

Consultancy Agreement (Short Form)

Contract Number: XXXXXX

Reference Schedule

Item No.	Item	Details
Item A	JCU	Name: James Cook University Address: 1 James Cook Drive, Townsville, Queensland, 4811 ABN: 46 253 211 955
Item B	JCU's address for notice (clause 19)	Name: Lisa James Position: Manager, Strategic Procure to Pay Address: 1 James Cook Drive, Townsville, Queensland, 4811 Telephone: 0428 194 350 Email: lisa.james3@jcu.edu.au
Item C	Consultant	Name: [#insert] Address: [#insert] ABN / ACN: [#insert]
Item D	Consultant's address for notice (clause 19)	Name: [#insert] Position: [#insert] Address: [#insert] Telephone: [#insert] Email: [#insert]
Item E	Commencement Date (clause 3)	[#insert]
Item F	Completion Date (clause 3)	[#insert]
Item G	Fee and Payment Schedule (clause 7)	[#insert] All fees are to be deposited by JCU into the Consultant's nominated bank account no later than thirty (30) days from receipt of the tax invoice. All tax invoices must be sent to accountspayable@jcu.edu.au .
Item H	Services (clause 2)	As specified at Schedule 1.
Item I	Other documents forming part of the Agreement	[#insert or write 'nil']
Item J	Key Personnel (clause 5)	Name: [#insert] Position: [#insert] Address: [#insert] Telephone: [#insert] Email: [#insert]
Item K	JCU Supplied Items (clause 2.3(a))	[#insert any equipment or material etc to be provided by JCU to the Consultant; or Not Applicable]
Item L	Insurance (clause 10.1)	The Consultant agrees to effect and maintain: (a) Workers' compensation insurance for an amount required by the relevant State or Territory legislation YES <input type="checkbox"/> NO <input type="checkbox"/> (b) Public liability insurance for an amount of not less than \$20 million dollars, per occurrence; and

		(c) Professional indemnity insurance for an amount of not less than \$10 million dollars.
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List of Attachments:

General Conditions
 Schedule 1 – Services
 Schedule 2 – Special Conditions

Execution

By executing this document, JCU and the Consultant agree to the contract on the terms contained in the Reference Schedule, the General Conditions, the Schedules and any documents referred to in Item I.

James Cook University ABN 46 253 211 955
 signed on / / by its duly authorised officer
 in the presence of:

 Signature

 Signature of witness

 Full Name

 Name of witness (print)

 Position Held

[#insert consultant's name] ABN [#insert consultant's ABN or ACN]
 signed on / / by its duly authorised officer
 in the presence of:

 Signature

 Signature of witness

 Full Name

 Name of witness (print)

 Position Held

OR IF SOLE TRADER [DELETE AS APPROPRIATE]

[#insert consultant's name] ABN [#insert consultant's ABN or ACN]
 signed on / / In the presence of:

 Signature of witness

 Signature

 Name of witness (print)

 Full Name (print)

General Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place.

Commencement Date means the date stated in Item E of the Reference Schedule or otherwise notified by JCU to the Consultant.

Completion Date means the date stated in Item F of the Reference Schedule, or for completion of a stage of the Services as may be extended in accordance with this Agreement.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as being confidential; or
- (c) a party knows or ought to know is confidential;

but does not include information that:

- (d) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (e) is in the possession of a party without restriction in relation to disclosure before the information is received from the other party;
- (f) has been independently developed or acquired by a party; or
- (g) is required to be disclosed by Legislative Requirements, but only to the extent that the information is required to be disclosed.

Conflict means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Consultant (or its Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Consultant in performing the Services fairly and independently.

Contract Material means all Material created in the course of performance of the Services.

Deliverables means correspondence, reports, plans, drawings, designs, samples, sketches, illustrations, models, specifications, calculations, information, technical documents and other data in a format required by JCU which result from or are the product of carrying out the Services.

Existing Material means all Material in existence prior to the commencement of this Agreement.

- (a) incorporated in;
 - (b) supplied with, or as part of; or
 - (c) required to be supplied with, or as part of;
- the Contract Material.

Fee means the amount or amounts specified in Item G of the Reference Schedule.

