PANEL AGREEMENT FOR SUPPLY OF TRAVEL SERVICES

between

ROYAL MELBOURNE INSTITUTE OF TECHNOLOGY
ABN 49 781 030 034

and

***
ABN ***

File No: 6700
PANEL AGREEMENT FOR THE SUPPLY OF TRAVEL SERVICES

THIS AGREEMENT is made the day of 20 .

BETWEEN

ROYAL MELBOURNE INSTITUTE OF TECHNOLOGY ABN 49 781 030 034 of 124 La Trobe Street, Melbourne (“RMIT”)

AND

The party described in Item 1 as the Contractor (“the Contractor”)

AND

The party described in Item 2 as the Guarantor (“the Guarantor”)

RECITALS:

A. The Contractor is a provider of travel and related services.

B. RMIT issued a Request for Tender for the supply of travel and related services from time to time by a panel of service providers.

C. The Contractor submitted a Tender Response. RMIT has appointed the Contractor as a preferred supplier of Travel Services to RMIT.

D. The parties have agreed to execute this agreement to confirm the basis upon which Travel Services are supplied to RMIT by the Contractor.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement (including the Recitals, any Schedules and Annexures) unless the context otherwise requires:

“Annexure” means an annexure to this agreement.

“Background IP” means any pre-existing or independently developed Intellectual Property provided by the Contractor for the provision of the Travel Services and which is also identified in Item 10.

“Commencement Date” means the date described in Item 3.

“Confidential Information” in respect of RMIT means all Information submitted or disclosed by RMIT to the Contractor at any time in connection with the
subject matter of this agreement (including during negotiations, discussions and meetings) and includes without limitation:

(a) Information which at the time of disclosure by RMIT is identified as being confidential;

(b) Information which is by its nature confidential;

(c) Information which the Contractor knows or ought reasonably be expected to know is confidential;

but does not include Information which:

- is in or becomes part of the public domain otherwise than as a result of a breach of the terms of this agreement or any other obligations of confidentiality owed by the Contractor;

- prior to disclosure by RMIT was lawfully known to the Contractor and in respect of which the Contractor is not bound by any other obligations of confidentiality; or

- is required by law to be disclosed.

“Contract Material” means all material brought into existence as part of, or for the purposes of performing the Travel Services including, but not limited to documents, reports, equipment, information, data stored by any means, and the material detailed in the Specifications.

“Contractor Representative” means the person appointed by the Contractor to be its principal point of contact with RMIT for the purposes of this agreement.

“Contract Supervisor” means the person appointed from time to time by RMIT and notified to the Contractor as the person responsible for supervising performance of this agreement on behalf of RMIT.

“Delivery Date” means the date or period for the delivery of the Travel Services as specified in an Order.

“Event of Default” has the meaning given to it in clause 14.

“Event of Insolvency” means if any one or more of the following events occurs:

(a) a party disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

(b) a party ceases to carry on business;

(c) a party ceases to be able to pay its debts as they become due;

(d) a party, being a company, has steps taken to appoint a liquidator, receiver, manager, controller or administrator (as those terms are defined in the Corporations Act 2001) over the party or any part of its undertaking, property or assets; or
(e) a party, being an individual, enters into a scheme of arrangement with creditors, commits an act of bankruptcy or becomes a bankrupt, or become incapable of managing the party’s own affairs.

“Expiry Date” means the date described in Item 4.

“Fees” means the fees and charges payable by RMIT in respect of a particular Order, based on or calculated in the manner set out in the Specifications.

“GST” means any tax imposed under the GST Act.

“GST Act” means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended and includes any Act of Parliament of Australia which imposes or deals with GST.

“Guarantor” means the party referred to in Item 2.

“Information” means information, inventions and ideas, which may be oral, written, recorded or stored in a machine readable form.

“Intellectual Property” means all intellectual and industrial property rights, including without limitation:

(a) patents, copyright, rights in circuit layouts, plant breeder’s rights, registered designs, trade marks and the right to have confidential information kept confidential; and

(b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

“Item” means an item of the Schedule.

“Key Personnel” means those persons described in Item 5 and such other persons as mutually agreed.

“Order” means an agreement between the parties for the supply of Travel Services in accordance with the procedures set out herein whether made in writing or orally by RMIT.

“Panel” means the panel of preferred suppliers established by RMIT to provide Travel Services.

“party” means a party to this agreement.

“Personal Information” has the meaning given in the Information Privacy Act 2000 (Vic).

“Privacy Legislation” means any legislation applicable to the Contractor, which affects privacy or any Personal Information (including the collection, storage, use or processing of such information) including, without limitation:

(c) the Information Privacy Act 2000 (Vic); and

(d) any codes of conduct, directives, principles, policy papers or orders made or issued under such legislation.
“Request for Tender” means the request for tender titled # and issued on # 2011 and includes all addendums, amendments and clarifications issued by RMIT.

