- 3.2.1 The Term may be extended by the University for further period(s), specified in Item 3 of Schedule 1 (each an **Option Period**), on the terms and conditions then in effect, by giving 30 days written notice to the Consultant before the end of the current Term of the University's wish to extend the Term.
- 3.2.2 If the Consultant agrees to the extension of the Term in writing, the extension takes effect from the end of the then current Term.

## 4 Provision of Services

### 4.1 The Consultant must provide the Services as described in this Agreement:

- 4.1.1 to the reasonable satisfaction of the University;
- 4.1.2 with due skill and care and to the best of the Consultant's knowledge and expertise;
- 4.1.3 to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- 4.1.4 in accordance with the Performance Criteria;
- 4.1.5 using the Specified Personnel (if any);
- 4.1.6 in accordance with all applicable Laws;
- 4.1.7 in accordance with the University's policies and procedures, as applicable;
- 4.1.8 in accordance with any reasonable directions in relation to the Services given by the University from time to time;
- 4.1.9 to meet the Milestone Dates, and where no Milestone Dates are specified, promptly and without delay;
- 4.1.10 by keeping accurate and auditable records relating to the performance of the Services; and
- 4.1.11 otherwise in accordance with the provisions of this Agreement.

### 4.2 Without limiting any other rights available to the University under this Agreement, where the Consultant is unable to provide the Services within the University's specified timeframe as a result of an act or omission of the Consultant, or as a result of a breach by the Consultant of this Agreement, the University may:

- 4.2.1 withhold any payment otherwise due under this Agreement until such time as the delay or breach is rectified to the satisfaction of the University; and
- 4.2.2 in the event that such failure lasts more than 30 days (or longer period notified by the University in writing), terminate this Agreement and pursue any remedies available under this Agreement or at Law.

## 5 General obligations

### 5.1 General obligations of the parties

The parties will, at all times:

- 5.1.1 act reasonably in performing their obligations and exercising their rights under this Agreement;
- 5.1.2 diligently perform their respective obligations under this Agreement; and
- 5.1.3 work together in a collaborative manner.



## **5.2 University's obligations**

Without limiting any of its other obligations and responsibilities under this Agreement, the University is responsible for:

- 5.2.1 providing timely instructions and decisions to enable the Consultant to perform the Services;  
and
- 5.2.2 providing the University Materials and other inputs specified in Item 6 of Schedule 1.

## **5.3 Consultant's obligations and responsibilities**

5.3.1 Without limiting any of its other obligations and responsibilities under this Agreement, the Consultant must, at all times:

- (a) co-operate with the University in the pursuit of its objectives relevant to this Agreement;
- (b) pursue best practice in the delivery of Services pursuant to this Agreement;
- (c) consult with the University on any matter which may materially affect the performance by the Consultant of its obligations under this Agreement; and
- (d) notify the University of all instructions, decisions, Material and other inputs to enable the University to meet its obligations under clause 5.2.

5.3.2 Without limiting the Consultant's other obligations in this Agreement, to the extent that the Services do not meet the University's requirements as a result of the Consultant's failure to comply with clause 5.3.1(d), the Consultant is responsible for that deficiency.

5.3.3 Where the University provides University Material to the Consultant, the Consultant must ensure that the University Material is used strictly in accordance with any direction by the University.

5.3.4 On the expiry or termination of this Agreement or on such earlier date as may be specified by the University, the Consultant must immediately deliver to the University's Contract Manager all University Material.

## **6 Consultant Personnel**

6.1 Where Specified Personnel are identified in Schedule 1, the Consultant must ensure that the Services are only performed by the Specified Personnel, and must notify the University immediately the Consultant becomes aware that the Specified Personnel will cease to be engaged or employed by the Consultant during the Term.

6.2 The Consultant must keep the University informed of steps taken to replace Specified Personnel and must act promptly and without delay to replace the Specified Personnel.

6.3 The University's Contract Manager must approve any replacement Specified Personnel. If the Consultant does not appoint replacement Specified Personnel within a reasonable timeframe and to the satisfaction of the University, the University may terminate this Agreement under clause 24.

## **7 Consultant Warranties**

7.1 The Consultant represents and warrants that:

- 7.1.1 it has the right and authority to enter into this Agreement;
- 7.1.2 it has all rights, title, licences, interests and property necessary to lawfully perform the Services;

- 7.1.3 it and its Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to perform the Services;
- 7.1.4 the Services will be fit for the purpose;
- 7.1.5 the Services will be complete and accurate;
- 7.1.6 it conducts its business in a manner that is consistent with all applicable modern slavery laws, statutes, regulations and codes from time to time in force;
- 7.1.7 all work performed under this Agreement will be carried out and completed in a proper and workmanlike manner and in the most cost-effective manner and using materials suitable for the purpose; and
- 7.1.8 the person who signs this Agreement for and on behalf of the Consultant has the requisite authority to do so, and if that person is acting under a power of attorney that the power of attorney is in force and in existence and has not been revoked.