Force Majeure means an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations, and any other cause, whether of the kind specifically enumerated or otherwise which is not reasonably within the control or anticipation of the party affected.

Insolvency Event means any of the following events concerning a party:

- (a) an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the party;
- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to, or over, any of the property or undertaking of the party;
- (d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (e) the party is unable to pay its debts when they become due and payable or is presumed to be insolvent under the *Corporations Act 2001* (Cth) or Bankruptcy Act;
- (f) the party ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Intellectual Property includes all copyright (including rights in relation to phonogram and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), trade secrets and know how, registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Key Personnel means those employees of the Consultant specified in Item J of the Reference

Schedule.

Labour Hire Services has the meaning given in the *Labour Hire Licensing Act 2017* (Qld).

Legislative Requirement includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services;
- (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with the Services;
- (c) Australian Standards and any other relevant standards applicable to the Services; and
- (d) fees and charges payable in connection with the foregoing.

Material includes documents, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

Moral Rights means the right of attribution of authorship of work, the right to not have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

Personnel means the employees, officers, agents, subcontractors, suppliers and consultants of a party (which in the case of the Consultant includes the Key Personnel), but JCU's Personnel do not include the Consultant or the Consultant's Personnel and the Consultant's Personnel do not include JCU or JCU's Personnel.

Policy means any policy or procedure of JCU notified to the Consultant from time to time.

Services means the services described in Item H of the Reference Schedule and includes provision of Contract Material.

Special Conditions means the special conditions (if any) set out in Schedule 2 which take precedence over these General Conditions to the extent of any inconsistency.

WH&S Act means:

- (a) the Work Health and Safety Act 2011 (QLD);
- (b) any of its regulations; and
- (c) any advisory standards, ministerial notices, codes of practice or prohibition notices and made under or preserved pursuant to, the *Work Health and Safety Act 2011* (QLD).

1.2 Interpretation

In the interpretation of this Agreement:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or any legal entity;
- (d) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders in council, rules, by-laws and ordinances made under those statutes;
- (e) headings and the table of contents (if any) are used for convenience only and are to be disregarded in interpretation;
- (f) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (g) covenants by each party include an obligation to procure compliance by each of the parties' employees and all other persons under the control of that party;
- (h) where a party consists of more than one person the covenants on the party bind each two or more persons jointly and each person severally. The release of one of the persons from an obligation does not release any other person who may be jointly liable;
- (i) any undertaking by a party not to do any act or thing is taken to include an undertaking not to permit or suffer the doing of the act or thing;
- (j) where under this Agreement the day on or by which any act or thing is to be done is not a Business Day, that act or thing must be done on the next Business Day following the due day;
- (k) all annexures, schedules and other attachments (if any) form part of this Agreement;
- (l) references to "writing" include all means of reproducing words in a tangible, permanently visible form in the English language;
- (m) a reference to anything after the words "includes" or "including" does not limit what else might be included.

2. SERVICES

2.1 Consultant to undertake Services

The Consultant agrees to undertake and complete the Services in accordance with this Agreement.

2.2 Warranties

The Consultant warrants that the Services will:

- (a) be carried out using appropriately qualified and trained Personnel;
- (b) match the description of the Services as set out in this Agreement;
- (c) be carried out with the care, skill and

judgment of a competent professional consultant experienced in the provision of services of a similar size, scope and complexity to the Services;

- (d) be fit for purpose or purposes;
- (e) be of merchantable quality;
- (f) be carried out in accordance with relevant professional principles and standards; and
- (g) be carried out in accordance with all Legislative Requirements including the WH&S Act, Policies and all directions given by or on behalf of JCU under this Agreement.

2.3 Labour, plant and equipment

- (a) The Consultant must, except to the extent stated to the contrary in Item K of the Reference Schedule, supply all equipment, services, utilities and labour the Consultant requires to perform its obligations under the Agreement.
- (b) Any items which the Consultant uses or supplies in conjunction with the Services must:
 - (i) be of merchantable quality; and
 - (ii) comply with any applicable Australian Standards and any other standards specified in this Agreement.

