

# Subcontract Agreement

## AGREEMENT DETAILS

**Agreement Date** The date that this Agreement is executed by the last party to it.

<b>UNSW</b>	Name	The University of New South Wales, a body corporate established pursuant to the <i>University of New South Wales Act 1989 (NSW)</i> ( <b>UNSW</b> )	
	Address	UNSW Sydney NSW 2052, Australia	
	ABN	57 195 873 179	
	Attention	Director, Research Grants and Contracts	
	Address	Research Grants and Contracts Level 3, Rupert Myers Building South Wing Gate 14 Barker Street UNSW NSW 2052, Australia	
	Notices & Invoices	Email	<a href="mailto:MyResearch.rgc@unsw.edu.au">MyResearch.rgc@unsw.edu.au</a>
		Phone	+61 2 9065 8491
		Agreement Finance Contact	Associate Director, Research Revenue and Accounting
		Invoice Email	<a href="mailto:researchfinance@unsw.edu.au">researchfinance@unsw.edu.au</a>
		Phone	+61 2 9065 8577
	UNSW Research Grant (RG) Number	_____	

<b>Subcontractor</b>	Name	-----
	Address	-----
	ABN or ACN or other registration number:	-----

Notices

Attention .....

Address

.....  
.....

Email

.....

Phone

.....

**Project**

.....

**Sponsor**

.....

**Head Agreement  
(See the  
Annexure)**

Head Agreement title:

.....

Date of Head  
Agreement:

.....

Parties to  
Head Agreement:

.....

**Fee**

**Date Due/Milestone**

**Fee in**

**(GST exclusive)**

.....

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.....

.....

.....

.....

**Subtotal**

**GST**

**Total**

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**Commencement Date**      The Agreement Date **OR**

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**Completion Date**

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**Subcontract Services**

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**Deliverables and Due Dates**

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**Key Personnel**

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**Insurance**

Workers compensation insurance in accordance with applicable law and awards;  
Public liability insurance appropriate to the party's activities for an amount not less than \$10 million; and

Professional indemnity insurance for an amount not less than \$5 million in respect of a claim for breach of professional duty whether incurred in contract, tort or otherwise or by reason of any act or omission of the party.

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**Background IP**      UNSW

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Subcontractor

# EXECUTION

## Executed as an Agreement

**Signed for and on behalf of UNSW by its authorised representative:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Position

**Signed for and on behalf of \_\_\_\_\_ by its authorised representative:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Position

# GENERAL TERMS

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Agreement, the following capitalised words have the following meaning:

**Background IP** means all Intellectual Property Rights owned or controlled by a party at the Commencement Date or subsequent to that date but independently of this Agreement, which they have made available to the other party for use in relation to performance of the Subcontract Services under this Agreement, including any Background IP described in the Agreement Details.

**Confidential Information** means any information disclosed by a party (**Discloser**) to the other party (**Receiving Party**) or which the Receiving Party otherwise becomes aware of during the Term or before the Commencement Date, that is:

- (a) imparted in circumstances of confidence, or
- (b) by its nature reasonably to be considered the confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence,

**GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).

**Head Agreement** means the agreement between UNSW and the Sponsor, detailed in the Agreement Details, a copy of which is attached to this Agreement in the Annexure.

**Insolvency Event** means, with respect to a party:

- (a) a liquidator is appointed to the party;
- (b) the party applies to be voluntarily deregistered;
- (c) the party resolves to wind itself up; or
- (d) the party receives a notice from the Australian Securities and Investments Commission (or equivalent authorities in the country where the Subcontractor is based) that it is to be deregistered, unless the deregistration process is stopped within one month after that notice.

**Intellectual Property Rights** means any inventions, patents, trade marks, service marks, design rights, database rights (whether registered or otherwise) and any applications, renewals and extensions for these, copyright, know-how, trade or business names and all other intellectual or industrial property rights anywhere in the world, whether or not registered or capable of registration and any associated goodwill and the right to have confidential information kept confidential.

**Loss** means liabilities, expenses, charges, claims, losses, damages and costs (including legal cost on a full indemnity basis) whether incurred by or awarded against a party.

**Personnel** means any employee, officer, principal, agent, contractor, student or volunteer of a party.

**PID Act** means the *Public Interest Disclosures Act 2022* (NSW).

**Privacy Laws** means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth) and laws, principles, codes and policies relating to the collection, use, disclosure, storage and access to Personal Information in the jurisdiction where a party is located.

**Project** means the project for which the Sponsor has engaged UNSW, the details of which are set out in the Agreement Details.