“RMIT Data” means all data and information (including Personal Information) relating to RMIT, its operations, facilities, RMITs, students, Personnel, assets, programs and other commercial, financial, technical and strategic information, of which the Contractor becomes aware through its provision of the Services under this agreement.

“RMIT Material” means any Confidential Information, Intellectual Property or other material provided by RMIT to the Contractor for the purposes of this agreement including, but not limited to, documents, equipment, information and data stored by any means.

“RMIT’S Business Hours” means the normal hours during which RMIT is open for business, as specified in Item 6 of the Schedule.

“RMIT Travel Policy, Procedures and Guidelines” means RMIT’s Travel Policy, Procedures and Guidelines as published from time to time.

“Schedule” means the schedule to this agreement.

“Service Levels” means the standards of service that the Contractor must achieve in providing the Travel Services to RMIT and specified in Annexure “B”.

“Specifications” means the specifications for provision of the Travel Services as contained in Annexure “A”.

“Tender Response” means the response submitted by the Contractor to the Request for Tender”.

“Term” means the period of this agreement commencing on Commencement Date and ending on Expiry Date.

“Travel Services” means the services described in the Specifications.

1.2 Interpretation

In this agreement (including the Recitals and any Annexures or Schedules) unless the context otherwise requires:

(a) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(b) if any party to this agreement comprises two or more persons then the obligations of those persons are joint and several;

(c) a provision of this agreement which is in favour of two or more persons is for the benefit of them jointly and severally;

(d) a reference to any party includes that party’s legal representatives and if any party is a corporation a reference to that party includes its successors and assigns;
(e) a reference to a person includes a natural person, partnership, a body corporate, an unincorporated association, a governmental or local authority or other entity;

(f) words denoting the singular number include the plural and vice versa and words importing one gender include the other gender;

(g) references to “$” and “dollars” are to Australian currency;

(h) unless otherwise provided in this document a party which acts as a trustee of a trust or trusts executes this document both in its own right and as trustee of that trust or trusts and in so doing is not acting in breach of trust.

2. TERM OF AGREEMENT

2.1 The Term of this agreement begins on Commencement Date and ends on the Expiry Date, unless extended or terminated earlier due to default.

2.2 RMIT may in its absolute discretion, at any time prior to the date that is 30 days before the end of the initial Term by notice in writing to the Contractor, extend the initial Term for a further period of one year, on the terms and conditions then in effect. Any extension in accordance with this clause 2.2 take effect from the end of the initial Term.

3. SCOPE OF AGREEMENT

3.1 The Contractor is appointed as a member of the Panel and a preferred supplier of Travel Services during the Term.

3.2 For the duration of this Agreement, the Contractor must supply Travel Services to RMIT in response to Orders in the manner specified in this agreement.

3.3 Notwithstanding anything else contained in this agreement, RMIT does not warrant that any Orders will be placed with the Contractor during the term of this agreement.

3.4 RMIT may engage any other party for the supply of Travel Services. Without limiting the foregoing, RMIT expressly reserves the right to utilise, at its sole discretion, a party other than the Contractor for the supply of Travel Services in any instance.

3.5 RMIT may appoint any other parties to the Panel at any time during the term of this agreement.

4. ORDERING PROCEDURE

4.1 If RMIT wishes to acquire Travel Services, it may place an Order with the Contractor for the supply of the requisite Travel Services.

4.2 RMIT may seek quotations from other contractors or from any other party in any instance and is not obliged to accept any quotation given by the Contractor.

4.3 The Contractor must comply with the requirements of the Order.
4.4 Except where the Contractor incurs a penalty imposed by a third party, RMIT may cancel the Order without liability at any time prior to delivery of the Travel Services.

4.5 The supply of Travel Services pursuant to an Order must comply with the delivery requirements as specified in this agreement.

5. TRAVEL SERVICES SPECIFICATIONS

5.1 The Travel Services must at all times and for all purposes relevant to this agreement conform with the Specifications.

5.2 No substitution or modification of the Travel Services or any component of the Travel Services may be made by the Contractor prior to provision without the prior written consent of RMIT.

6. GENERAL SERVICE OBLIGATIONS

6.1 The Contractor must perform the Travel Services to a high standard within the timeframes and during the hours required by the Specifications and the Service Levels.

6.2 As part of provision of the Travel Services, the Contractor must prepare any Contract Material required.

6.3 The Contractor warrants that:

   (a) it has fully informed itself on all aspects of the work required for performance of the Travel Services; and

   (b) it is able to provide the Travel Services in accordance with this agreement.

6.4 The Contractor must use all due care and skill when performing the Travel Services.

7. CONTRACTOR'S WARRANTIES

7.1 The Contractor represents and warrants that:

   (a) all representation and warranties made by it in the Tender Response are true and correct;

   (b) it has the right to enter into this agreement; and

   (c) it has all rights, title, licences, interests and property necessary to lawfully perform its obligations under this agreement.