3. TIME AND COMPLETION

The Consultant must:

- (a) commence the Services on the Commencement Date;
- (b) proceed with the Services with due diligence and without delay and in accordance with any directions of JCU; and
- (c) complete the Services by the Completion Date.

4. VARIATION OF SERVICES

4.1 Variation of Services

JCU may notify the Consultant at any time JCU requires the Consultant to amend, increase, decrease, omit or change the quality, character or extent of the Services (Variation). No Variation notified by JCU will invalidate the Agreement.

4.2 Terms of Variation

- (a) The parties agree to negotiate (in good faith) the terms of the Variation, including any variation to the Fee, and the Completion Date, and failing agreement, a dispute will have arisen and the parties will follow the process under clause 19.
- (b) The parties agree that no Variation will be carried out by the Consultant until such time as the terms of the Variation have been agreed by the parties in writing.

5. KEY PERSONNEL

5.1 Key Personnel

Where the Key Personnel are specified in Item J of the Reference Schedule, the Consultant must ensure that the Services are carried out by the Key Personnel. If any of the Key Personnel leave the Consultant's employment, the Consultant must promptly notify JCU and seek approval for the replacement of such Personnel. The replacement of such Personnel will be with a person of comparable skill, experience and qualifications.

5.2 Provision of replacement Personnel

If any Personnel of the Consultant's prove, in the reasonable opinion of JCU, to be unsatisfactory to JCU, JCU may direct their removal in writing and the Consultant will immediately remove the Personnel concerned from performance or any other role in respect to the Services and will provide a replacement for such Personnel, as approved in accordance with clause 5.1 as soon as practicable and unless otherwise agreed in writing, at no extra cost to JCU.

6. NON-COMPLIANT SERVICES

If JCU is not satisfied that the Services comply in all respects with the requirements of this Agreement, JCU may, at its option:

- (a) require the Consultant to, within a reasonable time, take such steps as are necessary to ensure that the Services comply with this Agreement and the Consultant agrees that no Fee, costs, damages or other claim will be payable to the Consultant by JCU for any work done to rectify the non-compliance; or
- (b) notify the Consultant that JCU rejects the Services which do not comply with this Agreement and the Consultant agrees to refund to JCU any payments made by JCU in respect of the Services which do not comply with this Agreement.

7. FEE

7.1 Payment

In consideration of the proper performance of the Services by the Consultant in accordance with this Agreement, and subject to clause 8, JCU will pay the Consultant the Fee, in accordance with the Payment Schedule set out in Item G of the Reference Schedule.

7.2 Fee

The Fee and any rates or prices used to calculate the Fee (together with any additions or deductions expressly provided for by the Agreement):

- (a) include all costs, expenses, fees, customs duties and charges that may be incurred by the Consultant in performing its obligations under the Agreement, including any costs related to the induction of the Consultant or its Personnel;
- (b) include the provision of all equipment, services, utilities, transport, labour and supervision for carrying out the Services, even if not specifically mentioned in the Agreement;

- (c) include the Consultant's profit, attendance, preliminaries, supervision and on-site and off-site overheads in connection with the performance of its obligations under the Agreement; and
- (d) will not be subject to any rise and fall in the costs of labour, any foreign exchange adjustment or any other adjustment for any reason,

except to the extent expressly provided by this Agreement.

Other than the Fee, no additional amounts shall be payable to the Consultant by JCU unless agreed in writing, except to the extent expressly provided for by this Agreement.

7.3 Consultant's Acknowledgement

The Consultant acknowledges that:

- (a) it has carefully reviewed the description of the Services prior to entering into this Agreement and has a clear understanding of the Services and all things required to complete the Services;
- (b) it has made its own investigation and assessment of the work and risks involved in providing the Services and it has reviewed the information that JCU has made available to it about the Services and this Agreement;
- (c) the Services include all incidental and related work which may arise from matters referred to or contemplated by the description of the Services;
- (d) it has made allowances in the Fee and any rates or prices used to calculate the Fee for all the risks and other matters for which it is responsible under this Agreement; and
- (e) where JCU has furnished information for the purpose of the Services the Consultant will not rely on such information without separately confirming its accuracy and making its own investigations and assessments. The Consultant shall review any information provided by JCU and notify JCU in writing if it contains errors or inconsistencies. The Consultant will have no entitlement to make any claim against JCU arising out of or in relation with any error or inconsistency.

