

**JAMES COOK UNIVERSITY**

**STANDARD CONDITIONS OF A CONSULTANCY CONTRACT**

## TABLE OF CONTENTS

	<b>Clause</b>
Interpretation .....	1
Consultancy Services.....	2
Key Personnel .....	3
Fees and Reimbursable Expenses .....	4
Deficient Goods or Services.....	5
Payment Procedure .....	6
No Agency .....	7
Conflict of Interest .....	8
Contract Material .....	9
Project Management .....	10
Disclosure of Information.....	11
Security and Access .....	12
Suspension of Services .....	13
Variation.....	14
Payment for Reduced Services.....	15
Default of the Consultant and Termination .....	16
Compliance with Laws .....	17
Indemnities .....	18
Insurance .....	19
Unavoidable Delay .....	20
Waiver .....	21
Governing Law .....	22
Entire Contract .....	23
No Subcontracting .....	24
Further Assistance.....	25
Resolution of Disputes.....	26
GST .....	27
Clauses to Survive Termination .....	28
Notices .....	29
Severability .....	30

## SCHEDULE 1

## IT IS AGREED -

### 1. 1. Interpretation

1.1 In these Conditions unless the context otherwise requires, the following definitions apply:

<i>“Conditions of Contract” or “Conditions”</i>	These Standard Conditions of the Consultancy Contract;
<i>“Consultant’s Offer” or “Offer”</i>	The Offer submitted to the James Cook University by the Consultant to provide the Consultancy Services, as amended in writing by any post-offer negotiations;
<i>“Consultancy Services”</i>	The services described in the Specifications;
<i>“Contract”</i>	The written contract between the parties constituted by: <ol style="list-style-type: none"><li>1. The Letter of Acceptance</li><li>2. These Standard Conditions of the Consultancy Contract</li><li>3. Clarification of the Specifications</li><li>4. The Specifications for the Invitation to Offer</li><li>5. Offer</li><li>6. The Standard Conditions of Offer specified in the Invitation to Offer</li><li>7. The Invitation to Offer.</li></ol>

Where there arises an inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from Document 1 to Document 7.

<i>“Contract Material”</i>	New Contract Material and Existing Contract Material;
<i>“Deliverable”</i>	Any document, piece of equipment, data listing or other creation required to be delivered to James Cook University in order to complete the performance of the Consultancy Services;
<i>“James Cook University’s Consent”</i>	The prior written consent of James Cook University which shall not be unreasonably withheld and which may be given subject to such terms and conditions as James Cook University may see fit to impose;
<i>“Existing Contract Material”</i>	Any material that exists at the Commencement Date and is incorporated into a Deliverable;
<i>“Force Majeure”</i>	Any event beyond the reasonable control of the party affected and includes an event due to natural causes that happens independently of human intervention;
<i>“Intellectual Property Rights”</i>	All copyright, patents and all rights in relation to inventions, trade marks and designs or any rights to registration of such rights, whether created before, on or after the date of this Contract;

“ <i>Invitation</i> ”	The Invitation to Offer given to prospective offerors inviting offers for the supply of the Consultancy Services;
“ <i>Key Personnel</i> ”	The representatives of the Consultant specified in the [ <i>Consultant’s Offer or the Letter of Acceptance</i> ];
“ <i>New Contract Material</i> ”	Any material forming part of or constituting a Deliverable that is created, written or otherwise brought into existence by or on behalf of the Consultant in the course of performing the Consultancy Services;
“ <i>Project Officer</i> ”	The officer appointed by James Cook University to manage the Contract or any other person substituted by James Cook University by notice to the Consultant;
“ <i>Records</i> ”	All material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by James Cook University to the Consultant in connection with the performance of the Contract;
“ <i>Specifications</i> ”	The Specifications issued by James Cook University for the Invitation to Offer;
“ <i>Term</i> ”	The period for which the Contract will be in effect as specified in the [ <i>Invitation or Specification or the Letter of Acceptance</i> ]

1.2 In this Contract:

- (a) clause headings are inserted for ease of reference only and will not form part of, nor be used in the interpretation, of the Contract;
- (b) words importing the singular will include the plural and vice versa, words importing a gender will include other genders;
- (c) A reference to a person will be construed as a reference to an individual, firm, body corporate or other entity (whether incorporated or not), or, where a position is nominated, the individual occupying that position.

