EXPLANATORY INFORMATION

UNSW (ACADEMIC STAFF) ENTERPRISE AGREEMENT 2011

Since July 2009, the University has been in negotiations with National Tertiary Education Industry (NTEU) for a replacement agreement to the University of New South Wales (Academic Staff) Enterprise Agreement 2006 (current Agreement). The University has reached agreement with NTEU on a new enterprise agreement titled, the University of New South Wales (Academic Staff) Enterprise Agreement 2011 (new Agreement), and now asks you to consider and vote on the new Agreement.

The new Agreement contains a number of changes from the current Agreement. Some of the changes made reflect changes that are necessary to comply with new industrial relations legislation introduced since the current Agreement, including the Fair Work Act 2009 (Cth) (Act). For example, the Act requires that enterprise agreements include new mandatory content such as an enterprise flexibility clause and a major consultative change clause.

The Act also introduced the National Employment Standards (NES) which are minimum terms and conditions of employment that relate to matters including various types of leave (annual leave, personal/carer’s (previously known as sick leave), compassionate leave etc), notice of termination and redundancy pay. An enterprise agreement cannot exclude the NES.

The below table explains the terms and effect of the new Agreement. For complete details on each clause or schedule of the new Agreement, staff should access it at: http://www.hr.unsw.edu.au/services/indrel/Proposed_Academic_EBA_2011.pdf

<table>
<thead>
<tr>
<th>Clause Number</th>
<th>CLAUSE TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART A</strong></td>
<td>GENERAL MATTERS</td>
</tr>
<tr>
<td>1.0</td>
<td>Arrangement</td>
</tr>
<tr>
<td></td>
<td>This clause lists all of the clauses and schedules of the new Agreement.</td>
</tr>
<tr>
<td>2.0</td>
<td>Title</td>
</tr>
<tr>
<td></td>
<td>This clause records that the title of the new Agreement is the University of New South Wales (Academic Staff) Enterprise Agreement 2011.</td>
</tr>
<tr>
<td>3.0</td>
<td>Interpretations and Definitions</td>
</tr>
<tr>
<td></td>
<td>Lists the definitions of terms contained in the new Agreement, including:</td>
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<tr>
<td></td>
<td>- Act (Fair Work Act 2009 (Cth));</td>
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<td></td>
<td>- casual employee</td>
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<td></td>
<td>- consult or consultation</td>
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<tr>
<td></td>
<td>- continuous service</td>
</tr>
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<td></td>
<td>- Dean</td>
</tr>
<tr>
<td></td>
<td>- Deputy Vice-Chancellor</td>
</tr>
<tr>
<td></td>
<td>- employee</td>
</tr>
<tr>
<td></td>
<td>- employee representative</td>
</tr>
</tbody>
</table>
- fractional-time employee
- full-time employee
- FWA (Fair Work Australia)
- immediate family
- post-retirement employment contract
- redundant position
- supervisor
- Union
- University

4.0 **Duration and Operation of Agreement**

This clause identifies the employees covered and not covered by the new Agreement. Only those employees who will be covered by the new Agreement are eligible to vote for it, i.e., academic staff employed at UNSW.

5.0 **Application**

This clause provides for the new Agreement to operate to the exclusion of all other agreements and awards that would otherwise apply. An enterprise agreement made under the Act applies to the exclusion of any award that would otherwise apply. This means that, upon approval, the new Agreement will exclude the *Higher Education Industry – Academic Staff – Award 2010*. The new Agreement also replaces the current Agreement.

6.0 **Awards and Antecedent Agreements**

This clause provides for the new Agreement to replace the current Agreement. It also provides for certain operative matters which commenced under the current Agreement to continue under the new Agreement to finality, despite the commencement of the new Agreement. Those matters are as follows: managing change in the work, redundancy and disciplinary provisions.

7.0 **Accessibility of Agreement**

The new Agreement will be placed on the University’s Human Resources website and be available for inspection upon request by any employee.