7.2 This clause 7 will survive the expiration or termination of this Agreement.

## **8 Reporting**

- 8.1 The parties will meet at the times and in the manner set out in Part 4 of Schedule 2 (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The parties must ensure that their Contract Managers are reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.
- 8.2 The Consultant must otherwise provide the University with reports in accordance with Part 4 of Schedule 2.

## **9 Performance Assessment**

- 9.1 Without limiting any other obligation of the Consultant, each element of the Services is subject to assessment by the University against the relevant Performance Criteria.
- 9.2 If the University considers that all or part of the Services do not meet the Performance Criteria, the University may provide the Consultant with notice of that fact and include reasons for the Services not meeting the Performance Criteria.
- 9.3 If the University notifies the Consultant that all or part of the Services do not meet the Performance Criteria, the Consultant must:
  - 9.3.1 take all necessary steps to ensure that the Services are promptly corrected;
  - 9.3.2 give notice to the University when the Services have been corrected; and
  - 9.3.3 allow the University to repeat the assessment of all or part of the Services against the Performance Criteria,within five (5) Business Days after the date of the notice or such other time as agreed between the parties in writing.
- 9.4 If any part of the Services does not meet the Performance Criteria on two or more occasions, the University may terminate this Agreement immediately under clause 24 by giving the Consultant written notice.
- 9.5 Clauses 9.2, 9.3 and 9.4 do not limit in any way any other right, remedy or recourse of the University.

## **10 Fees**

### **10.1 Subject to:**

10.1.1 clause 10.2; and

10.1.2 the Services meeting the requirements of this Agreement including the Performance Criteria, the University must pay to the Consultant the Fees in accordance with Schedule 3.

### **10.2 The Consultant must provide a correctly rendered invoice to the University for the Fees in accordance with the requirements of Schedule 3.**

### **10.3 The Consultant must pay:**

10.3.1 all stamp duty (including penalties and interest) assessed or payable in respect of this Agreement;

10.3.2 subject to clause 11, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

### **10.4 For the avoidance of doubt, the University will not be liable for any other payment to the Consultant other than the Fees specified in this clause 10.**

## **11 GST**

### **11.1 Unless stated otherwise in this Agreement, the amount payable for the supply of any goods, services or other things under or in connection with this Agreement is stated as exclusive of GST.**

### **11.2 The party liable to pay for a taxable supply to which this clause applies must also pay the amount of any GST payable in respect of the taxable supply on the date that the payment for the taxable supply is due.**

### **11.3 A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a Tax Invoice for the supply to which the payment relates.**

## **12 Intellectual Property**

### **12.1 The title to and ownership of Intellectual Property in all Contract Material will vest immediately upon its creation in the University.**

### **12.2 This Agreement does not affect the ownership of Intellectual Property rights in any Background Intellectual Property.**

### **12.3 To the extent that the University needs to use any of the Consultant's Background Intellectual Property to receive the full benefit of the Services, the Consultant grants to the University a permanent, irrevocable, royalty-free, non-exclusive licence to use, reproduce, publish, adapt and exploit the Consultant's Background Intellectual Property anywhere in the world.**

### **12.4 The Consultant must ensure that all Contract Material is neatly and legibly compiled in a standard software format and contains adequate information to demonstrate the nature and extent of the Services, and to support all conclusions, findings and opinions.**

### **12.5 The Consultant warrants that the Contract Material and the University's use of the Contract Material in accordance with this Agreement, will not infringe the Intellectual Property rights of any person.**

### **12.6 If someone claims, or the University reasonably believes that someone is likely to claim, that all or part of the Contract Material infringes their Intellectual Property rights, the Consultant must, in addition to the indemnity under clause 20 and to any other rights that the University may have against it, promptly, at the Consultant's expense:**

- 12.6.1 use its best efforts to secure the rights for the University to continue to use the affected Contract Material free of any claim or liability for infringement; or
- 12.6.2 replace or modify the affected Contract Material so that the Contract Material or the use of it does not infringe the Intellectual Property rights of any other person without any degradation of the performance or quality of the affected Contract Material.
- 12.7 To the extent permitted by Law, the Consultant unconditionally and irrevocably consents, and will use its best endeavours to ensure that its employees and subcontractors consent, to any act or omission that would otherwise infringe its or their Moral Rights in the Contract Material, including any act or omission that may have taken place before this consent and in particular:
  - 12.7.1 consents to the following acts:
    - (a) any alteration to or deletion from this Contract Material;
    - (b) any use of this Contract Material that does not identify the author;
    - (c) any use of this Contract Material under an organisational banner; and
    - (d) use of the Contract Material in a different context to that originally envisaged, where it is reasonable in the circumstances, but does not include derogatory treatment or false attribution of authorship.
- 12.8 On the earlier of the expiration or termination of this Agreement, or on any date specified in this Agreement for delivery of Contract Material, the Consultant must deliver to the University all Contract Material.
- 12.9 This clause 12 will survive the expiration or termination of this Agreement.