**2. Consultancy Services**

2.1 The Consultant will provide and complete the Consultancy Services in accordance with the Contract for the Term, through its Key Personnel, to the standards and in the manner, frequency, quantity and times specified in the Specifications and/or Letter of Acceptance.

2.2 The Consultant will:

- (a) comply with the Specifications;
- (b) consult regularly with James Cook University (through the Project Officer) throughout the Term; and

- (c) act professionally at all times and exercise skill, care and diligence in the performance of the Contract.

2.3 The Consultant warrants that it has the qualifications, admissions and memberships (if any) specified in the Specifications and/or Offer.

2.4 The Consultant will ensure that the Deliverable (if any) specified in the Specification complies with the standards and specifications (if any) set out in the Specification.

2.5 James Cook University will provide the assistance to the Consultant, if any, specified in the Specifications.

### **3. Key Personnel**

3.1 The Consultancy Services will be performed by the Key Personnel unless the Consultant obtains James Cook University's Consent. If James Cook University's Consent has been obtained to a person replacing one of the Key Personnel then that person will be one of the Key Personnel during the period of the person's engagement on the Consultancy Services.

3.2 The Consultant will ensure that Key Personnel are competent and have the necessary skills to perform the Consultancy Services on which they will be engaged.

3.3 The Consultant will not without James Cook University's Consent:

- (a) allow Key Personnel to delegate any part of the Consultancy Services;
- (b) allocate tasks not connected with the Consultancy Services to any of the Key Personnel who are engaged on the Consultancy Services on a full time basis, until the Consultancy Services allocated to that person have been completed by that person.

3.4 If any of the Key Personnel are not available to perform any of the Consultancy Services allocated to them, the Consultant will immediately:

- (a) give notice to James Cook University of the circumstances; and
- (b) if requested by James Cook University, arrange for replacement of that person with a person satisfactory to James Cook University, at no cost to James Cook University.

3.5 James Cook University may, on reasonable grounds, give notice requiring the Consultant to remove any Key Personnel from working on the Consultancy Services. Upon receipt of a notice pursuant to this clause 3.5, the Consultant will, at no cost to James Cook University, promptly remove and replace the Key Personnel referred to in the notice with a person satisfactory to James Cook University.

### **4. Fees and Reimbursable Expenses**

4.1 The Consultant will provide the Consultancy Services for the fee and reimbursable expenses specified in the Letter of Acceptance.

4.2 Invoices must be completed by the Consultant in accordance with the Conditions.

4.3 The Consultant will not be entitled to be paid for any part of the Consultancy Services which the Project Officer has certified as not having been performed in accordance with the Contract.

## **5. Deficient Goods or Services**

5.1 The Consultant will promptly perform or perform again any part of the Consultancy Services certified by the Project Officer as not being performed in accordance with the Contract. James Cook University may, without derogating from any other right it may have, defer payment for that part of the Consultancy Services until the Project Officer has certified that the Consultancy Services have been performed or performed again in accordance with the Contract.

## **6. Payment Procedure**

6.1 The Consultant shall submit invoices to the Project Officer on a monthly basis, unless otherwise specified by James Cook University.

6.2 James Cook University will not have any obligation to pay the Consultant for any part of the Consultancy Services until James Cook University has been given a correctly rendered invoice.

6.3 All invoices must:

- (a) identify the title of the services and the name of the relevant Project Officer;
- (b) quote the relevant James Cook University purchase order reference number;
- (c) provide sufficient detail to enable James Cook University to assess progress against targets (if any) set out in the Specifications and verify that the invoice is then payable;
- (d) where Consultancy Services are charged on a time basis, be supported by Records of times spent by individual persons on the Consultancy Services, verified by the Project Officer; and
- (d) comply with the requirements of clause 27.