8. PAYMENT FOR THE SERVICES

8.1 Invoices

The Consultant must submit to JCU an invoice for payment of the Fee, which must include the calculations for substantiating the amount which it claims and be in a form reasonably approved by JCU. The invoice must contain any other information JCU may reasonably require. No money shall be paid by JCU unless an invoice is received in accordance with this clause.

8.2 Additional Information

Upon receipt of a valid invoice, JCU may require the Consultant to provide additional information to assist

in determining the amount payable.

8.3 Payment

Subject to clauses 8.4 and 8.5, JCU will pay the amount of the invoice within thirty (30) days of receipt of the valid invoice. Any payment made by JCU is on account only, and is not evidence of any Services having been carried out in accordance with the requirements of this Agreement.

8.4 Disputed Amounts

JCU is not required to pay any amounts which it disputes until after the dispute has been resolved in accordance with clause 20 but will pay all amounts not subject to the dispute. If the Consultant disputes any amount paid by JCU such disputed amount shall be resolved in accordance with clause 20.

8.5 Deductions by JCU

Without limiting JCU's rights under any other clause in this Agreement, JCU may set off against and deduct from any monies due to the Consultant, any debt, costs, damages, restitution, loss or expense due to or claimed by JCU from the Consultant arising out of the Agreement or otherwise and whether these moneys to be paid to JCU are disputed by the Consultant.

8.6 Incorrect Lodgement

If an invoice is found to be incorrectly lodged with JCU after payment, any underpayment or overpayment will be recovered by or from the Consultant by payment to or by the Consultant or off set against any subsequent invoice.

9. GOODS AND SERVICES TAX

9.1 GST Exclusive

Except under this clause, the consideration for a Supply made under or in connection with this Agreement does not include GST.

9.2 Taxable Supply

If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Supplier must give the Recipient a Tax Invoice for the Supply; and
- (b) the Recipient must pay the Supplier an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Supply.

9.3 Definitions

In this clause 9, the terms 'GST', 'Recipient', 'Supplier', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

10. INSURANCE AND INDEMNITY

10.1 Insurances

- (a) Before the Commencement Date, the

Consultant must take out and maintain the insurance policies set out Item L of the Reference Schedule at its own cost.

- (b) Evidence of the currency of the insurances must be given in writing to JCU prior to the Commencement Date, each time any such insurance is renewed and at any time upon request by JCU.
- (c) The Consultant will immediately notify JCU and keep JCU informed of any claims which fall for consideration under any policy of insurance required by clause.
- (d) If the Consultant fails to obtain or maintain any insurance required under clause 10.1(a) or fails to provide satisfactory evidence of insurance under clause 10.1(b), JCU may obtain the relevant insurance and the Consultant will be indebted to JCU for its costs of doing so.
- (e) The Consultant must pay any excesses for claims made under any policy of insurance effected by JCU or the Consultant, which relate to the Consultant or the Services, except to the extent that JCU or its Personnel caused the claim to arise.
- (f) If the Consultant takes out a 'claims made' policy, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Consultant must maintain the policy during the term of this Agreement and for seven (7) years after the expiry or earlier termination of this Agreement.
- (g) If the Consultant takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Consultant must maintain the policy during the term of this Agreement.

10.2 Indemnity

- (a) The Consultant indemnifies JCU, its Council members, and its Personnel ("the Indemnified") from and against all actions, losses, damage, claims, demands, costs and expenses (including the cost of defending or settling any action, claim or demand) made sustained, brought or prosecuted against the Indemnified in any manner which may arise directly or indirectly in connection with:
 - (i) any act, error or omission of the Consultant (or its Personnel) in the performance of the Consultant's obligations under the Agreement;
 - (ii) a breach of the Consultant's warranties or obligations under the Agreement; or
 - (iii) any infringement or alleged infringements of any third party rights (including Intellectual Property rights and Moral Rights).
- (b) The Consultant's liability to indemnify the Indemnified under this clause shall be reduced proportionately to the extent that any negligent acts, errors or omissions of the

Indemnified, caused or contributed to such claims, costs, expenses, losses or damages.