7.2 The Contractor represents and warrants that:

   (a) it and its subcontractors and personnel, including its Key Personnel, have the necessary experience, skill, knowledge and competence to perform its obligations under this agreement; and
7.3 The warranties in this clause 7 are given with effect from the Commencement Date and at all times during the Term.

8. FEES

8.1 RMIT is entitled to the benefit of any decrease in the Contractor’s standard price list for the Travel Services during the term of this agreement if and to the extent that such decrease results in a standard price for the Travel Services which is lower than the price as specified in the Specifications.

8.2 Any decrease in pricing pursuant to clause 8.1 must have no effect in respect of items of Travel Services which have already been the subject of an Order.

8.3 Except to the extent otherwise provided in this agreement, the Fees must be the total amount payable by RMIT. Without limiting the foregoing, no additional charges will be made on the account of new or existing or increased government levies or charges including customs duty, sales tax, freight handling or clearing costs.

8.4 RMIT is not required to reimburse the Contractor for travelling, accommodation and other out-of-pocket expenses incurred in performing the Travel Services unless RMIT agrees in writing to do so.

8.5 Prior to payment of the Fees the Contractor must provide RMIT with an invoice which clearly details the Travel Services which have been performed to date.

9. PAYMENT

9.1 Subject to clause 9.2, RMIT must pay the Fees on the terms specified in the Specifications.

9.2 Where the Travel Services are delivered pursuant to an invoice payment must not be due until RMIT receives a correctly rendered invoice. An invoice is correctly rendered if:

(a) the specified amount is correctly calculated and due for payment;

(b) the invoice is set out in a manner that enables RMIT to ascertain the goods or services to which the invoice relates and the Fees payable in respect of those goods or services;

(c) the invoice is accompanied (where necessary or where reasonably requested by RMIT) by verifying documentation; and

(d) the invoice is addressed as specified by RMIT from time to time.

10. GST

10.1 For the purposes of this agreement, where the expression “GST inclusive” is used in relation to an amount payable or other consideration to be provided for a
supply under this agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

10.2 All Fees, unless specifically described in this agreement as “GST exclusive”, include an amount on account of GST.

10.3 Despite any other provision in this agreement, if a party (“Supplier”) makes a supply under or in connection with this agreement in respect of which GST is payable (not being a supply the consideration for which is GST inclusive for the purposes of this agreement), the consideration payable or to be provided for that supply under this agreement but for the application of this clause is increased by, and the recipient of the supply (“Recipient”) must pay to the Supplier, an amount equal to the GST payable by the Supplier on the supply (“GST Amount”).

10.4 If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

10.5 Tax invoice

The Recipient need not make a payment for a taxable supply made under or in connection with this agreement in respect of a taxable supply until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

10.6 The Contractor warrants and agrees that the Contractor is registered for GST purposes.

11. CONTRACTOR’S DUTIES

11.1 The Contractor must:

(a) ensure that the Key Personnel perform the Travel Services in accordance with this agreement;

(b) notify RMIT immediately where Key Personnel are unable to perform the Travel Services and, if asked by RMIT, provide replacement personnel acceptable to RMIT;

(c) promptly arrange for the removal of any personnel (including Key Personnel) whom RMIT may decide, in its absolute discretion, are unacceptable to RMIT, and promptly replace with personnel acceptable to RMIT (it being acknowledged that if the Contractor is unable to provide acceptable replacement personnel in these circumstances, RMIT may terminate this agreement under clause 14.2);

(d) liaise with and report to the Contract Supervisor when asked by the Contract Supervisor;

(e) effect and maintain public liability insurance, professional indemnity insurance, product liability insurance and insurance against liability in relation to workers compensation for amounts of not less than amounts set out in Item 7;
(f) provide RMIT with a copy of any policy of insurance or certificate of currency promptly when asked;

(g) when using RMIT’s premises or facilities, comply with all RMIT’s security regulations, policies and procedures;

(h) at all reasonable times give to the Contract Supervisor or to any persons authorised in writing by RMIT access to premises occupied by the Contractor and permit those persons to inspect the performance of the Travel Services and any of RMIT Material, Contract Material, or other material relevant to the Travel Services;

(i) remain responsible for the performance of the Travel Services despite sub-contracting the performance of any part of the Travel Services;

(j) on the expiration of the Term or earlier termination of this agreement, deliver to RMIT all Contract Material, transfer to RMIT any Intellectual Property and return to RMIT all of the RMIT Material;

(k) ensure that the Contract Material and the RMIT Material are used or copied only for the purposes of providing the Travel Services and that all copies are destroyed or erased upon completion of the Travel Services;

(l) use any of the RMIT Material in which third parties hold Intellectual Property only in accordance with conditions which are notified by RMIT as attaching to the use of that material; and

(m) be responsible for the safekeeping and maintenance of the RMIT Material.

12. INTELLECTUAL PROPERTY

12.1 Intellectual Property in the Background IP will remain the property of the Contractor.

12.2 RMIT Material remains the property of RMIT at all times.

12.3 All Intellectual Property in the Contract Material and otherwise arising from performance of the Travel Services will vest on creation in RMIT.