### **13 Confidentiality and Disclosure of Information**

- 13.1 A party, its employees, agents or subcontractors must not disclose or make public any Confidential Information provided by the other party without the prior approval in writing of the other party.
- 13.2 On the earlier of the expiration or termination of this Agreement, the Consultant must deliver to the University (and not retain any copies of) all material forms of Confidential Information provided to the Consultant by the University and allow the University to audit its compliance with this clause.
- 13.3 A party is permitted to disclose any Confidential Information:
  - 13.3.1 to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency having authority over the party;
  - 13.3.2 if required in connection with legal proceedings;
  - 13.3.3 for public accountability reasons, including a request for information by parliament or a parliamentary committee;
  - 13.3.4 for any other reporting requirements of the party; or
  - 13.3.5 to the party's staff and Consultants to the extent required to enable performance of the obligations created by this Agreement.
- 13.4 This clause 13 will survive the expiration or termination of this Agreement.

#### **14 Privacy, Data Breaches, Freedom of Information and NACC**

- 14.1 The Consultant acknowledges that the University is subject to the provisions of the Privacy Act. The Consultant must ensure that its collection, retention, access to, correction, use and security of any Personal Information will be made, as the case may be:
- 14.1.1 only for the purposes of fulfilling its obligations under this Agreement; and
  - 14.1.2 in accordance with the procedures from time to time requested by the University, but otherwise at least in accordance with the Australian Privacy Principles as set out in the Privacy Act, to the extent that the content of those Principles apply to the types of activities the Consultant is undertaking under this Agreement.
- 14.2 The Consultant must:
- 14.2.1 not do any act, or engage in any practice, that would be a breach of the Australian Privacy Principles or the Privacy Act;
  - 14.2.2 not disclose any Personal Information obtained in connection with this Agreement without the written authority of the University and must immediately notify the University where it becomes aware or ought reasonably to have become aware that a disclosure of Personal Information may be required by Law; and
  - 14.2.3 co-operate and comply with any reasonable requests or directions of the University arising directly from or in connection with the exercise or the functions of the Privacy Commissioner under the Privacy Act or otherwise.
- 14.3 The Consultant must ensure that any record as defined in the Privacy Act containing Personal Information provided to or obtained by the Consultant pursuant to this Agreement is, at the expiration or termination of this Agreement, either returned to the University or deleted or destroyed, and if required, in the presence of a person duly authorised by the University to oversee such deletion or destruction.
- 14.4 If the Consultant becomes aware that there are reasonable grounds to suspect a Data Breach has occurred in relation to any Personal Information held by the Consultant as a result of this Agreement or its provision of the Services, the Consultant agrees to:
- 14.4.1 notify the University in writing as soon as possible, which must be no later than within 3 days; and
  - 14.4.2 provide the University with all information requested by the University about the Data Breach;
  - 14.4.3 co-operate and comply with any reasonable requests or directions of the University so that the University can carry out an assessment of the Data Breach in accordance with its obligations under the Privacy Act.
- 14.5 Where the Consultant notifies the University of a Data Breach in accordance with clause 14.4, or where the University notifies the Consultant that there has been a Data Breach in relation to any Personal Information held by the Consultant as a result of this Agreement or its provision of the Services, the Consultant will:
- 14.5.1 take all reasonable action to mitigate the risk of the Data Breach causing serious harm to any of the individuals to whom the compromised information relates;
  - 14.5.2 unless otherwise directed by the University, take all other action necessary to comply with the requirements of the Privacy Act; and
  - 14.5.3 take any other action as reasonably directed by the University.



- 14.6 In the event that the University receives a request under Freedom of Information legislation for access to information created by, or in the possession of, the University that relates to the performance of this Agreement, the Consultant must, if required by the University, immediately assist the University in relation to the request (including by providing any information that it holds to the University).
- 14.7 The Consultant must ensure that each subcontract imposes obligations on the subcontractor equivalent to the obligations under this clause 14.
- 14.8 The Consultant must notify the University as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in this clause 14.
- 14.9 The Consultant acknowledges that in providing the Services to the University under this Agreement, it is a contracted service provided for the purposes of the *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**). The Consultant must comply with any reasonable request, policy or direction issued by the University and otherwise cooperate with the University in relation to any action taken by the University required or authorised by the NACC Act.
- 14.10 This clause 14 will survive the expiration or termination of this Agreement.