8.0 **Employee Representation**

This clause is substantially similar to the clause in the current Agreement in that an employee may choose to be represented by an employee representative for any matter or process in the new Agreement.

9.0 **University-Wide Policies**

This clause is substantially similar to the clause in the current Agreement and provides for consultations with employees and the Union where policies, procedures and guidelines which have a significant and substantial impact on employees are developed or reviewed by the University.
10.0 Dispute Resolution Proceedings

The amendments to the dispute resolution procedure reflect the requirements of the Act that a dispute resolution procedure must deal with disputes in relation to the NES or other matters arising under the new Agreement.

This clause has been streamlined to enable a prompt resolution of disputes. Notification of a dispute by an employee or the Union must be made to the HR Director in writing and outline the resolution of the dispute sought.

PART B SALARIES AND RELATED MATTERS

11.0 Salaries

The new Agreement provides for salary increases of 2.0% in July and January of each year between 2009 and 2013 and an increase of 2.0% in January 2014. The clause also provides for the University to deduct monies owing by employees arising from their employment under certain circumstances on termination of employment.

12.0 Superannuation

The major changes to the clause on superannuation in the new Agreement are: (i) casual employees will receive employer contributions of 9% of ordinary time earnings; and (ii) employees employed on a new category of employment titled, Continuing (Contingent Funded Research) Employment, and employees employed on a new contract after two years of consecutive fixed term employment contracts (other than those employed in externally funded positions) will receive employer contributions of 17%.

13.0 Salary Sacrificing Scheme

This clause is identical in application to the same clause in the current Agreement.

14.0 Equalisation of Salary

This clause is identical in application to the same clause in the current Agreement.

PART C EMPLOYMENT ARRANGEMENTS

15.0 Categories of Employment

This clause outlines the general arrangements applying to Part C of the new Agreement, including the ability of employees to undertake casual employment and to be employed on a full-time or fractional-time basis.

16.0 Continuing Employment

Continuing employment means full-time or fractional-time employment that does not have a fixed end date or a contingency upon which the employment contract will come to an end. All employment other than fixed-term employment and casual employment will be continuing employment.
### 17.0 Fixed Term Employment

Significant changes have been made to the same clause in the current Agreement. The new Agreement provides for fixed-term employment generally to be limited to 16 specified circumstances, one of which will be the use of convertible “tenure track” contracts. A convertible tenure track employment contract is a fixed-term contract offered for a period of 3 or 5 years which at the end of the contract will be converted to continuing employment contracts, subject to certain requirements being met. The new Agreement also provides for the employment of postgraduate teaching fellows. Such employees will be students enrolled at the University on a full-time or fractional-time basis for a Masters or Doctoral degree. This will not apply to a person who already holds a Doctoral degree, unless they are studying for a second Doctoral degree. Notice periods and severance pay provisions remain in this clause.

### 18.0 Continuing (Contingent Funded Research) Employment

This is a new clause for research positions funded by limited term funding provided from external sources, but not funded through an operating grant from Government or funding comprised of payment of fees made by or on behalf of students. An employee engaged in contingent funded research may apply for, or be offered, a Continuing (Contingent Funded Research) Employment contract (CCFRC) to perform predominantly or exclusively research work where the employee: (i) is 0.5 FTE or more; (ii) has been employed in fixed-term academic employment at the University for a period of 5 years or more, and who is to be appointed to their second or subsequent consecutive contract; and (iii) is “research active” as defined by the University’s Deputy Vice-Chancellor (Research). This clause includes notice periods and severance pay provisions, and will commence operation on 1 January 2012.

### 19.0 Casual Employment

The clause in the new Agreement contains two important changes: a casual employee will be paid, in addition to the hourly rate, the following casual loading: (i) 23% payable from the date of effect of the new Agreement until 5 January 2012; (ii) 24% payable from 6 January 2012 until 3 January 2013; and (iii) 25% payable from 4 January 2013. In addition, during the life of the new Agreement, the parties will jointly examine and report on proposals to improve career opportunities for long term casual academic staff who hold a PhD.