12.4 The Contractor grants to RMIT a royalty-free, perpetual, irrevocable, world-wide licence to use, reproduce and exploit the Background IP to the extent necessary for RMIT to utilise and exploit the Contract Material and other deliverables comprised in the Travel Services.

12.5 Rights and obligations of parties under this clause shall survive expiration or earlier termination of this agreement.

12.6 Where the Contractor is a natural person and the author of the Travel Services, the Contractor consents to:

(a) the performance of any acts permitted under clause 12.4; and

(b) any dealings with the Intellectual Property in the Contract Material by RMIT, its licensees or any person authorised by RMIT to exercise RMIT’s
rights as owner of the Intellectual Property in the Contract Material, with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Contract Material by RMIT or any person claiming under or through RMIT.

12.7 In any other case, the Contractor will:

(a) obtain from each author a written consent which extends directly or indirectly to:

(i) the performance of any acts permitted under clause 12.4; and

(ii) any dealings with the Intellectual Property in the Contract Material by RMIT, its licensees or any person authorised by RMIT to exercise RMIT’s rights as owner of the Intellectual Property in the Contract Material, with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Contract Material by RMIT or any person claiming under or through RMIT;

(b) upon request, provide the executed original of any such consent to RMIT.

13. CONFIDENTIAL INFORMATION

13.1 The Contractor undertakes to keep RMIT’s Confidential Information confidential. Without limiting this obligation the Contractor must not:

(a) use or permit any person to use RMIT’s Confidential Information for any purpose other than the performance of the Travel Services;

(b) disclose or in any way communicate to any other person any of the Confidential Information except as authorised by RMIT;

(c) permit unauthorised persons to have access to places where the other party’s Confidential Information is displayed, reproduced or stored; or

(d) make or assist any person to make any unauthorised use of the Confidential Information.

13.2 The Contractor must:

(a) take reasonable steps to enforce the confidentiality obligations imposed by clause 13.1 including diligently prosecuting, at its own cost, any breach or threatened breach of those obligations by a person to whom the Contractor has disclosed the Confidential Information; and

(b) co-operate and provide RMIT with all reasonable assistance, in any action which it may take to protect the confidentiality of the Confidential Information.

13.3 Subject to clause 13.4, the Contractor may disclose Confidential Information to its advisers in relation to its rights under this agreement or to its employees and sub-contractors on a need to know basis, solely to assist in providing the Travel Services and on the condition such persons do not disclose the Confidential Information to any other person.
13.4 The Key Personnel and, if required by RMIT, each of the Contractor’s employees and sub-contractors engaged in the performance of the Travel Services must sign the Confidentiality Undertaking contained at the end of this agreement.

13.5 If as a result of this agreement RMIT acquires Information which is confidential to the Contractor (“the Contractor’s confidential information”), then RMIT must:

(a) keep secret and protect and preserve the confidential nature and secrecy of the Contractor’s confidential information;

(b) not disclose such confidential information except to its advisers, contractors or representatives for the purposes of this agreement, and on the basis that those persons are subject to the same obligations of confidentiality as RMIT.

13.6 The obligations of confidentiality under this agreement shall survive expiration or earlier termination of this agreement.

14. **EVENTS OF DEFAULT**

14.1 An Event of Default occurs if any one or more of the following events occur:

(a) the Contractor is in breach of the performance or observance of any obligation on its part contained in this agreement or an Order and if such default can be remedied, is not remedied within fourteen (14) days of written notification from RMIT that it requires that default to be remedied;

(b) a representation or warranty made on behalf of the Contractor is found to be incorrect or misleading at the time it is made;

(c) an Event of Insolvency occurs in respect of the defaulting party.

14.2 If an Event of Default occurs in respect of the Contractor, then RMIT may in its discretion terminate this agreement by written notification to the Contractor.

14.3 RMIT is not entitled to exercise its rights and remedies against the Contractor if that Event of Default relates to a failure on the part of the Contractor to perform the Travel Services within the timeframes required by this agreement which:

(a) is caused by an act or event which is beyond the reasonable control of the Contractor;

(b) continues for no more than seven (7) days; and

(c) was not reasonably foreseeable at the time this agreement was entered into.

15. **RIGHT TO AUDIT**

15.1 RMIT shall be permitted to audit and verify the correctness of financial and operational records of the Contractor in relation to the provision of the Travel Services including those relating to invoices, rebates, refunds, actual costs incurred by the Contractor, performance and service standards.
15.2 To facilitate inspection of the Contractor’s records for the purposes of this clause RMIT, or its duly authorised agent as advised to the Contractor in writing, shall have access to the Contractor’s premises and records during usual RMIT’s Business Hours during the term of this agreement and for two (2) years thereafter. Such inspections shall be at RMIT’s cost.