## **15 Modern Slavery**

- 15.1 In performing its obligations under this Agreement, the Consultant must:
- 15.1.1 take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in delivery of the Services;
  - 15.1.2 if it becomes aware of any Modern Slavery practices in the operations and supply chains used in its performance of this Agreement, as soon as reasonably practicable:
    - (a) take all reasonable action to address or remove these practices; and
    - (b) promptly notify the University of the Modern Slavery practices and provide any relevant information requested by the University; and
    - (c) provide updates to the University of its progress to address or remove the Modern Slavery practices.
  - 15.1.3 ensure that each of its suppliers and subcontractors complies with the terms of this clause 15;
  - 15.1.4 if requested by the University, provide the University with an annual report in the form specified by the University, setting out the steps it has taken to comply with the requirements of this clause.

## **16 Conflict of Interest**

- 16.1 The Consultant warrants that, at the date of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement which has not already been advised to the University in writing and consented to by the University.
- 16.2 If, during the Term, a conflict, or risk of conflict, of interest arises, the Consultant undertakes to notify the University immediately in writing of that conflict or risk and to take such steps as the University may reasonably require to resolve or deal with the conflict as required. If the Consultant is unable or unwilling to resolve or deal with the conflict as required, the University may terminate this Agreement in accordance with clause 24.

## **17 Conduct on University Premises and Work Health and Safety**

- 17.1 The University must cooperate with the Consultant by providing access to its premises and facilities as reasonably necessary to enable the Consultant to provide the Services.
- 17.2 The Consultant and its employees, subcontractors and agents must, when using the University's premises or facilities,
  - 17.2.1 comply with all statutes, Acts and Regulations and other requirements which relate in any way to the performance of the Services (**WH&S Laws**);
  - 17.2.2 comply with all of the University's reasonable directions, WHS policies and procedures including the actions and responsibilities specified in the relevant section of the Work Health and Safety Management System (WHSMS) Handbook Chapter 3.6 noted in the Contractor Classification item of the Details (made available and accessible on the [ANU Website](#)) and Contractor Work Health and Safety Procedure (made available and accessible on the [ANU Policy Library](#)) in operation at those premises or facilities;
  - 17.2.3 do all things necessary to assist the University in discharging its obligations under the WH&S Laws, and must not do or omit to do anything which would cause the University to breach its obligations under the WH&S Laws;
  - 17.2.4 upon request by the University, promptly provide evidence of all relevant insurance, licences, qualifications and registrations required to provide the Services; and
  - 17.2.5 promptly notify the University of any accident or injury that occurs during the performance of the Services.
- 17.3 The Consultant acknowledges their obligation to notify the University of all incidents as specified in Chapter 3.6 of the WHSMS Handbook. In particular, if a Notifiable Incident occurs in the Consultant's performance of the Agreement or when using the University's premises or facilities, the Consultant must:
  - 17.3.1 immediately notify the University including all relevant details known to the Consultant;
  - 17.3.2 co-operate in the investigation of the Notifiable Incident by the University in accordance with the process set out in Chapter 3.6 WHSMS Handbook; and
  - 17.3.3 investigate the Notifiable Incident as soon as possible to determine its causes and any adverse effects on the Agreement (including risks to health and safety), and take all reasonable steps to remedy any effects on health and safety and to ensure the event or circumstances that led to the Notifiable Incident do not happen again.
- 17.4 The University will determine the classification of the Consultant under the WHSMS Handbook and provide the Consultant with a copy of the section relevant to their classification prior to the Consultant commencing the Services.
- 17.5 The Consultant must ensure that light, power and water consumption arising from performance of the Services are kept to minimum levels without compromising the effectiveness of the Services provided.
- 17.6 The Consultant must ensure that its employees, subcontractors and agents comply with any reasonable security requirements as directed by the University.
- 17.7 The Consultant must ensure that its employees, subcontractors and agents maintain appropriate training, competency, qualification and licences and only assign qualified and competent persons to perform the Services on University premises.

- 17.8 The Consultant acknowledges that the University is a smoke-free campus and that it will comply with University policy in this regard.
- 17.9 The Consultant must ensure that each subcontract imposes obligations on the subcontractor equivalent to the obligations under this clause 17.

## **18 Negation of Employment and Agency**

- 18.1 The Consultant must not represent itself, and must ensure that its employees or agents do not represent themselves, as being employees, partners or agents of the University.
- 18.2 The Consultant will not, by virtue of this Agreement, or for any purpose be deemed to be an employee, partner or agent of the University.