### PART D WORKPLACE AND ORGANISATIONAL CHANGE

#### 20.0 Managing Change in the Workplace

This clause is substantially similar in application to the same clause in the current Agreement. The two categories of minor and major workplace change have been retained as have the processes around consultation with directly affected staff.

#### 21.0 Redeployment and Redundancy Provisions

This clause is identical in application to the same clause in the current Agreement. The entitlements payable to employees on retrenchment and the review processes for academic positions declared redundant by the University are unchanged.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>22.0</td>
<td>Voluntary Early Retirement Schemes</td>
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<tr>
<td></td>
<td>This clause is identical in application to the same clause in the current Agreement.</td>
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<tr>
<td>PART E</td>
<td>ACADEMIC PERFORMANCE AND RELATED MATTERS</td>
</tr>
<tr>
<td>23.0</td>
<td>Intellectual Property</td>
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<tr>
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<td>This clause is identical in application to the same clause in the current Agreement.</td>
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<tr>
<td>24.0</td>
<td>Academic Workloads</td>
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<td></td>
<td>The new Agreement provides for a workloads formula to be in place in each Academic Unit that has been developed through a collegial process, should be generally supported by the employees in the Academic Unit/s, and will provide for the equitable and transparent allocation of workload within the Academic Unit.</td>
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<td>The workload formula will be developed in a way that identifies a transparent correlation between the measure applied and the hours of work generated. It must contain a quantifiable maximum on required workload and, subject to an employee agreeing to undertake a predominantly teaching role for a defined period, a quantifiable upper limit on teaching contact hours. These requirements shall be taken to have been met in circumstances where some types of work (other than teaching and related tasks) are excluded in respect of all staff or all staff in particular categories, but with an appropriate reduction in the total workload accounted for in the model.</td>
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<td>Work allocated to an employee will be reduced to reflect any significant periods of planned leave, or significant unplanned leave (eg; sick leave) in excess of the standard four weeks annual leave per annum. Work allocated to an employee will be increased to reflect circumstances where the employee takes significantly less than the standard four weeks of annual leave per annum. Where a significantly higher or lower workload is allocated to an employee in one year (or an alternative period specified in the workloads formula) disregarding any adjustments referred to in the preceding sentence, an equivalent adjustment to the employee’s workload allocation will be made in the following year (or alternative period).</td>
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<td>The provisions in the clause around periods of scheduled teaching and the request by an employee for a review of their workloads are substantially unchanged from the same provisions in the current Agreement.</td>
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<tr>
<td>25.0</td>
<td>Probationary Employment</td>
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<td>The provisions of this clause are identical in application to the same clause in the current Agreement. The University may require a new employee to serve a formal probationary period of up to twelve (12) months and who will be advised accordingly in the letter of appointment. Any second or subsequent fixed-term contract with the University will not contain a probationary period.</td>
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</table>
26.0  Performance Based Incremental Progression

The provisions of this clause are identical in application to the same clause in the current Agreement. Increments are paid from either 1 January or 1 July of each year. An employee will be entitled to progress by annual increments to the top of the relevant salary range, provided the employee has not refused to participate in a professional development meeting with their supervisor.

27.0  Professional Development

The provisions of this clause are substantially similar in application to the same clause in the current Agreement. A number of provisions have been added to the clause such as: discussion between the employee and the supervisor will include the planning of leave; where concerns are held by a supervisor that an employee is not performing satisfactorily, the University will not use the procedures set out in this clause to address these concerns; and on its own, student feedback cannot be used as the total measure of teaching performance and as such, no disciplinary action for unsatisfactory performance will be taken solely on the basis of teaching evaluations by students.