- (c) If, during this Agreement or at any time after its termination, the Consultant or the Key Personnel is held or deemed to be an employee of JCU under the general law, any statute or enterprise agreement, the Consultant must indemnify and keep indemnified JCU in respect of any:
 - (i) Additional tax, levy or other payment including any interest, penalty or late fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; or
 - (ii) remuneration, superannuation, worker's compensation, annual leave, long service leave, bereavement leave or other leave, other payment, entitlement or other monetary or non-monetary benefit to be paid or provided to the Consultant or the Key Personnel.
- (d) The indemnities in this clause 10.2 survive the expiry or termination of this Agreement.

11. INTELLECTUAL PROPERTY

11.1 Intellectual Property Rights

Any Intellectual Property rights and title to, or in relation to, the Contract Material will vest, upon creation, in JCU.

11.2 Licence to use Intellectual Property Rights

- (a) This clause 11 does not affect the ownership of any Intellectual Property in any Existing Material.
- (b) The Consultant grants to JCU a perpetual, non-exclusive, royalty free licence to use all Existing Material for any purpose.

11.3 Warranties

The Consultant warrants to JCU that:

- (a) the provision of the Services does not and will not infringe the rights (including, but not limited to the Intellectual Property rights) of a third party;
- (b) the Consultant will, at no further cost to JCU, procure all licences and consents to use any Intellectual Property rights of any third party which are necessary to provide the Services;
- (c) Contract Material does not and will not infringe the rights (including not limited to, any Intellectual Property rights) of a third party; and
- (d) the Consultant has the right to assign all Contract Material to JCU in accordance with this clause 11.

11.4 Moral Rights

The Consultant consents to, and warrants that it has consents from each of its Personnel, permitting JCU

to infringe any Moral Rights that the Consultant and/or its Personnel may have, or become entitled to, in any Contract Material or Existing Material.

11.5 Indemnity

The Consultant indemnifies JCU for any breach of the warranties contained in this clause 11.

11.6 Survival of obligations

The obligations of the Consultant under this clause 11 continue after expiry or termination of this Agreement.

12. ASSIGNMENT AND SUBCONTRACTING

12.1 Assignment or subcontracting by Consultant

The Consultant may, with the approval of JCU, subcontract part of the Services or assign the Agreement or any right, benefit or interest under the Agreement. JCU must not unreasonably withhold approval but may impose conditions on any such consent. No consent by JCU under this clause will relieve the Consultant of any of its obligations under the Agreement.

12.2 Assignment by JCU

JCU may assign or novate this Agreement or assign a right under this Agreement by notice to the Consultant. The Consultant must execute any document reasonably required by JCU to affect its rights under this clause 12.2.

13. CONFIDENTIAL INFORMATION

13.1 Disclosure of Confidential Information

- (a) Each party must ensure that Confidential Information belonging to the other party is kept confidential and is not used or disclosed to any person for any purpose except when:
- (i) disclosure is needed for the performance of the Agreement;
 - (ii) the other party consents under mutually agreeable terms; or
 - (iii) disclosure is made to an advisor of the party under a professional relationship that is governed by an obligation of confidence.
- (b) Each party must:
- (i) immediately notify the other party if it becomes aware of any breach of this clause 13;
 - (ii) immediately notify the other party if it is required to disclose Confidential Information under any law;
 - (iii) subject to clause 13.2, upon receiving a request from the disclosing party (either during the term of this Agreement or upon its earlier termination or expiry) deliver or destroy all documents or files in its possession or control which contain Confidential Information, in accordance with the disclosing

party's instructions.

13.2 Retention of Confidential Information

Subject to obtaining prior written approval from the disclosing party, a party may retain copies of Confidential Information required to be retained by law, and one copy of that party's records.

13.3 Survival

The obligations in this clause 13 survive for a period of two years from the earlier of the expiration or termination of this Agreement.

14. PRIVACY

14.1 Where this clause applies

This clause 14 applies only where the Consultant deals with Personal Information when, and for the purpose of, performing the Services under this Agreement.