16. INDEMNITIES AND ACKNOWLEDGEMENT

16.1 The Contractor indemnifies and will keep indemnified RMIT and its officers, employees, agents, sub-contractors and consultants from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Contractor in respect of any loss, death, injury, illness, damages, costs or expenses (whether to person or property) where caused by:

(a) any unlawful or negligent act of the Contractor, its officers, employees, agents, sub-contractors or consultants;

(b) breach of Intellectual Property rights of any third party; or

(c) breach of any warranty contained in this agreement;

arising from the Contractor’s exercise of its rights or obligations under this agreement or from any other loss which may arise from or as a result of any breach of the terms of this agreement by the Contractor, its officers, employees, agents, sub-contractors or consultants.

16.2 The Contractor’s indemnity in clause 16.1 is a continuing obligation separate and independent from the Contractor’s other obligations and will survive expiration or earlier termination of this agreement.

17. GUARANTEE

17.1 The Guarantor unconditionally and irrevocably guarantees to RMIT performance of each of the Contractor’s obligations under this agreement.

17.2 The Guarantor unconditionally and irrevocably indemnifies RMIT against all losses or costs arising out of any breach, or any losses or costs caused to another person, by the Contractor or by its Key Personnel, officers, employees, agents, sub-contractors or consultants.

17.3 The Guarantor will obtain independent legal advice about its decision to assume the obligations and liability under this clause and acknowledges having read this agreement. The Guarantor waives any right of first requiring RMIT to proceed against the Contractor before exercising its rights under this clause.

17.4 Where the Guarantor comprises more than one person, then the obligations of the Guarantor are joint and several.

17.5 The obligations and liability of the Guarantor under this clause are assumed by the Guarantor in consideration of RMIT agreeing to enter into this agreement with the Contractor.
18. SUBCONTRACTS

18.1 The Contractor must not subcontract or otherwise arrange for another person to perform any part of this agreement or to discharge any of its obligations under any part of this agreement without the prior written consent of RMIT.

18.2 In the event RMIT consents to a subcontract pursuant to clause 18.1, the Contractor must not be relieved of any of its liabilities or obligations under this agreement and the Contractor must be liable to RMIT for the acts, defaults and neglects of any subcontractor or any employee or agent of the subcontractor as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

18.3 The Contractor must be responsible for ensuring the suitability of all subcontractors and for ensuring that the work performed by the subcontractor meets the requirements of this agreement.

18.4 The Contractor must ensure that each subcontractor is aware of all the terms of this agreement relevant to the sub-contractor’s part in the performance of this agreement.

19. CONFLICT OF INTEREST

19.1 The Contractor warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under this agreement.

19.2 The Contractor must not, during the course of this agreement, engage in any activity likely to compromise the ability of the Contractor to perform its obligations under this agreement fairly and independently. The Contractor must immediately disclose to RMIT any activity which constitutes or may constitute a conflict of interest.

20. ENTIRE AGREEMENT

20.1 In relation to membership of the Panel, this agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

20.2 Without limiting the generality of clause 20.1, the terms and conditions contained in the Specifications are incorporated in and form part of this agreement.

21. PRECEDENCE

21.1 The documents comprising this agreement must be read in the following order of precedence:

(a) this agreement;

(b) the Order.

21.2 Where any conflict occurs between the provisions contained in two or more of the documents forming this agreement, the document lower in the order of precedence shall prevail.
precedence must where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions must be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

22. **DISPUTE RESOLUTION**

If a dispute arises in respect of any aspect of this agreement, the parties must attempt to resolve that dispute in good faith and no party shall be entitled to exercise any of its rights under this agreement or at law unless:

(a) that party has served a notice on the other party requesting resolution of the dispute; and

(b) the dispute has not been resolved within fourteen (14) days of the date of service of the notice.

22.2 Nothing in this clause 22 will affect a party’s right to seek urgent interlocutory relief in relation to this agreement.

23. **SERVICE LEVELS**

23.1 The Contractor agrees it must provide the Travel Services so as to achieve or exceed the Service Levels.

23.2 To the extent that the Contractor fails to achieve one or more of the Service Levels in a given period, it agrees that it must pay to RMIT, or allow as a reduction of the Fees for that period, a rebate the amount of which will be specified or determined in Annexure “B”. The parties agree that a rebate payable or allowable for a given month will be paid (or allowed) at the end of the following month.

23.3 The parties agree that the amount of the rebate payable or allowable to RMIT represents a genuine pre-estimate of the likely loss or damage that RMIT will sustain as a result of the Contractor’s failure to achieve the relevant Service Level. Notwithstanding the previous sentence, the Contractor agrees that its payment or allowance of the rebate will be without prejudice to RMIT’s rights to pursue other rights or remedies under this agreement or at law as a result of the Contractor’s failure to achieve the relevant Service Level or Service Levels generally.

24. **REPORTING**

24.1 The Contractor agrees that, as part of its obligations to provide Travel Services, it will prepare and supply those reports listed and described in the Specifications or as otherwise required by RMIT.