6.4 Upon receipt of an invoice James Cook University may require the Consultant to provide additional information to assist James Cook University to determine whether or not an amount is payable.

6.5 Subject to the Project Officer's certification that:

- (a) the Consultancy Services are of an acceptable standard;
- (b) the relevant services are completed;

- (c) the Consultant's invoice is in accordance with the Conditions,

James Cook University will make payment of a correctly rendered invoice in the payment run following 30 days after receipt of the invoice or, if additional information is required by James Cook University pursuant to clause 6.4, 30 days after receipt of the additional information. Payment runs are conducted weekly for suppliers who provide details that enable payment to be made by Electronic Funds Transfer. Payment runs for payees who choose to receive cheque payment are made monthly.

6.6 If, after James Cook University has paid an invoiced amount to the Consultant, the invoice is found not to have been a correctly rendered invoice, James Cook University will:

- (a) pay, subject to clause 6.5, any underpaid amount owed to the Consultant within 30 days of receipt of a correctly rendered invoice or, if additional information is required by James Cook University, 30 days after receipt of the additional information; or
- (b) deduct any overpaid amount owed to James Cook University from the next invoiced payment or, if no other payment is due to the Consultant pursuant to this Contract, recover the amount from the Consultant as a debt due to James Cook University.

6.7 Payment of money to the Consultant will not constitute an admission by James Cook University that any of the Consultancy Services have been performed in accordance with this Contract.

## **7. No Agency**

7.1 The Consultant will not:

- (a) represent itself or allow itself to be represented as being an employee or agent of James Cook University; or
- (b) by virtue of the Contract be or become an employee or agent of James Cook University.

## **8 Conflict of Interest**

8.1 The Consultant warrants that, to the best of its knowledge, information and belief, at the date of the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If during the term of the Contract, a conflict or risk of conflict of interest arises because of work undertaken for any person other than James Cook University, the Consultant undertakes to notify the Project Officer immediately in writing of that conflict of interest or risk of it.

8.2 The Consultant will take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the term of the Contract, engage in any activity or obtain any interest which is in conflict with providing the Consultancy Services to James Cook University. Any such activity must be disclosed in writing to the Project Officer immediately.

8.3 Where the Project Officer receives a notice of conflict of interest under this clause, James Cook University may give the Consultant a notice to remedy the conflict.

## **9. Contract Material**

9.1 Unless otherwise specified in the Specifications and/or Letter of Acceptance, title to and Intellectual Property Rights in all New Contract Material will vest in James Cook University in accordance with clauses 9.2 and 9.3.

9.2 Title to, and Intellectual Property Rights in, all New Contract Material, including each and every stage of design and production of it, will upon its creation vest in James Cook University without need for further assurance.

9.3 This Contract does not affect Intellectual Property Rights in Existing Contract Material but the Consultant grants, and will ensure that relevant third parties grant, to James Cook University a paid up non-exclusive, non-transferable licence -

- (a) to use, reproduce, communicate to the public and adapt for its own use; and
- (b) to perform any other act with respect to copyright; and
- (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,

the Existing Contract Material but only as part of the Contract Material (and any further development of that material).

9.4 Where specified in the Specification and/or Letter of Acceptance, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the Consultant and the Consultant grants to James Cook University a non-exclusive, non-transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Specifications or Letter of Acceptance.

9.5 Where specified in the Letter of Acceptance and/or Specifications, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the parties as co-owners in equal shares on the terms and conditions specified in the Letter of Acceptance or Specifications.

9.6 Upon the expiration or earlier termination of the Contract, the Consultant will deliver to James Cook University all Records and Contract Material, and all copies thereof.

9.7 The Consultant will ensure that Records and Contract Material are used, copied, supplied or reproduced only for the purposes of the Contract.

9.8 Prior to commencing work in relation to the Contract Material, the Consultant will obtain from every person who is to create Contract Material, and provide to James Cook University, a written assignment from that person to James Cook

University of any Intellectual Property Rights which may vest in that person as a result of that person performing the work.