**Project IP** means Intellectual Property Rights arising from or developed in the course of the Project by the parties, or the employees, contractors, officers, agents or in the case of a university party, by students, of any party.

**Student** means any student who is enrolled at UNSW and engaged in the Project.

**Subcontract Services** means the part of the Project to be performed by the Subcontractor as set out in the Agreement Details.

### 1.2 Rules for interpreting this Agreement

Unless the context requires otherwise:

- (a) Reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person includes a body corporate;
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
  - (v) dollars means Australian dollars unless otherwise stated, and
  - (vi) a statute, regulation, ordinance or by-law (**Law**) will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that Law from time to time.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

- (e) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day; and
- (f) A reference to a term in the Agreement Details which is not separately defined has the meaning specified in the Agreement Details.

## 2 General Obligations of the Subcontractor

### 2.1 Scope of Subcontract Services

The Subcontractor must perform:

- (a) the Subcontract Services specified in the Agreement Details; and
- (b) any other services not specified in the Agreement Details but which are reasonably related or incidental to the proper performance of Subcontract Services specified in 2.1(a),

in accordance with the timeframes specified in the Agreement Details.

### 2.2 Subcontractor Obligations

- (a) The Subcontractor must comply with any requirements specified in Schedule 1 – Special Conditions.
- (b) The Subcontractor must provide the Deliverables by the dates and in accordance with requirements specified in the Agreement Details.

### 2.3 Specified Personnel

- (a) If the Agreement Details specifies that the Subcontractor must perform the Subcontract Services using Key Personnel, the Subcontractor must ensure that the Subcontract Services are performed by the Key Personnel.
- (b) The Subcontractor must:
  - (i) immediately notify UNSW if any Key Personnel are unavailable to perform the Subcontract Services; and
  - (ii) use its best efforts to find a suitable replacement that is acceptable to UNSW within 30 days.
- (c) If the Subcontractor is unable to provide replacement Key Personnel acceptable to UNSW within 30 days, UNSW may terminate this Agreement by notice in writing.

### 2.4 Standard of Performance

The Subcontractor must carry out the Subcontract Services:

- (a) to the same standards of performance that are specified in the Head Agreement as being applicable to the Subcontract Services to be performed under the Head Agreement, but and in any event, to no less than a standard of diligence, skill and care exercised by duly

qualified and experienced persons in the performance of comparable services;

- (b) in accordance with all applicable laws and regulations, relevant ethical approvals and applicable codes for the responsible conduct of research;
- (c) in a manner that is fit for the purposes described in the Agreement Details; and
- (d) in accordance with the reasonable directions of UNSW Personnel and, whilst on UNSW's premises, UNSW's security and personnel policies.

### 2.5 Relationship with Sponsor

The Subcontractor agrees not to contact the Sponsor directly or follow the directions of the Sponsor without the prior approval of UNSW.

## 3 Head Agreement Terms

- (a) Subject to clause 3(f) below, the parties acknowledge that, although the Subcontractor is not a party to the Head Agreement, the provisions of the Head Agreement must be read with this Agreement.
- (b) Subject to clause 3(g) below, the terms of the Head Agreement are incorporated into this Agreement and they apply to the Subcontract Services as if they were reproduced in full within this Agreement and a reference in the Head Agreement to: (i) UNSW, will be read as a reference to the Subcontractor; and (ii) the Sponsor, will be read as a reference to UNSW.
- (c) The conditions, warranties, obligations and indemnities that apply under the Head Agreement in respect of the Subcontract Services or the use of, or access to, any Sponsor provided resources, property or materials will be binding on the Subcontractor in connection with the Subcontract Services provided under this Agreement.
- (d) If there is any inconsistency between the terms of this Agreement, the order of priority for the purposes of construction will be (with highest to lowest):
  - (i) the terms of the Head Agreement that are incorporated by reference in accordance with clause 3(b);
  - (ii) any Special Conditions set out in the Agreement Details or Schedule 1;
  - (iii) these General Terms; and
  - (iv) the Agreement Details and any document attached to or referred to in the Agreement Details.
- (e) In performing the Subcontract Services, the Subcontractor must do all things necessary to enable UNSW to comply with and give full effect to all of its obligations under the Head Agreement and must not do anything which

would cause UNSW to be in breach of the Head Agreement.

- (f) If the Head Agreement imposes an obligation on UNSW to do something within a certain time frame (such as attend a meeting or provide a report) or the Head Agreement gives the Sponsor a right to do something by giving a notice, the corresponding time obligation on the Subcontractor or notice period will be construed as being 2 days less in order for UNSW to be able to comply with its obligations under the Head Agreement.
- (g) The parties may specify in the Special Conditions any terms of the Head Agreement which do not apply to the Subcontractor and which are not incorporated into this Agreement.