14.2 Contracted Service Provider

The Consultant acknowledges that it is a "contracted service provider" within the meaning of section 34 of the *Information Privacy Act 2009 (Qld)* ("the Privacy Act"), and agrees when performing the Services under this Agreement:

- (a) to use or disclose Personal Information obtained during the course of performing the Services under this Agreement, only for the purposes of this Agreement;
- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle ("IPP") or National Privacy Principle ("NPP") contained in sections 26 to 33 inclusive, of the Privacy Act, which if done or engaged in by an agency, would be a breach of those IPPs or NPPs;
- (c) to carry out and discharge the obligations contained in the IPPs and NPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose Personal Information the Consultant holds how these individuals may gain access to their Personal Information and how individuals may amend their Personal Information, if it is inaccurate (to the extent required by the Privacy Act);
- (e) to notify individuals whose Personal Information the Consultant holds, that complaints about acts or practices of the Consultant may be investigated by the Office of the Information Commissioner;
- (f) to immediately notify the individual and JCU if the Consultant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 14 by the Consultant or any subcontractor; and
- (g) to ensure that any employee of the Consultant who is required to deal with Personal Information for the purposes of this Agreement is made aware of the obligations of the Consultant set out in this clause 14.

14.3 Transfer of Personal Information

- (a) The Consultant agrees not to transfer Personal Information held in connection with this Agreement outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of JCU.
- (b) If the Consultant receives written approval from JCU pursuant to clause 14.3(a), the Consultant agrees that it will not transfer an individual's Personal Information to an entity outside Australia unless:
- (i) the individual agrees to the transfer; or
 - (ii) the transfer is authorised or required under a law; or
 - (iii) the Consultant is satisfied on reasonable grounds that the transfer is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or to public health, safety or welfare; or
 - (iv) two or more of the following apply:
 - (A) the Consultant reasonably believes that the recipient of the Personal Information is subject to a law, binding scheme or contract that effectively upholds principles for the fair hearing of Personal Information that are substantially similar to the IPPs or NPPs;
 - (B) the transfer is necessary for the performance of the Consultant's functions in relation to the individual;
 - (C) the transfer is for the benefit of the individual but it is not practicable to seek the agreement of the individual, and if it were practicable to seek the agreement of the individual, the individual would be likely to give the agreement;
 - (D) the Consultant has taken reasonable steps to ensure that the Personal Information it transfers will not be held, used or disclosed by the recipient of the Personal Information in a way that is inconsistent with the IPPs or NPPs.

14.4 Subcontracting

The Consultant agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Consultant has under this clause 14, including the requirement in relation to subcontracts.

14.5 Reliance on exception in IPPs or NPPs

If the Consultant relies or intends to rely on any of the exceptions in the IPPs or NPPs it will notify JCU prior to placing any reliance on these exceptions.

14.6 Return of Personal Information

The Consultant agrees to ensure that any record or document (as defined in the Privacy Act) containing Personal Information provided to the Consultant by JCU or any other person pursuant to this Agreement is, at the expiration or earlier termination of this Agreement, either returned to JCU or deleted or destroyed. If requested by JCU, the Consultant will provide JCU with a statement signed by the Consultant, certifying that the Consultant has complied with this clause 14.6.

14.7 Breach

- (a) The Consultant acknowledges that a privacy-related breach is a significant breach and will treat any such breach seriously.
- (b) Without limiting any other provision of this clause 14, if there is unauthorised access to, unauthorised disclosure of, or loss of, Personal Information held by the Consultant, the Consultant must immediately notify JCU and must provide JCU with all reasonable assistance and information in order to enable JCU to comply with all notifications that JCU is required to make in accordance with any Legislative Requirement.

14.8 Definitions

In this clause 14, the terms "agency", "Information Privacy Principles" (IPPs), and "National Privacy Principles" (NPPs) have the same meaning as they have in the Privacy Act.

14.9 Survival

The provisions of this clause 14 will survive the termination or expiration of this Agreement.