9.9 Clauses 9.6, 9.7 and 9.8 do not apply to Contract Material specified in the Letter of Acceptance or Specifications for the purposes of clause 9.4 or clause 9.5.

9.10 If any Contract Material is produced or reproduced in an electronic format, the Consultant must deliver it to James Cook University in a format approved in writing by James Cook University.

9.11 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Consultant must not store it on a foreign computer without keeping the current version of the Contract Material on separate media as specified in the Letter of Acceptance or Specifications and delivering it to James Cook University at the intervals specified in the Letter of Acceptance or Specifications.

9.12 The Consultant must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer, from material that is not the subject of the Contract.

9.13 For the purposes of this clause 9, "*foreign computer*" means a hard disk or other similar device affixed to a computer that is not the property of James Cook University.

9.14 Intellectual property rights in Records supplied to the Consultant by James Cook University for reproduction or guidance remains vested in James Cook University.

9.15 Where the Consultant is an individual, the Consultant consents to be attributed as author of works comprised in the Contract Material in a form and manner acceptable to James Cook University."

## **10. Project Management**

10.1 James Cook University shall :

- appoint a Project Officer to oversee the performance of the Contract; and
- advise the Consultant in writing of the appointment.

10.2 The Consultant will liaise with, and report to, the Project Officer and attend briefings when reasonably required by the Project Officer. The Consultant shall be available for discussions as requested by the Project Officer and reply promptly to any correspondence from the Project Officer dealing with the Contract.

10.3 The Consultant will, if required, provide written reports to the Project Officer. All reports must be submitted in the form and to a standard required by James Cook University and shall contain such information as may be required by James Cook University.

## **11. Disclosure of Information**

11.1 The Consultant will:

- (a) keep all Records and other information in a secure location so that no unauthorised person is able to gain access to them; and
- (b) ensure that Records are kept confidential and are not disclosed to any person other than James Cook University and the Project Officer except:
  - (i) where required by law; or
  - (ii) with James Cook University's Consent.

## **12. Security and Access**

12.1 The Consultant will, when using James Cook University's premises or facilities, comply with all reasonable directions and procedures as notified by James Cook University or the Project Officer, including those relating to security and to occupational health and safety which are in effect at those premises or facilities.

12.2 The Consultant will, at all reasonable times, give to the Project Officer or to any other persons authorised in writing by James Cook University, access to premises occupied by the Consultant where the Consultancy Services are being undertaken and will permit those persons to inspect the performance of the Consultant of its obligations under the Contract.

12.3 The Project Officer and any other person authorised by James Cook University, when at the Consultant's premises, will comply with all rules, directions and procedures as notified by the Consultant which are in effect at those premises including those relating to security and to occupational health and safety.

## **13. Suspension of Services**

13.1 James Cook University may by notice require the Consultant to suspend the progress of the whole or any part of the Consultancy Services for a specified period within a reasonable time after receipt of the notice, if suspension is required by James Cook University because of any change in the nature, scope or timing of the Consultancy Services to be provided.

13.2 James Cook University may by notice require the Consultant to recommence work on all or any part of the suspended Consultancy Services.

13.3 Where the Consultant is required to suspend the Consultancy Services pursuant to clause 13.1:

- (a) the Consultant and James Cook University will negotiate in good faith as to reasonable compensation payable to the Consultant; and
- (b) any previously agreed completion dates for the Consultancy Services will be postponed by a period equivalent to the duration of the suspension.

13.4 James Cook University will reimburse the Consultant for additional costs reasonably and properly incurred by the Consultant as a result of the suspension of the Consultancy Services pursuant to clause 13.1. If the Consultant and James Cook University do not agree on the amount of reasonable compensation within thirty (30) days of the request for compensation by the Consultant, the amount will be determined pursuant to clause 26.

#### **14. Variation**

14.1 James Cook University may by notice require the Consultant to vary the nature, scope or timing of the Consultancy Services.