## **19 Audit**

- 19.1 The University, its nominee, the Commonwealth Auditor-General, the Commonwealth Information Commissioner, or a delegate of the Auditor-General or the Information Commissioner, for the purpose of ensuring the proper performance of this Agreement and/or performing the Auditor-General's or the Information Commissioner's statutory functions, may at reasonable times and on giving reasonable notice to the Consultant:
  - 19.1.1 require the provision by the Consultant, its employees, agents or subcontractors of records and information which are related to this Agreement;
  - 19.1.2 have access to the premises of the Consultant for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Consultant, its employees, agents or subcontractors which are related to this Agreement; and
  - 19.1.3 where relevant, inspect the University assets held on the premises of the Consultant.
- 19.2 The Consultant must comply with the University's requests under clause 19 at no additional cost to the University.
- 19.3 The Consultant must promptly take, at no additional cost to the University, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Consultant has under this Agreement:
  - 19.3.1 performed the Services; or
  - 19.3.2 calculated any Fees or any other amounts invoiced to the University.
- 19.4 Clause 19 applies for the Term and for a period of seven (7) years from the date of expiration or termination of this Agreement.

## **20 Indemnity**

- 20.1 Subject to clause 20.2, the Consultant must at all times indemnify the University, its officers, employees, students and agents (**those indemnified**) from and against all Loss or liability whatsoever incurred or suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way:
  - 20.1.1 by any wrongful, unlawful or negligent act or omission of the Consultant, or its officers, employees, agents, subcontractors or invitees in performing the Services in connection with this Agreement;



- 20.1.2 by arising out of an allegation that any Services or Contract Material (including the use of any Contract Material by the University or its employees, agents or subcontractors) infringes the Intellectual Property rights or Moral Rights of the third party; or
- 20.1.3 by any act or omission by the Consultant causing death, personal injury or property damage.
- 20.2 The Consultant's liability to indemnify the University under clause 20.1 will be reduced proportionally to the extent that any wrongful, unlawful or negligent act or omission of the University or its officers, employees or agents caused the Loss or liability.
- 20.3 The University may enforce the indemnity in clause 20.1 in favour of the persons specified in clause 20.1 for the benefit of each of such persons in the name of the University or of such persons.
- 20.4 If payment under an indemnity to the University gives rise to a liability for the University to pay GST, the Consultant must pay and indemnify the University against the amount of such GST.
- 20.5 This clause 20 will survive the expiration or termination of this Agreement.
- 20.6 Notwithstanding this clause 20, the Consultant's total liability for any Loss or liability suffered or incurred by any of those indemnified, whether arising out of or in connection with this Agreement, under statute, in tort (including for negligence) or any other basis in law or equity, is limited to \$20 million.
- 20.7 **Consequential Loss** means any loss, damage or expense recoverable at Law which is:
- (a) indirect, special, incidental, or consequential loss;
  - (b) a loss of opportunity, reputation, or goodwill;
  - (c) a loss of profits, anticipated savings, or business; or
  - (d) a loss of the value of any equipment.
- 20.8 Neither party will be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Agreement for any Consequential Loss, even if such party has been advised of the possibility of such loss or damage.

## **21 Insurance**

- 21.1 The Consultant must, at its own expense, effect and maintain with a reputable insurance company from the date of commencement of this Agreement in the amount specified in Item 7 of Schedule 1:
- 21.1.1 public & products liability insurance;
  - 21.1.2 professional indemnity insurance; and
  - 21.1.3 workers compensation insurance.
- 21.2 Any insurance policies held by the Consultant that provide cover on a 'claims made' basis must be maintained for no less than seven (7) years after the completion of the Agreement. Any insurance policies that provide cover on an 'occurrence' basis must be maintained during the term of this Agreement.
- 21.3 The Consultant must provide evidence without delay of its insurance under clause 21.1 on request by the University.

## **22 Subcontracting**

- 22.1 The Consultant must not subcontract any aspect of the provision of the Services without the prior written approval of the University, which will not be unreasonably withheld.
- 22.2 The Consultant is fully responsible for the performance of the Services even if the Consultant subcontracts any aspect of the provision of the Services.
- 22.3 The Consultant must on request by the University provide the University with the names of any of the Consultant's subcontractors and agrees that the University may, where required, disclose publicly the names of any of the Consultant's subcontractors.

## **23 Termination for Convenience**

- 23.1 The University may, at any time, by written notice, terminate this Agreement in whole or in part.
- 23.2 Upon such notice being given the Consultant must:
  - 23.2.1 cease or reduce work according to the tenor of the notice;
  - 23.2.2 immediately do everything possible to mitigate or minimise any losses resulting from that termination and to protect the Contract Material; and
  - 23.2.3 continue work on any part of the Services not affected by the notice.
- 23.3 If this Agreement is terminated under clause 23.1, the University is liable only for:
  - 23.3.1 payment of Fees for Services performed before the effective date of termination, provided those Services performed have been performed in accordance with this Agreement and the Consultant is not otherwise in breach of this Agreement; and
  - 23.3.2 subject to this clause 23, any reasonable costs (excluding consequential losses including without limitation damage to reputation, loss of profits, loss of revenue, loss of business, loss of data or failure to realise anticipated benefits) in respect of unavoidable Loss sustained or incurred by the Consultant and directly attributable to the termination or partial termination of this Agreement, provided that the costs are fully substantiated to the University. These costs must not exceed total Fees paid under this Agreement up to and including the effective date of termination.
- 23.4 In the event of partial termination, the University's liability to pay the Fees, in the absence of agreement to the contrary, will abate proportionately to the reduction in the Services.