#### **4 Fee**

##### **4.1 UNSW to pay**

- (a) UNSW agrees to pay the Subcontractor the Fees specified in the Agreement Details in accordance with the due dates and milestones specified. The Subcontractor may invoice UNSW (addressed to the UNSW Financial Contact identified in UNSW's Details) for the Fee at the times specified in the Agreement Details and UNSW will pay each validly issued invoice within 30 days of the end of the month in which the invoice was received.
- (b) The Fee due to the Subcontractor is contingent upon UNSW receiving sufficient payments from the Sponsor under the Head Agreement to enable UNSW to pay the Subcontractor. UNSW is not liable to make payments to the Subcontractor unless:
  - (i) the funds received under the Head Agreement are sufficient for UNSW to meet its liabilities to all subcontractors as those liabilities fall due; and
  - (ii) the Sponsor is up to date in the performance of its payment obligations under the Head Agreement.
- (c) The Fee is all inclusive and unless specified in the Agreement Details, UNSW will not be liable to pay any additional expenses, overheads or other amounts to the Subcontractor.

##### **4.2 Taxes**

- (a) Unless otherwise stated in the Agreement Details, all fees, charges and expenses payable by UNSW under this Agreement are exclusive of GST but inclusive of any other applicable taxes, duties, imposts and other similar charges payable in respect of the Subcontract Services.
- (b) If GST is payable on any supply made by UNSW under this Agreement, UNSW will pay to Subcontractor, an additional amount equivalent to the GST at the time payment to UNSW is due.

## **5 Intellectual Property and Public Statements**

### **5.1 Project IP**

- (a) All right, title and interest in and to the Project IP will vest solely in UNSW with effect from the date of creation, who may be required to license or assign that Project IP to the Sponsor under the terms of the Head Agreement. The Subcontractor agrees to do all things reasonably necessary (including executing any documents) to ensure that ownership of the Project IP vests in accordance with this clause and the Head Agreement.

### **5.2 Background IP**

If any Background IP of the Subcontractor is provided for the purposes of the Subcontract Services or incorporated into the Deliverables, the Subcontractor grants UNSW:

- (a) a world-wide, royalty and licence fee free, non-exclusive licence to use, reproduce, adapt, modify and communicate that Background IP:
  - (i) during the Term for the purposes of the Project; and
  - (ii) on a perpetual basis, to the extent necessary to enable UNSW to continue to use the Project IP and Deliverables for the purposes contemplated by this Agreement, after the expiry of this Agreement; and
- (b) a right to sub-licence that Background IP to the Sponsor to the extent UNSW is required to do so to fulfil its obligations under the Head Agreement.

### **5.3 Public Statements**

The Subcontractor must not make any public statement about the Project, this Agreement or the relationships between UNSW, the Subcontractor and the Sponsor without first obtaining the prior written consent of UNSW (and the Subcontractor acknowledges that UNSW may be required to obtain the approval of the Sponsor).

## **6 Confidentiality**

### **6.1 Confidentiality Obligations**

Both parties must and must ensure their Personnel (except as may be required by law or with the other party's prior written consent):

- (a) keep secure and maintain the confidentiality of any Confidential Information of the other party;
- (b) refrain from using or directly or indirectly disclosing any Confidential Information of the other party, or attempting to do so, except to the extent necessary to perform the Subcontract Services, and

- (c) not disclose the other party's Confidential Information to any third party.

## 6.2 Consequences of expiry or termination

- (a) The Receiving Party must cease all use of and return to the Discloser, or on the Discloser's instruction, destroy all Confidential Information on expiration or termination of this Agreement.
- (b) Despite clause 6.2(a), the Receiving Party may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):
  - (i) to fulfil legal, regulatory or reporting obligations;
  - (ii) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by law, and
  - (iii) provided the Receiving Party maintains the confidentiality of the Confidential Information in accordance with clause 6.

## 6.3 Duration of obligations

The parties must comply with the confidentiality obligations under this clause 6 until the later of: (a) the expiry of the Term; or (b) the date 5 years from the Commencement Date.

## 7 Privacy

Both parties agree to:

- (a) comply with the relevant Privacy Laws;
- (b) not do anything with any personal information it receives or holds that will cause the other party to be in breach of any Privacy Laws; and
- (c) to assist and co-operate with the other party in resolving any complaints made under any Privacy Laws.