14.2 Without limiting the generality of clause 14.1, James Cook University may direct the Consultant to:

- (a) increase, decrease or omit any part of the Consultancy Services;
- (b) change the character or content of any part of the Consultancy Services;
- (c) change the direction or dimensions of any part of the Consultancy Services;
- (d) perform additional work.

14.3 Where James Cook University requires a variation to the Consultancy Services, the parties will negotiate in good faith a variation of the fees and the time for completion and failing agreement, the fees and time for completion will be determined pursuant to clause 26. The Consultant will not commence work on the variation to the Consultancy Services without James Cook University's Consent and the written agreement of both parties to the varied fees and time for completion.

#### **15. Payment for Reduced Services**

15.1 In the event of a reduction in the Consultancy Services James Cook University will pay the Consultant:

- (a) fees determined in accordance with clause 14.3;
- (b) reasonable costs incurred by the Consultant directly attributable to the reduction in the Consultancy Services; and
- (c) compensation for reasonable set up costs incurred by the Consultant.

15.2 Where the fee for the Consultancy Services is a lump sum, James Cook University will not be liable to pay any amounts to the Consultant pursuant to clause 15.1, where it would result in amounts greater than the fees and expenses specified in the Letter of Acceptance being paid to the Consultant.

15.3 Where fees are on a schedule of rates basis, the rates for the reduced Consultancy Services, will be subject to negotiation and agreement between the parties and failing agreement, resolved pursuant to clause 26.

15.4 The Consultant will not be entitled to compensation for loss of prospective profits.

## **16. Default of the Consultant and Termination**

16.1 If the Consultant:

- (a) breaches any clause of the Contract;
- (b) suspends payment of its debts or is unable to pay its debts;
- (c) has execution levied on any of its assets and the execution is not satisfied within 28 days;
- (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them;
- (e) has a receiver appointed for all or any part of its assets; or
- (f) has an application made or order filed for its administration, voluntary or compulsory liquidation, winding up, dissolution or bankruptcy,

the Consultant will be in breach of the Contract and James Cook University may give the Consultant a notice to remedy the breach.

16.2 If within 14 days of receiving a notice under this clause 16, the Consultant does not remedy the breach or conflict and a dispute notice has not been given under clause 26, James Cook University may immediately terminate the Contract.

16.3 Upon termination of this Contract pursuant to this clause 16, all money which has been paid and all money to be paid for work done up to the date of the termination will be in full and final satisfaction of all claims by the Consultant under the Contract.

## **17. Compliance with Laws**

17.1 The Consultant will comply with all relevant laws and the requirements of any statutory authority in performing the Consultancy Services.

## **18 Indemnities**

18.1 The Consultant will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by James Cook University, its officers, servants or agents, arising from the unlawful or negligent acts or omissions of the Consultant, its employees, subcontractors or agents, in the course of the performance (or attempted or purported performance) of the Consultancy Services.

18.2 The Consultant releases and indemnifies James Cook University and its officers, servants and agents from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Consultant, arising from:

- (a) any wilful or negligent act or omission of the Consultant or any person for whose conduct the Consultant is liable;
- (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Consultant;
- (c) death, injury, loss or damage suffered by the Consultant, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of James Cook University, its officers, servants or agents.

## **19. Insurance**

19.1 The Consultant must have and maintain workers' compensation insurance in compliance with the *Workers' Compensation and Rehabilitation Act 2003* (or other applicable law of the State of Queensland from time to time making provision for workers' compensation insurance) or any other equivalent or similar State Act.

19.2 Where specified in Schedule 1, the Consultant must have and maintain:

- (a) public liability insurance for a minimum per occurrence cover of the amount specified in Schedule 1; and
- (b) professional indemnity insurance for a minimum per occurrence cover of the amount specified in Schedule 1.

19.3 The insurances must be effected with an insurer approved by James Cook University, include terms and conditions acceptable to James Cook University, and be maintained for the Term.