PART F  MANAGEMENT OF DISCIPLINARY MATTERS AND TERMINATION OF EMPLOYMENT

28.0  Disciplinary Action and Termination of Employment

The provisions of this clause are substantially similar in application to the same clause in the current Agreement. Several provisions have been added to the clause, such as: a breach of the University Research Code of Conduct may constitute misconduct; in the case of an alleged breach or serious breach of the University’s Research Code of Conduct, any such allegation may be referred by the Deputy Vice-Chancellor (Research) directly to the Deputy Vice-Chancellor; the Deputy Vice-Chancellor may suspend any administrative duties and/or leadership role performed by the employee if the Deputy Vice-Chancellor is of the view that the alleged act of serious misconduct or misconduct, justifies such action; and the chairperson of the review committee (if a review is requested by an employee) will be appointed by the Vice-Chancellor from the list agreed between the University and the Union.

29.0  Termination of Employment on the Grounds of Ill Health

The provisions of this clause are substantially similar in application to the same clause in the current Agreement. The only change is that where an appeal has been lodged by an employee against the medical findings of the medical practitioner, the University will refer the original assessment to a reviewing medical practitioner, who must be a specialist in the relevant discipline having regard to the original assessment. The reviewing medical practitioner must have experience in providing medical fitness reports, be nominated or suggested by the Australian Medical Association, the employee’s superannuation fund or Unisuper, or a member of the panel of health providers used for such matters by NSW Health. Currently, these arrangements are managed through the employee’s superannuation fund, which are generally not responsible for such medical reviews.
### PART G LEAVE ENTITLEMENTS AND ARRANGEMENTS

<table>
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<tr>
<th>Section</th>
<th>Title</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>30.0</td>
<td>General Leave Conditions</td>
<td>This clause outlines in general terms the conditions relating to the breaks in service and continuity of employment, along with the application of leave entitlements for fractional-time employees and casual employees.</td>
</tr>
<tr>
<td>31.0</td>
<td>Annual Leave</td>
<td>Substantial changes have been made to the clause on annual leave in the current Agreement. The new clause has a primary emphasis on the planning and taking of annual leave by academic employees. For the purposes of this clause, a “leave year” refers to the period from 16 February in one year to 15 February in the following year. An employee (other than a casual employee) is entitled to four weeks annual leave per annum. Annual leave will normally be taken in a period or periods between the completion of examination duties in one session and the commencement of enrolment or teaching preparation duties for the next session. Annual leave may be taken at other times with the approval of the employee's Dean or Head of School. If at 15 November in any year, an employee has not taken or submitted a plan to take their full leave accrual for that leave year, the employee may be directed to take the untaken component of the leave year entitlement prior to 15 February the following year. In certain circumstances, the University may give a direction to an individual employee or collectively to all employees to take annual leave. An employee who has been directed to take leave from a specified date will be recredited with leave should they be required to perform work, either at the direction of the University or as a result of an unforeseen exigency such that it would have been a dereliction of the duties of the academic office for the employee not to have performed the work at that time and that the employee notified the supervisor of the need to perform this work at the earliest possible time.</td>
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<tr>
<td>32.0</td>
<td>Long Service Leave</td>
<td>The provisions of this clause are identical in application to the same clause in the current Agreement.</td>
</tr>
<tr>
<td>33.0</td>
<td>Personal Leave</td>
<td>This form of leave covers: sick leave; carer’s leave, compassionate leave, domestic violence leave, and parental leave.</td>
</tr>
<tr>
<td>33.1</td>
<td>Sick Leave</td>
<td>The provisions of this clause are identical in application to the same clause in the current Agreement, such as sick leave entitlements and the arrangements applying under the Professorial Superannuation Scheme.</td>
</tr>
<tr>
<td>33.2</td>
<td>Carer’s Leave</td>
<td>This clause provides for 12 days of carer’s leave to commence on an employee’s</td>
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second year of service instead of 10 days under the current Agreement. The
definition of “immediate family member” has been extended to include a person
who lives in an employee’s household. An employee may also apply to the
Director, Human Resources for carer’s leave with respect to a person not covered
by the definition of “immediate family” but for whom there is a significant and
close cultural or family relationship.