## **24 Termination for Default**

- 24.1 Without limiting any other rights or remedies the University may have against the Consultant arising out of or in connection with this Agreement, the University may, by notice in writing to the Consultant, terminate this Agreement immediately (or at the expiration of a stay period that applies to an Insolvency Event under the Corporations Act) in whole or in part and recover from the Consultant any Loss or damage suffered by the University if:
  - 24.1.1 the Consultant suffers an Insolvency Event;
  - 24.1.2 the Consultant ceases, or threatens to cease, to carry on its business;
  - 24.1.3 the Consultant commits a breach of this Agreement which is not, in the opinion of the University, capable of rectification;

- 24.1.4 the Consultant breaches this Agreement where such breach is, in the opinion of the University, capable of rectification and the Consultant does not rectify the breach within 14 days after receiving a notice from the University requiring rectification;
  - 24.1.5 the Consultant suffers a change in Control where the University (acting reasonably) has not consented to the change in Control; or
  - 24.1.6 a delay or failure of the Consultant to perform its obligations which exceeds 45 days, due to a Force Majeure Event.
- 24.2 Where, before termination of this Agreement under clause 24.1, the University has made any payment in advance to the Consultant for which it has not received Services, the amount of that payment must be repaid by the Consultant to the University immediately on termination and, if not repaid, is recoverable by the University from the Consultant as a debt.
- 24.3 If this Agreement is terminated under this clause 24:
- 24.3.1 subject to this Agreement, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - 24.3.2 the University's rights to recover damages are not affected;
  - 24.3.3 the Consultant must comply with all obligations in this Agreement relating to Contract Material;
  - 24.3.4 in addition to any remedies available, under clause 20, to the University, the Consultant must indemnify the University in respect of any Loss it may incur in procuring similar functions to the Services from another supplier.
- 24.4 On termination of this Agreement, the Consultant must:
- 24.4.1 stop work on the Services;
  - 24.4.2 deal with Contract Material as reasonably directed by the University; and
  - 24.4.3 subject to clause 13.2, return all the University's Confidential Information to the University.

## **25 Dispute Resolution**

- 25.1 A Party must not start court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement unless it has complied with this clause 25.
- 25.2 A Party claiming that a dispute has arisen must notify the other Party giving details of the dispute ('Notification').
- 25.3 On receipt of a Notification, each Party must negotiate in good faith to resolve the dispute and, if necessary to resolve the dispute, involve the relevant senior officers of the Parties directly in those negotiations.
- 25.4 If a dispute is not resolved within 30 days (or longer period agreed between the Parties), the Parties will refer the dispute for mediation by the Australian Disputes Centre Limited ("ADC") for resolution in accordance with the ADC guidelines for commercial mediation.
- 25.5 If a dispute is not resolved under clause 25.4 within 90 days after referral (or longer period agreed between the Parties) a Party may initiate court proceedings.

## **26 Variation of Agreement**

- 26.1 No agreement or understanding that varies or extends this Agreement (including in particular the scope or performance of the Services, or the Fees) will be legally binding upon either party unless in writing and signed by both parties.
- 26.2 This Agreement is the entire agreement between the parties and supersedes all previous correspondence, contracts and arrangements between the parties relating to the Services.

## **27 Applicable Law**

- 27.1 This Agreement will be governed by and construed in accordance with the Law for the time being in force in the Australian Capital Territory and the parties agree to submit to the exclusive jurisdiction of the courts of the Australian Capital Territory.

## **28 Right to Set Off**

- 28.1 The University may deduct from or set off against any other money owing to the Consultant, any money owing by the Consultant to the University under this Agreement.

## **29 Notices**

- 29.1 Notices under this Agreement may be delivered by prepaid postage, by hand, by facsimile or by e-mail transmission to each of the parties at the address listed in Item 8 of Schedule 1.