19.4 The Consultant will:

- (a) within 21 days of the date of the Letter of Acceptance and before supplying or performing any of the Consultancy Services; and
- (b) upon request in writing at any time by James Cook University,

produce evidence to James Cook University that the insurances have been effected and maintained in accordance with this clause. If the Consultant fails to produce evidence of compliance with its insurance obligations to the satisfaction of James Cook University, James Cook University may effect and maintain the insurance, pay the premiums and deduct these payments from moneys due or becoming due to the Consultant from James Cook University.

19.5 The professional indemnity insurance shall cover the Consultant and its servants and agents for liability under the Contract for the amount set out in Schedule 1. The Consultant must maintain the professional indemnity insurance on terms and conditions no less favourable to James Cook University than those approved under this clause 19, for the period specified in Schedule 1 after completion of the

Consultancy Services or termination of the Contract and, upon request in writing, produce evidence to James Cook University that it has been maintained.

19.6 Where public liability insurance is required under clause 19.2, the insurance must name James Cook University as co-insured or otherwise be endorsed so as to protect the interests of James Cook University and the Consultant as if they were co-insurers in respect of the liability of James Cook University arising out of the Consultancy Services.

19.7 Where public liability insurance is required under clause 19.2, the insurance will provide that the term 'Insured' does apply to each of the persons comprising the insured in the same manner as if a separate policy had been issued to each of those persons in their name alone and the Insurer does waive all rights of subrogation or action which the Insurer may have or acquire against any of those persons, provided however that this clause will not be deemed to increase the limit of the Insurer's liability under the policy.

19.8 The effecting and maintaining of insurance will not limit the liabilities or obligations of the Consultant under other provisions of the Contract.

19.9 The Consultant shall ensure that the policies of insurance effected pursuant to this Contract contain provisions acceptable to James Cook University that will:

- (a) require the Insurer, whenever the Insurer gives to or serves upon the Consultant notice of cancellation or any other notice under or in relation to all or any of the interests insured under the policy, at the same time to give notice to James Cook University in writing that the notice has been given to or served upon the Consultant;
- (b) require that the Insurer will not cancel or vary the interest of all or any of the insured under the policy at the request of an insured party except with the written consent of all the co-insured; and
- (c) provide that a notice of claim given to the insured by one insured shall be accepted by the Insurer as a notice of claim given to the Insurer by all the insured, as the case may require.

19.10 The Consultant shall inform James Cook University in writing of any claim or of the occurrence of any event that may give rise to a claim under the policies of insurance effected pursuant to the Contract within 7 days thereof and shall ensure that James Cook University is kept fully informed of subsequent actions and developments concerning the event or claim.

19.11 The Consultant shall ensure that each sub-contractor shall inform the Consultant in writing within 7 days of any claim or of any event that may give rise to a claim under the policies of insurance effected pursuant to the Contract.

## **20. Unavoidable Delay**

20.1 A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or pursuant to the Contract) if that default:

- (a) is caused by Force Majeure; or
- (b) continues for less than three (3) days.

## **21. Waiver**

21.1 A right under the Contract will only be waived where the waiver is in writing and is signed by the relevant party.

21.2 A waiver by either party will not prejudice its rights in respect of any subsequent breach of the Contract by the other party.

## **22. Governing Law**

22.1 The Contract will be governed by and construed in accordance with the law of the State of Queensland, and the parties submit to the jurisdiction of the courts of that State and all courts competent to hear appeals therefrom.

## **23. Entire Contract**

23.1 The Contract constitutes the entire agreement between the parties in relation to its subject matter.

## **24. No Subcontracting**

24.1 The Consultant will not subcontract any part of the Consultancy Services without obtaining James Cook University's Consent.

24.2 Any Consent given by James Cook University for the Consultant to subcontract:

- (a) will not operate as an authority to transfer responsibility to the subcontractor; and
- (b) will not relieve the Consultant from any of its liabilities or obligations under the Contract.

24.3 The Consultant will not assign this Contract or any of the benefits under the Contract without James Cook University's Consent.