33.3 Compassionate Leave

This clause provides for an employee to take three (3) days of paid compassionate
leave for each occasion when a member of the employee’s immediate family, or a
member of the employee’s household, or a person who is related by blood or
marriage or who has a strong affinity with the employee by way of traditional or
ceremonial affiliation, contracts or develops a personal illness that poses a serious
threat to their life, or sustains a personal injury that poses a serious threat to their
life, or dies.

33.4 Domestic Violence Leave

This is a new clause which recognises the difficulties encountered by employees
experiencing domestic violence and identifying the types of support mechanisms
that are available. As part of that support, employees will be able to access sick
leave, carer’s leave, compassionate leave and flexible working arrangements.

33.5 Parental Leave

In addition to existing entitlements of 26 weeks of parental leave, the new clause
provides for 36 weeks of maternity leave on full pay to employees on completion of
5 years of continuous service with the University. Maternity leave and adoption
leave can also be shared if both parents work at UNSW. The clause also retains the
provisions on foster parent leave and partner leave. The clause also includes a new
provision called “Grandparent Leave”, which provides for 2 weeks of leave on full
pay within any two year period from the date of birth and up to 3 months
immediately thereafter in circumstances where the birth mother of the child has no
partner available to provide care to the birth mother.

34.0 Special Leave

The provisions of this clause are identical in application to the same clause in the
current Agreement. Special leave with pay of up to three (3) days per year may be
given to an employee on account of special circumstances or emergencies. Special
circumstances or emergencies may include situations such as where the employee’s
home has been damaged by fire, flood or other mishap, burglary, or where the
employee is to take part in state emergency services activities. Special
circumstances do not include situations such as moving house, care of an
immediate family member, attendance at union state or national conferences or
similar events or other private business that the employee was aware of in advance
sufficient to use other forms of leave.

35.0 Observation of Holy Days and Essential Religious or Cultural Duties

The provisions of this clause are identical in application to the same clause in the
current Agreement. An employee of the University will be granted annual leave or
long service leave (where the employee has an entitlement to annual leave or long service leave) or leave without pay for the purpose of observing holy days or attend essential religious or cultural duties associated with a particular religious faith or culture. The University will be particularly cognisant of the needs of employees of Aboriginal and Torres Strait Islander descent to meet needs associated with their culture.

36.0 **Jury Leave and Witness Leave**

The provisions of this clause are substantially similar in application to the same clause in the current Agreement. The clause now provides for an employee required as a witness by the University, or directly in a matter relating to a University award or industrial agreement in FWA or other tribunal or court, to be regarded as being on duty and consequently there will be no loss of pay or leave for the absence from work. Previously, an employee was regarded to be on duty when required to appear before FWA only.

37.0 **Defence Forces Leave**

The provisions of this clause are substantially similar in application to the same clause in the current Agreement. Under this clause, the University will consider on a case-by-case basis an application submitted by an employee for paid leave, in addition to other prescribed entitlements, where the University is reimbursed for the employee’s absence through a scheme funded by the Commonwealth Government.

38.0 **Special Studies Program**

The provisions of this clause are identical in application to the same clause in the current Agreement.

39.0 **Public Holidays**

The provisions of this clause are substantially similar in application to the same clause in the 2006 Agreement. In addition to the existing provisions in the 2006 Agreement, the new clause provides for all working days between Christmas Day and New Years Day to be deemed University Holidays.

**PART H OTHER ITEMS**

40.0 **Individual Flexibility Arrangement**

This is a new clause. The Fair Work Act requires enterprise agreements to include a flexibility term that enables an employee and the employer to agree to an arrangement varying the affect of the agreement in relation to the employee and employer. A flexibility term must set out the terms of the enterprise agreement, the effect of which may be varied by a flexibility agreement. It must require that any individual flexibility agreement is genuinely agreed to, and that any individual flexibility agreement must result in the employee being better off overall than the employee would have been if no individual flexibility agreement was agreed to.