## **30 Force Majeure Event**

- 30.1 A party (the **non-performing party**) will not be liable to the other party in respect of the consequences of any non-compliance with its obligations under this Agreement (other than an obligation to pay money) if and to the extent such non-compliance is caused by a Force Majeure Event, provided the non-performing party:
- 30.1.1 is without fault in causing the Force Majeure Event or resulting non-compliance;
  - 30.1.2 could not have prevented or reasonably circumvented the Force Majeure Event or resulting non-compliance by taking reasonable precautions, or through the use of alternative sources, work-around plans or other means;
  - 30.1.3 as soon as practicable, notifies the other party of the Force Majeure Event and details of any non-compliance;
  - 30.1.4 continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay; and
  - 30.1.5 keeps the other party informed of steps taken to address the non-compliance.
- 30.2 Without limiting the University's right to terminate pursuant to clause 24.1.6, during any period in which the Consultant is not performing obligations because of a Force Majeure Event, the University:
- 30.2.1 is relieved from the obligation to pay the Consultant to the extent that the Consultant has not performed its obligations in accordance with this Agreement; and
  - 30.2.2 may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation that the Consultant is not performing without incurring any liability to the Consultant.

**31 No Waiver**

- 31.1 Failure by either party to enforce a provision of this Agreement will not be construed as in any way affecting the enforceability of that provision, or the Agreement as a whole.

**32 Assignment and Novation**

- 32.1 The Consultant must not assign in whole or in part or novate the Agreement without obtaining the prior written consent of the University, which may withhold consent at its discretion.

**33 Counterparts**

- 33.1 This Agreement may be signed in any number of counterparts (including electronically signed counterparts) and all such signed counterparts, taken together, shall be deemed to constitute one and the same instrument even though both parties may not have signed each separate counterpart.

EXECUTED AS AN AGREEMENT

SIGNED

for and on behalf of the **Australian National University ABN 52 234 063 906** by an authorised officer in the presence of:

s47F - Public Interest Conditional Exemptions - Personal Privacy

(Signature of witness)

Kiley Robinson

(Printed name of witness)

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(Signature of authorised officer)

Jonathan Churchill

(Printed name of authorised officer)

17/4/2025 | 11:21 AM AEST

Date

SIGNED

for and on behalf of **NOUS GROUP PTY LTD ABN [66 086 210 344]]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

s47F - Public Interest Conditional Exemptions - Personal Privacy

(Signature of witness)

(Printed name of witness)

14<sup>th</sup> April, 2025

Date

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(Signature of authorised representative)

(Printed name of authorised representative)

10<sup>th</sup> April, 2025

Date

## Schedule 1      Contract Details

Item	Description	Details	
1.	<b>Commencement Date</b>	Date following contract execution	
2.	<b>Initial Term</b>	6 Months	
3.	<b>Option Period</b>	6 months	
4.	<b>Contract Managers</b>	<p><u>For the University:</u></p> <p><b>Name:</b> Will Thompson  <b>Position:</b> Transformation Lead  <b>Telephone:</b> <span style="background-color: black; color: red;">b47f - Public Interest Conditional Exemptions - Personal Privacy</span>  <b>Email:</b> <a href="mailto:will.thompson@anu.edu.au">will.thompson@anu.edu.au</a></p> <p><u>For the Consultant:</u></p> <p><b>Name:</b> <span style="background-color: black; color: red;">b47f - Public Interest Conditional Exemptions - Personal Privacy</span>  <b>Position:</b> Principal  <b>Telephone:</b> <span style="background-color: black; color: red;">b47f - Public Interest Conditional Exemptions - Personal Privacy</span>  <b>Email:</b> <span style="background-color: black; color: red;">b47f - Public Interest Conditional Exemptions - Personal Privacy</span></p>	
5.	<b>Specified Personnel</b>	NA	
6.	<b>University Material</b>	Data related to staff positions and their functional work at the University. Data as needed to support the redesign of functions and/or the development of change plans. UniForum data.	
7.	<b>Insurance</b>	<p>Public &amp; products liability insurance in the amount of \$20,000,000 per occurrence and in the aggregate.</p> <p>Professional indemnity insurance in the amount of \$20,000,000 per occurrence and in the aggregate.</p> <p>Workers compensation insurance as required by Law.</p>	
8.	<b>Address for Notices</b>	<p><u>For the University:</u></p> <p><a href="mailto:office.coo@anu.edu.au">office.coo@anu.edu.au</a></p> <p><u>For the Consultant:</u></p> <p><span style="background-color: black; color: red;">b47f - Public Interest Conditional Exemptions - Personal Privacy</span></p>	
9.	<b>Contractor Classification and relevant WHSMS Handbook section (see clause 17)</b>	Contractor Classification	Section of WHSMS Handbook to be provided to Consultant
		NC2	3.6.4.2

## Schedule 2 Services

### 1. Services

Nous will partner with ANU to support Renew ANU outcomes. Services may include:

- Evaluation of current processes and resource allocations to identify possible efficiencies and savings.
- Analysing data to develop a comprehensive, sustainable operating model.
- Ensuring current state to future state proposals and plans are robust, well-documented, and presented in a manner that is accessible to all relevant stakeholders.
- Engaging and consulting with stakeholders, seeking feedback on proposals and providing clear recommendations to address any concerns raised.
- Developing detailed implementation plan including timelines, responsibilities, and communication strategies.
- Establishing a development program to equip executive staff to lead significant organisational change.