24.2 Each report must contain the details and information specified in the description of that report in the Specifications, and appear in an agreed format.
25. APPOINTMENT OF CONTRACTOR REPRESENTATIVE

25.1 The Contractor must, no later than the Commencement Date, appoint an individual, who is reasonably acceptable to RMIT, to act as the Contractor Representative. The Contractor Representative will serve as the principal point of contact for RMIT in relation to all issues and questions arising under and from this agreement. The Contractor agrees that the Contractor Representative will have full authority to resolve, on behalf of the Contractor, all issues and questions arising under or from this agreement, without further reference to the Contractor.

25.2 RMIT may, on reasonable grounds, request that the Contractor remove the Contractor Representative, and replace him or her with another individual of comparable or greater experience within 7 days, or such longer period as agreed between the parties. Where RMIT makes such a request, the Contractor must replace the existing Contractor Representative with a person reasonably acceptable to RMIT, and that replacement will, for the purposes of this agreement, be considered the ‘Contractor Representative’ for the remained of the Term, or until he or she is replaced.

25.3 The parties agree that the Contract Supervisor and Contractor Representative will meet periodically (but in any event no less frequently than once a month) to discuss the performance of the Travel Services by the Contractor, and all other issues arising under or from this agreement. This review is separate from and without prejudice to the dispute resolution process outlined in clause 22. RMIT may, whether as a result of such meetings or otherwise, issue directions to the Contractor in relation to the performance of the Travel Service by the Contractor with which the Contractor must comply.

26. MISCELLANEOUS

26.1 Variation and Waiver

A provision of or a right created by this agreement cannot be waived except in writing signed by the party granting the waiver. No variation to or amendment of this agreement can be made without the consent in writing of all of the parties.

26.2 Approvals and Consents

Where any provision of this agreement provides for a party to provide its consent or approval then such party may conditionally or unconditionally in its absolute discretion give or withhold such consent or approval unless this agreement expressly provides otherwise.

26.3 Time of Essence

Time is of the essence in respect to the obligations of the Contractor under this agreement.

26.4 Entire Agreement

This agreement contains all of the terms, conditions, representations and warranties in connection with the agreement reached between the parties with respect to the subject matter of this agreement. The Contractor acknowledges that in entering into this agreement it has not relied on any representations or
warranties in respect to the subject matter of this agreement except as provided in this agreement.

26.5 **Relationship of Parties**

The Contractor is an independent contractor and:

(a) neither the Contractor nor its officers, employees, agents, subcontractors or consultants will be acting as employees or agents of RMIT in carrying out the services and must not be represented as such by the Contractor;

(b) the Contractor is responsible for paying all taxes, levies, charges, insurances and other imposts which may arise with respect to performance of the Travel Services and indemnifies RMIT for any claims, liabilities or losses which RMIT may incur as a result of the Contractor’s failure to do so.

26.6 **Governing Law and Jurisdiction**

This agreement is governed by and construed in all respects in accordance with the laws of the State of Victoria, Australia and the parties hereby submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

26.7 **Costs**

The parties agree to bear their own costs (including legal costs) in respect of this agreement.

26.8 **Counterparts**

This agreement can be executed in a number of counterparts and the counterparts taken together will be deemed to constitute the one and the same document.

26.9 **Inconsistency**

In the event of any inconsistency between the Specifications and the terms of this agreement, the Specifications will prevail.

27. **NOTICES**

27.1 Any notice, demand, consent, approval or other communication (“a Communication”) in connection with this agreement by a party may (without limitation to any other valid form of execution) be signed by an authorised officer of that party.

27.2 In addition to any method of service provided for by statute, a Communication in connection with this agreement is taken to have been given to or made on the party to whom it is addressed if:

(a) sent by facsimile to the facsimile number set out in Item 8;

(b) left for the addressee, or sent by mail to the addressee at:
(i) any address of that person set out in this agreement; or

(ii) the registered office of any corporate addressee.

27.3 A Communication in connection with this agreement will be deemed to have been received by the person:

(a) if left or delivered personally, on the same day;

(b) if sent by post to an address in Australia, on the second business day after the date of posting;

(c) if sent by post to an address outside Australia, on the fourth business day after the date of posting;

(d) in the case of a facsimile, on receipt of the facsimile in legible form.

27.4 Unless the parties otherwise agree in writing a Communication in connection with the agreement may not be sent by electronic mail ("email").

28. PROTECTION OF PERSONAL INFORMATION

28.1 To the extent that the Contractor is able to access or collect Personal Information in the course of providing the Travel Services, the Contractor agrees to comply with all relevant Privacy Legislation with respect to any act done, or practice engaged in by it, in connection with this agreement.

28.2 Without limiting clause 28.1, the Contractor will:

(a) collect, use, disclose, store and otherwise handle Personal Information in compliance with the Privacy Legislation and such reasonable policies or directions as are notified to the Contractor from time to time by RMIT;

(b) provide reasonable assistance to RMIT to resolve any complaint or enquiry relating to Personal Information in connection with this agreement;

(c) only use Personal Information for the purpose of fulfilling its obligations under this agreement; and

(d) notify RMIT as soon as practicable if it becomes aware that it has or will breach any of the terms of this clause.