The new Agreement provides for the University and an employee to vary the terms of the agreement as follows:
(i) to adjust the rate at which long service leave is paid (as set out in clause 32.1(a) of the new Agreement) with an equivalent adjustment to lengthen the relevant leave entitlement; and

(ii) to adjust the rate at which maternity leave is paid (as set out in clause 33.5.1 of the new Agreement) with an equivalent adjustment to lengthen the relevant leave entitlement; and

(iii) to adjust the rate at which annual leave is paid (as set out in clause 31.2 of the new Agreement) with an equivalent adjustment to lengthen the relevant leave entitlement or in the case of an employee with more than two times the accrual specified in clause 31.2 above an equivalent adjustment to reduce the relevant leave entitlement.

41.0 Union Arrangements

This is a new clause which prescribes the various leave and related arrangements to which an employee serving as a union representative is entitled in respect to the conduct of union activities and attending union meetings and courses. The clause also contains provisions relating to the holding of meetings.

42.0 Indigenous Employment

The provisions of this clause have been enhanced. The University will continue to implement its Indigenous Employment Plan (the “Plan”), and develop a new Indigenous Employment Plan for the period at least of the nominal life of the new Agreement; develop and maintain a consultative mechanism for maintaining effective links with Indigenous communities and agencies, and include an Indigenous staff member nominated by the Union in any committee or like body which has the responsibility for monitoring or overseeing the implementation of the Plan; actively pursue the targets for increased Indigenous employment included in the present and any future Plan; and consult the Union up to twice a year, upon request, about progress in developing or implementing the Plan.

43.0 Employment Equity

The provisions of this clause have also been enhanced. The University will implement an Equal Employment Strategy during the life of the new Agreement. Two key objectives of this Strategy will be to: emphasise programs to support the development of female staff into senior positions within the University; and develop measures to support the needs of staff with disabilities or family responsibilities. The University will consult with the Union up to twice a year, upon request, about progress in developing or implementing these objectives.

44.0 Staff Personnel Files

The provisions of this clause are identical in application to the same clause in the current Agreement.

Schedule 1 Academic Salary Rates for Full-time Staff

This Schedule sets out the annual salary rates payable under the new Agreement, which will be 2% salary increases payable in July and January from 2009 to 2013.
and a 2.0% increase in January 2014.

<table>
<thead>
<tr>
<th>Schedule 2</th>
<th>Casual Academic Salary Rates</th>
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<tbody>
<tr>
<td>This Schedule sets out the casual salary rates payable under the new Agreement, which will be 2% salary increases payable in July and January from 2009 to 2013 and a 2.0% increase in January 2014. The current casual loading of 23% will increase to 24% in January 2012 and to 25% in January 2013. There is a separate rate for all marking, except in-class marking.</td>
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<thead>
<tr>
<th>Schedule 3</th>
<th>Duties and Expectations of Academic Staff at UNSW</th>
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<tbody>
<tr>
<td>The provisions of this Schedule are substantially similar in application to clause 16.0 in the current Agreement. The exception is at part (c) of the Schedule which has been amended to read as follows: “It is recognised that at a given point in an academic career, an employee may agree with their supervisor to perform a predominantly teaching or research role for a defined period due to the performance strengths or preferences of the employee. In entering into any such agreement with an early career academic, the University will take into account the need for that employee to establish a research profile. The wording underlined has been added.</td>
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<thead>
<tr>
<th>Schedule 4</th>
<th>UNSW Position Classification Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>The provisions of this Schedule are identical in application to the same Schedule in the current Agreement.</td>
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<table>
<thead>
<tr>
<th>Schedule 5</th>
<th>Individual Flexibility Arrangement</th>
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<tbody>
<tr>
<td>This Schedule prescribes the terms and conditions that apply where the University and an employee enter into individual flexibility agreement pursuant to clause 40.0 of the new Agreement.</td>
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</table>