### 2. Deliverables

Renew ANU transformation commenced in 2024, with some areas of the organisation well progressed in the process, and others yet to commence.

Specific work packages, resourcing levels, milestones and milestone dates will be agreed between the ANU and Nous contract managers, identified in Schedule 1, as part of the planning process and prior to the commencement of any work package.

Deliverables will comprise any or all of the following and may be specific to a particular functional area or university wide.

	Deliverables
1.	<b>Discovery &amp; Assessment</b> <ul style="list-style-type: none"> <li>• Conduct a current state analysis (business processes, culture, technology, governance).</li> <li>• Identify key pain points, challenges, and opportunities.</li> <li>• Develop project planning and governance documentation such as project plan, risk management plan and progress reporting.</li> </ul>
2.	<b>Vision &amp; Strategy Definition</b> <ul style="list-style-type: none"> <li>• Define transformation goals, objectives, and key performance indicators (KPIs).</li> <li>• Align transformation of functional area with overall Renew ANU strategy.</li> <li>• Develop a high-level roadmap with timelines and dependencies.</li> </ul>
3.	<b>Change Management &amp; Stakeholder Engagement</b> <ul style="list-style-type: none"> <li>• Develop a communication and engagement plan.</li> <li>• Establish leadership alignment and sponsorship.</li> <li>• Identify key stakeholders and change champions.</li> <li>• Deliver change leadership training for ANU leaders.</li> </ul>



	Deliverables
4.	<b>Solution Design &amp; Planning</b> <ul style="list-style-type: none"> <li>• Define future operating model, processes, and workflows.</li> <li>• Assess technology, tools, and resources needed.</li> <li>• Develop a phased implementation plan and risk mitigation strategy.</li> <li>• Gather feedback and refine approach before full rollout.</li> <li>• Address initial roadblocks and ensure early adoption.</li> </ul>
5.	<b>Implementation</b> <ul style="list-style-type: none"> <li>• Execute transformation plans.</li> <li>• Monitor adoption.</li> <li>• Conduct skills gap analysis and training strategy</li> </ul>
6.	<b>Performance Monitoring &amp; Continuous Improvement</b> <ul style="list-style-type: none"> <li>• Conduct post-implementation review and performance assessment.</li> <li>• Capture lessons learned.</li> </ul>

### 3. Performance Criteria (see clause 9)

Nous will endeavour to deliver each work package and milestone as agreed. The University will endeavour to ensure that key personnel and relevant University Material are available in a timely manner to allow achievement of those milestones.

### 4. Progress meetings and Reports

Report/meeting type and purpose	Frequency	Milestone Date/s
Initiation meeting	Once off	Commencement of each work package
Progress meetings	Weekly	Thursday afternoon (or as otherwise agreed)
Forma resourcing review	Fortnightly	Friday morning (or as otherwise agreed)
Close of services	Once off	End of each work package

### Schedule 3 Fees

### 1. Hourly rates

The Consultant's Fees will be calculated in accordance with the following and will not exceed the Maximum Charges in row 4:

[illegible]

## 2. Invoicing requirements

The invoice must be in a form approved by the University and must:

- (a) contain the Consultant's name, address and ABN;
- (b) contain pre-GST amounts, the amount of GST applied and the total price payable by the University;
- (c) contain the contract number, purchase order number or UID provided by the University (if any);
- (d) contain the name of the University Contract Manager;
- (e) contain an itemised list of the Fees payable together with any substantiating material required and a record detailing how the relevant Milestone Dates have been met;
- (f) contain an itemised list of the amount of any allowances and costs to be paid by the University together with any substantiating material required;
- (g) comply with the requirements of the GST law;
- (h) specify the period covered by the invoice; and
- (i) contain any other information reasonably requested by the University from time to time.

### 3. Fees

- (a) The Fees are payable by the University within 30 days of receipt by the University's Contract Manager of a correctly rendered Tax Invoice.
- (b) If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the University to the Consultant under this Agreement.

(c) Unless specified otherwise in this Schedule 3 the Consultant must not charge the University for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Fees. The University is under no obligation to pay any amount in excess of the Fees.

(d) The Consultant will be reimbursed:

(a) Travel expenses (including flights, accommodation, ground transport and incidentals) for senior team members to travel to Canberra at an estimated cost per trip of \$1,100-\$1,400 per person per trip.

Total travel expenses for the 6-month initial term of the contract will not exceed \$40,000.

The Consultant must submit an invoice for those expenses and the University will reimburse the Consultant in accordance with the invoicing procedure set out in this Schedule 3.