28.3 The Contractor will use all reasonable endeavours to ensure that access to Personal Information is restricted to those of its personnel who have a need to know the information for the purposes of the Contractor fulfilling its obligations under this agreement.

28.4 The Contractor will ensure that any of its Personnel who have access to Personal Information for the purposes of this agreement are made aware of, and undertake to observe:

(a) the Privacy Legislation and such reasonable policies or directions as are notified to the Contractor from time to time by RMIT; and
(b) those requirements to which the Contractor is bound under this clause.

29. SECURITY

29.1 The Contractor must, and must ensure that its personnel comply with:

(a) any security requirements specified in an Order; and

(b) any other security procedures or requirements notified, in writing, by RMIT to the Contractor from the date specified in the notice, or if no date is specified, within five business days of receipt of the notice.

29.2 The Contractor must not, and must ensure that its personnel do not:

(a) remove RMIT Data or allow RMIT Data to be removed from RMIT’s premises; or

(b) take RMIT Data or allow RMIT Data to be taken outside of Australia, without RMIT’s prior written consent.

30. SPECIAL CONDITIONS

The parties agree that any special conditions detailed in Item 9 are incorporated in and form part of this agreement.
EXECUTED as an agreement.

SIGNED for and on behalf of ROYAL )
MELBOURNE INSTITUTE OF )
TECHNOLOGY ABN 49 781 030 034 by )
a duly authorised officer )

....................................................... Signature

....................................................... Name & Title

in the presence of:

....................................................... Witness Signature

....................................................... Name & Address of Witness

EXECUTED by *** ABN ***

....................................................... Signature of director

....................................................... Signature of director / secretary

....................................................... Name of director

....................................................... Name of director / secretary

....................................................... Signature of witness

....................................................... Signature of witness
CONFIDENTIALITY UNDERTAKING BY KEY PERSONNEL

In the consideration of RMIT agreeing to enter into this agreement with the Contractor, the undersigned Key Personnel of the Contractor as described in this agreement acknowledge that the obligations with respect to Confidential Information which apply to the Contractor as set out in clause 13 of the agreement apply to each of the Key Personnel as well as to the Contractor.

SIGNED SEALED AND DELIVERED by the said *** in the presence of: .................................................................

(Witness)

........................................................................................................
(Name of witness)

........................................................................................................
(Address of witness)

SIGNED SEALED AND DELIVERED by the said *** in the presence of: .................................................................

(Witness)

........................................................................................................
(Name of witness)

........................................................................................................
(Address of witness)

GUARANTEE BY GUARANTOR

SIGNED SEALED AND DELIVERED by the said *** as GUARANTOR in the presence of: .................................................................

(Witness)

........................................................................................................
(Name of witness)

........................................................................................................
(Address of witness)
## SCHEDULE

<table>
<thead>
<tr>
<th>Item 1: Contractor</th>
<th>*** ABN *** of [address]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 2: Guarantor</td>
<td>***</td>
</tr>
<tr>
<td>Item 3: Commencement Date</td>
<td>***</td>
</tr>
<tr>
<td>Item 4: Expiry Date</td>
<td>***</td>
</tr>
<tr>
<td>Item 5: Key Personnel</td>
<td>*** of [home address]</td>
</tr>
<tr>
<td>Item 6: RMIT's Business Hours</td>
<td># am to # pm.</td>
</tr>
<tr>
<td>Item 7: Insurances</td>
<td>Public Liability $10,000,000</td>
</tr>
<tr>
<td></td>
<td>Professional Indemnity $ 5,000,000</td>
</tr>
<tr>
<td></td>
<td>Product Liability $       ***</td>
</tr>
<tr>
<td>Item 8: Notices</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) RMIT</td>
</tr>
<tr>
<td></td>
<td>Facsimile No: ***</td>
</tr>
<tr>
<td></td>
<td>Addressed to the attention of: ***</td>
</tr>
<tr>
<td></td>
<td>(b) Contractor</td>
</tr>
<tr>
<td></td>
<td>Facsimile No: ***</td>
</tr>
<tr>
<td></td>
<td>Addressed to the attention of: ***</td>
</tr>
<tr>
<td>Item 9: Special Conditions</td>
<td>***</td>
</tr>
<tr>
<td>Item 10: Contractor's Background IP</td>
<td>N/A</td>
</tr>
</tbody>
</table>
ANNEXURE “A”

SPECIFICATIONS
# ANNEXURE “B”