15. WORK, HEALTH & SAFETY & ENVIRONMENT

Person Conducting a Business or Undertaking

- (a) The Consultant acknowledges that it has a duty of care as a person conducting a business or undertaking under the WH&S Act to ensure the health and safety of itself (if an individual) and/or its Personnel.
- (b) The Consultant must, so far as is reasonably practicable, consult, cooperate and coordinate with JCU to ensure the health and safety of itself (if an individual) and/or its Personnel.

15.2 Compliance with JCU Policies

The Consultant must:

- (a) without limiting clause 2.2(g), comply with all lawful directions issued by JCU relating to health, safety and the protection of the environment;
- (b) undertake, and ensure that all applicable

- Personnel of the Consultant undertake, all work, health and safety inductions required by JCU prior to the Commencement Date;
- (c) comply with, and ensure that all Personnel of the Consultant comply with, all Policies relating to the Services and the premises at which the Services are performed;
- (d) immediately notify JCU of any accidents or workplace or environmental incidents and, within one day, give JCU a detailed report of the circumstances and consequences of the accident or incident; and
- (e) if required, cooperate with JCU, and ensure that all applicable Personnel of the Consultant cooperate with JCU, in any investigations relating to workplace or environmental incidents.

(iii) breaches any other term of this Agreement and, if the breach is remediable, fails to remedy that breach within ten (10) Business Days of being directed in writing to do so by JCU;

(iv) abandons or refuses to proceed with the Services,

then, without limiting its rights at law, JCU may immediately by notice to the Consultant, terminate this Agreement.

16. LABOUR HIRE SERVICES

16.1 Labour Hire Licence

If, on or before the Commencement Date or at any time during the Term, JCU determines, in its absolute discretion, that, in the course of performing the Services, the Consultant will provide Labour Hire Services to JCU:

- (a) the Consultant must hold and maintain a valid and current licence granted pursuant to the *Labour Hire Licensing Act 2017* (Qld); and
- (b) the Consultant must provide evidence of the licence to JCU immediately upon request by JCU.

16.2 Termination

Without limiting any other termination rights under this Agreement, JCU may immediately terminate this Agreement by notice in writing to the Consultant if the Consultant breaches clause 16.1.

17. CONFLICT OF INTEREST

The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no Conflict exists or is likely to arise in the performance of its obligations under this Agreement. If the Consultant becomes aware of any actual or potential Conflict, the Consultant must immediately notify JCU in writing.

18. TERMINATION

18.1 Termination by Notice

JCU may, at any time, terminate this Agreement for any reason in its absolute discretion by notice in writing to the Consultant.

18.2 Termination by default by Consultant

- (a) If the Consultant:
- (i) is subject to an Insolvency Event;
- (ii) breaches any Legislative Requirement; or

18.3 Termination by default of JCU

If JCU:

(a) having failed to pay to the Consultant any amount that may become due within the period provided for does not pay such amount within thirty (30) days of receipt of a notice from the Consultant stating that notice of determination may be served if payment is not made within thirty (30) days, or

(b) is subject to an Insolvency Event,

then, the Consultant may, by written notice delivered to JCU, terminate this Agreement.

18.4 Costs

(a) If JCU terminates the Agreement under clause 18.2(a), JCU will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Consultant, which are directly attributable to the termination.

(b) If JCU exercises its rights under clause 18.1, JCU will pay the Consultant for work completed up to the date of termination and reasonable and properly incurred demobilisation costs and otherwise the Consultant will have no other claim as a consequence of the termination.

18.5 Effect of Termination

Termination of this Agreement will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.

19. NOTICES

19.1 Service

A notice, consent or communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given by hand to that person's address, sent by prepaid mail to that person's address or sent by email to that person's email address.

19.2 Delivery

A notice, consent or communication delivered under clause (a) is given and received:

- (a) if it is hand delivered, on that day; or
- (b) if it is sent by prepaid mail, five (5) Business Days after posting; or
- (c) if sent by email, as provided under sections 24 and 25 of the *Electronic Communications Act 2001 (Qld)*,

but if the delivery, receipt or transmission is not a Business Day or if after 5.00pm (local time in the place of receipt), the notice, consent or communication is taken to be received at 9.00am on the next Business Day.

19.3 Address

A party's address and email address are those set out in Item B and D of the Reference Schedule, or as one party may notify the other of a change of such address or email address in writing.