## 8 Public Interest Disclosures

- 8.1 In this clause 8 (Public Interest Disclosures), words and expressions:
  - (a) which are not defined in this Agreement, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act; and
  - (b) which are defined in this Agreement but, by such a definition, are given a different meaning in other clauses of this Agreement to the meaning given in the PID Act, take the same meaning as in the PID Act in this clause.
- 8.2 The Subcontractor must ensure that all individuals involved in providing services under this Agreement are made aware of the following:
  - (a) that those individuals are public officials for the purposes of the PID Act;

- (b) UNSW's Public Interest Disclosure Policy, available at <https://www.unsw.edu.au/governance/policy/browse-a-z>;

- (c) That the above policy describes how to make a voluntary public interest disclosure (as described in such policy); and
- (d) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Act or law.

8.3 The Subcontractor must notify UNSW of a voluntary public interest disclosure of which the Subcontractor becomes aware where either:

- (a) the disclosure relates to UNSW; or
- (b) the maker of the disclosure is known to be a public official associated with UNSW.

8.4 The Subcontractor must notify UNSW of serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Agreement.

8.5 The Subcontractor must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of UNSW or any other UNSW (as defined in the PID Act).

8.6 The Subcontractor acknowledges that:

- (a) UNSW has an obligation to take corrective action under section 66 of the PID Act; and
- (b) UNSW has a right to terminate the Agreement in response to a finding of serious wrongdoing or other misconduct involving the Subcontractor or an individual providing services under this Agreement.

8.7 The Parties acknowledge that the regulations made under the PID Act may make further provision about terms that must, or must not, be included in an UNSW service contract or a class of UNSW service contracts.

## 9 GIPA Right of Access to Information

9.1 This clause 9 applies only where the Subcontractor is to provide services to the public on behalf of UNSW under the Agreement.

9.2 If this clause applies:

- (a) the Subcontractor must, within 7 days of receiving a written request by UNSW, provide UNSW with immediate access to the following information contained in records held by the Subcontractor:
  - (i) information that relates directly to the performance of the Services provided to



UNSW by the Subcontractor pursuant to the Agreement;

- (ii) information collected by the Subcontractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Agreement; and
- (iii) information received by the Subcontractor from UNSW to enable it to provide the Services pursuant to the Agreement.

9.3 For the purposes of sub-clause 9.2(a), information does not include:

- (a) information that discloses or would tend to disclose the Subcontractor's financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that the Subcontractor is prohibited from disclosing to UNSW by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to UNSW, could reasonably be expected to place the Subcontractor at a substantial commercial disadvantage in relation to UNSW, whether at present or in the future.

9.4 The Subcontractor will provide copies of any of the information in sub-clause 9.2(a), as requested by UNSW, at the Subcontractor's own expense.

9.5 Any failure by the Subcontractor to comply with any request pursuant to sub clause 9.2(a) or 9.4 will be considered a breach of an essential term and will allow UNSW to terminate the Agreement by providing notice in writing of its intention to do so with the termination to take effect 7 days after receipt of the notice. Once the Subcontractor receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of UNSW, then the termination will take effect 7 days after receipt of the notice.

## 10 Risk Management

10.1 Insurance

- (a) The Subcontractor must take out, maintain and keep current, at its own expense the insurances specified in the Head Agreement and any additional insurances specified in the Agreement Details.
- (b) If requested by UNSW, the Subcontractor must provide to UNSW a copy of the certificate of currency for the insurance policies required to be held under this Agreement.

10.2 Indemnity

- (a) The Subcontractor indemnifies UNSW and its Personnel against all Loss, where such Loss was caused by a wilful, unlawful or negligent act

or omission of the Subcontractor, or its Personnel in connection with this Agreement.

- (b) The Subcontractor's liability to indemnify UNSW and its Personnel under this Agreement will be reduced proportionally to the extent that any negligent act or omission of UNSW or its Personnel caused or contributed to the Loss.

## 11 Term and Termination

11.1 Term

This Agreement commences on the Commencement Date and ends on the Completion Date (**Term**), unless the Agreement is terminated in accordance with this clause 11.

11.2 Head Agreement

If the Head Agreement is terminated for any reason, UNSW may terminate this Agreement immediately by written notice to the Subcontractor.

11.3 Reasons for termination

A party may terminate this Agreement by written notice to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party commits a breach of this Agreement which is capable of remedy, and fails to remedy that breach within thirty (30) days from the date the first party notifies the Defaulting Party of the breach;
- (b) the Defaulting Party defaults in the performance of any of its material obligations under this Agreement, which is not capable of remedy; or
- (c) the Defaulting Party suffers an Insolvency Event.