## SERVICE LEVELS

<table>
<thead>
<tr>
<th>Ref</th>
<th>Type</th>
<th>Activities</th>
<th>Category</th>
<th>Agreed Service Level Target</th>
<th>KPI</th>
<th>SLA</th>
<th>Penalty for under performing service</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Consultation</td>
<td>Travel consultant request response times</td>
<td>High</td>
<td>Domestic and Trans-Tasman consultant assisted bookings and quotations.</td>
<td>1 hour</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Consultation</td>
<td>Travel consultant request response times</td>
<td>High</td>
<td>International (simple complexity, point to point) consultant assisted bookings and quotations.</td>
<td>3 hours</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Consultation</td>
<td>Travel consultant request response times</td>
<td>High</td>
<td>International (medium complexity, more than 2 stopover points) consultant assisted bookings and quotations.</td>
<td>4 hours</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Consultation</td>
<td>Travel consultant request response times</td>
<td>High</td>
<td>International (high complexity, more than 4 stop over points) consultant assisted bookings and quotations.</td>
<td>5 hours</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Consultation</td>
<td>Travel documentation</td>
<td>High</td>
<td>All ticketing time limits or specific document requirements clearly marked on travel documentation supplied to RMIT.</td>
<td>Advice clarity</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Consultation</td>
<td>Travel documentation</td>
<td>High</td>
<td>Travel documentation issued prior to departure or within ticket time limits specified by the vendor.</td>
<td>On time</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Consultation</td>
<td>Fare / Rate Check</td>
<td>Medium</td>
<td>Airfares and hotel rates for cheaper options must be advised prior to documentation being issued for the client.</td>
<td>Advice clarity</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Consultation</td>
<td>Price competitiveness</td>
<td>Medium</td>
<td>Itineraries price matched provided a written and confirmed itinerary is provided within 48 hours of the initial itinerary being created.</td>
<td>price match</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>System</td>
<td>Prolonged Electronic Systems unscheduled downtime</td>
<td>High</td>
<td>RMIT Travel Category Manager notified (by phone / email) where electronic system downtime is likely to exceed 2 hours</td>
<td>within 30 minutes</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>System</td>
<td>Electronic Systems unscheduled downtime</td>
<td>High</td>
<td>Provide back up service capability ensuring RMIT travellers are not deprived of service</td>
<td>service continuity</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>System</td>
<td>Electronic Systems scheduled downtime</td>
<td>Low</td>
<td>Notify the University Travel Office notified (by email) prior to any scheduled maintenance taking place to electronic systems.</td>
<td>&lt; 2 days</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Management</td>
<td>Stakeholder Contact:</td>
<td>High</td>
<td>Enquiries made by the RMIT Travel Category Manager are responded to efficiently and effectively.</td>
<td>1 hour</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Management</td>
<td>Stakeholder Contact:</td>
<td>Level</td>
<td>Description</td>
<td>Score</td>
<td>Compliance</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>------------</td>
<td>----------------------</td>
<td>------</td>
<td>-------------</td>
<td>-------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Management</td>
<td>Senior Executive Sponsor available to the RMIT Director of Procurement during normal Business Days except in a high severity issue situation where 24 hour contact is required.</td>
<td>High</td>
<td>2 hours</td>
<td>95%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Management</td>
<td>Account Manager, Team Leader and Operations Manager available to the RMIT Travel Category Manager during normal Business Days except in a high severity situation where after hours contact is required.</td>
<td>Medium</td>
<td>2 hours</td>
<td>95%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Management</td>
<td>Quarterly reviews completed by day 15 of the following month (preceding quarter reporting period) in the format provided by RMIT with all supporting documentation and reports presented.</td>
<td>Mandatory</td>
<td>on time</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Operational</td>
<td>Travel booking services 0800 – 1800hrs Monday to Friday in Melbourne, Australia including Labour Day (Victoria) and Melbourne Cup Day but excluding all other statutory and public holidays in Melbourne, Australia</td>
<td>Mandatory</td>
<td>always open</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Operational</td>
<td>Provide a dedicated toll free 1300 number for consultant assisted reservations. 1300 number accessible overseas</td>
<td>Mandatory</td>
<td>always available</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Operational</td>
<td>Provide a dedicated email address for consultant assisted reservations.</td>
<td>Mandatory</td>
<td>always available</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Operational</td>
<td>Vendor shall only process a booking request for ticketing and payment subject to a valid requisition number being quoted.</td>
<td>Mandatory</td>
<td>compliance</td>
<td>100%</td>
<td>Full refund to RMIT</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Operational</td>
<td>RMIT requires the vendor to automatically queue PNR’s to an approved TSDF provider when a new booking is completed and or changed (pre and post ticketing) by the Vendor 24 hours a day, 7 days a week.</td>
<td>Mandatory</td>
<td>compliance</td>
<td>200%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Operational</td>
<td>Dedicated toll free 1300 number for 24 hour assist calls with full travel support capability. 1300 number accessible overseas</td>
<td>High</td>
<td>always available</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Operational</td>
<td>Induction training completed for all new consultants assigned to the RMIT account prior to commencing on the account.</td>
<td>Medium</td>
<td>before starting</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Operational</td>
<td>Staff changes notified to the RMIT Travel Category Manager before changes taking effect.</td>
<td>Medium</td>
<td>&gt; 3 weeks</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>