## **25. Further Assistance**

25.1 The Consultant will do all things reasonably required by James Cook University to give effect to this Contract or to perfect or protect the rights of James Cook University including, without limitation, giving or obtaining of confidentiality undertakings acceptable to James Cook University in relation to Records and the Consultancy Services.

## **26. Resolution of Disputes**

26.1 If there is a dispute as to the Consultant's performance under the Contract, the Consultant may within 14 days of receipt of a notice to remedy under clause 16.1, or

James Cook University may at any time, give written notice inviting the other party to participate in an alternative dispute resolution procedure and designating as the first party's representative in negotiations relating to the dispute, a person with authority to settle the dispute.

26.2 Upon receipt of a notice, the second party shall give written notice to the first party within 7 days, designating as its representative in negotiations relating to the dispute, a person with authority to settle the dispute.

26.3 The designated representatives shall seek to resolve the dispute within 10 days of their appointment.

26.4 If the dispute is not resolved within the 10 day period, the parties shall seek during the next 7 days to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration (such as further negotiations, mediation, conciliation, independent expert determination).

26.5 The rules governing any alternative dispute resolution procedure adopted by the parties, shall be as recommended by Dispute Resolution Services, a service of the Bar Association of Queensland conducted through Barristers Services Pty Limited.

26.6 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the alternative dispute resolution procedure established by this clause for any purpose other than an attempt to settle a dispute under this Contract.

26.7 In the event that the dispute is not resolved by agreement within 45 days of the date upon which the first party gave notice under this clause either party may refer the dispute to arbitration or commence court proceedings.

26.8 Each party shall continue to perform its obligations under the Contract notwithstanding the existence of a dispute or any proceedings under this clause.

## **27 GST**

27.1 In this clause “GST”, “supplier” and “tax invoice” have the same meaning as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (“the GST legislation”).

27.2 The Contractor acknowledges that in terms of the GST legislation it will, under this Agreement, be a “supplier” and may be required to pay GST to the Commissioner of Taxation.

27.3 The parties agree that the agreed prices for the Goods or Services under the Contract are GST-inclusive prices, and that the amount payable under the Contract shall not be varied by the amount of the GST

27.4 The Contractor will ensure that all invoices rendered to James Cook University under the Contract are in a format that identifies any GST paid, and which permits James Cook University to claim an input tax credit.

27.5 The Department must pay to the Contractor the amount of each invoice subject to the terms of the Contract.

## **28. Clauses to Survive Termination**

28.1 The following clauses will survive termination or expiration of this Contract -

- (a) clause 9 (intellectual property);
- (b) clause 19.5 (maintenance of professional indemnity insurance); and
- (c) clause 25 (assistance to protect rights of James Cook University).

## **29. Notices**

29.1 Notices must be in writing and may be delivered by prepaid postage, by hand or by facsimile transmission to the parties at the address specified in the Offer or Letter of Acceptance, or other address subsequently notified by a party to the other. Notices will be deemed to be given:

- (a) 2 days after deposit in the mail with postage prepaid;
- (b) immediately upon delivery by hand;
- (c) immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's transmitter, prior to 5p.m. on any business day in Queensland, and if after 5p.m. the notice will be deemed to be given at 9.00am on the next business day.

## **30. Severability**

30.1 The invalidity or unenforceability of any one or more of the provisions of the Contract will not invalidate or render unenforceable the remaining provisions of the Contract. Any illegal or invalid provision of the Contract will be severable and all other provisions will remain in full force and effect.

## **SCHEDULE 1**

1 Public liability insurance

After carrying out a risk assessment the parties have agreed that the Consultant will take out public liability insurance for the amount of \$5,000,000

2. Professional indemnity insurance

After carrying out a risk assessment the parties have agreed that the Consultant will take out professional indemnity insurance for the amount of \$1,000,000

The professional indemnity insurance must be maintained on the terms set out in clause 19.5 for [ ](insert time period).

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For enquiries in relation to these Conditions please contact [Danella.Stolz@jcu.edu.au](mailto:Danella.Stolz@jcu.edu.au)  
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