11.4 Termination for convenience

- (a) Either party may terminate this Agreement with 30 days written notice to the other party (**Non-terminating Party**).
- (b) On receipt of notice for termination under clauses 11.2 or 11.4:
  - (i) the Subcontractor must cease all work related to the Project. UNSW will pay the Subcontractor for any work undertaken in relation to the Project up to the effective date of termination, which will not exceed an amount equivalent to the Fee, and
  - (ii) a Non-terminating Party will be entitled to payment of any reasonable costs incurred by it as a direct result of the termination.

11.5 Consequences of termination

If this Agreement is terminated for any reason or on expiry of this Agreement, unless otherwise specified:

- (a) the Subcontractor must return any unspent funds to UNSW, and
- (b) a party must return or if requested delete or destroy all property of the other party in their

possession or control, including Background IP and Confidential Information.

## 12 General

### 12.1 Assignment

A party must not assign, novate, or otherwise deal with its rights under this Agreement without the prior written consent of the other party except that UNSW may assign its rights and obligations in whole or in part under this Agreement to its Nominee by written notice to the Subcontractor.

### 12.2 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary to give full effect to this Agreement.

### 12.3 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary between the parties.

### 12.4 Entire Agreement

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and supersedes any prior agreement or understanding on anything connected with that subject matter.

### 12.5 Waiver

The failure by a party to require performance of an obligation under this Agreement by the other party will not operate as a waiver of the obligation and the other party remains liable to perform all its obligations under this Agreement.

### 12.6 Variation

Any variation to this Agreement is not valid unless it is in writing and signed by each party.

### 12.7 Severability

Any term of this Agreement which is wholly or partially unenforceable, illegal or void is severed to the extent that it is void or unenforceable, and the rest of this Agreement is not affected and remains in force.

### 12.8 Survival

Any clause that expressly or by implication continues after termination or expiration of this Agreement, will survive termination or expiry.

### 12.9 Counterparts

This Agreement may be executed in any number of counterparts each of which may be executed electronically or in handwriting and will be deemed an original whether kept in electronic or paper form. All counterparts together constitute one agreement.

### 12.10 Governing law and jurisdiction

The Laws of New South Wales, Australia governs this Agreement and the parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

## Schedule 1 Special Conditions

### 1 The Subcontractor must:

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- (a) spend the Fee only for the purpose of the Project;
- (b) return unspent funds to UNSW at the conclusion of the Project; and
- (c) provide a financial acquittal 30 days after the conclusion of the Project.

### 2 Australia's Foreign Relations (State and Territory Arrangements) Act 2020

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- 2.1 Unless otherwise indicated, the terms used in this special condition 2 of Schedule 1 have the meaning given to them in Australia's Foreign Relations (State and Territory Arrangements) Act 2020 (the **Act**).
- 2.2 If UNSW reasonably determines that this Agreement is a "subsidiary arrangement" under the Act, then notwithstanding any other provision of this Agreement:
- (a) UNSW may give a notice in respect of this Agreement (and any other arrangement contemplated by this Agreement) to the Minister under the Act, and as a result information about this Agreement will appear on a publicly available Register;
  - (b) If (whether or not UNSW has notified the Minister of this Agreement) the Minister makes a declaration under the Act in respect of this Agreement:
    - (i) UNSW may take all actions which UNSW reasonably determines to be necessary to ensure UNSW's compliance with the Act and with the declaration made under the Act (including ceasing to perform this Agreement in whole or in part); and
    - (ii) the Subcontractor must, at its own cost, promptly cooperate with UNSW to do all things reasonably necessary to give effect to the declaration and to the actions taken by UNSW as referred to in paragraph (b)(i) including, without limitation, negotiating in good faith with UNSW to enter into a variation required by the declaration; and
  - (c) UNSW will not be in breach of this Agreement and will not have any liability to the Subcontractor or to any other person claiming through the Subcontractor as a result of any actions referred to in paragraph (b)(i) or otherwise as a result of the declaration, including any failure to fulfill its obligations under this Agreement as a result of the declaration, and the Subcontractor releases and discharges UNSW (and its officers, employees and agents) from any liability in connection with, the actions taken by UNSW to comply with the Act.
- 2.3 The parties acknowledge and agree that if it is proposed to vary this Agreement, the above provisions will apply equally to the variation, as if references above to "this Agreement" were references to the variation agreement.

## Schedule 2 Subcontract Services

SAMPLE

**Annexure – Head Agreement**

SAMPLE