20. DISPUTE RESOLUTION

20.1 Dispute

Subject to clause 20.3, the parties agree not to commence any legal proceedings in respect to any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.

20.2 Procedure

The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) the party claiming the dispute will send the other party a written notice (Notice of Dispute) setting out the nature of the dispute, and the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute.
- (b) the parties have ten (10) Business Days from the receipt of the Notice of Dispute to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure.
- (c) if:
 - (i) there is no resolution of the dispute, within the ten (10) Business Days;
 - (ii) there is no agreement, within the ten (10) Business Days on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the fifteen (15) Business Days,

then, either party may commence legal proceedings.

20.3 Where this clause does not apply

This clause 20 does not apply to the following circumstances:

- (a) where either party commences legal proceedings for urgent interlocutory relief; or
- (b) where an authority of the Commonwealth, or a State or Territory is investigating a breach or suspected breach of the law by JCU or the Consultant.

20.4 Continue to perform obligations

Despite the existence of a dispute, both parties must (unless requested to do so in writing by the other party not to do so) continue to perform its obligations under the Agreement.

20.5 Survival of this clause

The operation of this clause survives the expiration or earlier termination of this Agreement.

21. FORCE MAJEURE

21.1 Occurrence of Force Majeure

A party is not liable for any delay or failure (whether total or partial) in the performance of its obligations under this Agreement if the delay or failure is caused by any event of Force Majeure.

21.2 Notice of Force Majeure

If a party's performance of its obligations is affected or the party has reason to believe its performance of its obligations may be affected by any event of Force Majeure, then it must:

- (a) give notice of the occurrence of the Force Majeure to the other party in writing (by facsimile transmission if possible);
- (b) within five (5) days of giving that notice also provide written particulars of the Force Majeure and supply, if possible, supporting evidence; and
- (c) take all reasonable steps to make good and resume performance of the obligations affected by Force Majeure under this Agreement.

21.3 Termination

Either party may terminate this Agreement if the Force Majeure continues for a period of three (3) months and prevents performance of the substance of this Agreement.

22. RELATIONSHIP

22.1 Independent contractor

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

22.2 No right or authority

The Consultant does not have the right or authority to act on behalf of or bind JCU unless the Consultant has been expressly authorised by JCU in writing to do so.

22.3 No entitlements

Apart from the Fee and subject to clause 22.4, neither the Consultant nor its Personnel is entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from JCU. The Consultant is solely responsible for providing its Personnel with these entitlements.

If JCU becomes liable for the payment of any tax (including but not limited to PAYG Withholding, payroll tax, GST or fringe benefits tax) JCU may deduct these amounts from any monies owing to the Consultant under this Agreement. If no such monies or insufficient monies are owing, JCU may recover the amount from the Consultant as a debt.

22.4 Superannuation

If JCU is required to pay superannuation, JCU will contribute the minimum amount to a complying superannuation fund.

23. DISCONTINUANCE OF BODIES

23.1 Where this clause applies

This clause applies to any reference to any authority, institute, association or body whether statutory or otherwise ("a Body") if:

- (a) the Body ceases to exist;
- (b) the Body is reconstituted, renamed or replaced; or

its powers or functions are transferred to another organisation.

23.2 Reference

A reference to a Body is taken to include a reference to the organisation established or constituted in lieu of it or to which its powers or functions are transferred, or, in the absence of either of the above, to the organisation which most closely serves the same purpose as the Body.

24. WARRANTY OF EXECUTION

The signatories warrant and represent that he and/or she has the authority to sign the Agreement on behalf of the party that he and/or she purports to sign.

25. GENERAL PROVISIONS

25.1 This Agreement may only be amended by written agreement between all parties.

25.2 This Agreement may be executed in any number of counterparts including by exchange of electronic copy. All counterparts together make one instrument.

25.3 This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this Agreement.

25.4 Each party must do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.

25.5 A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

25.6 Queensland law governs this Agreement. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

25.7 Each party will bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

25.8 Any duty payable on this Agreement must be paid by the Consultant.

25.9 Any provision of this Agreement which is illegal, void or unenforceable is ineffective to the extent only of such illegality, voidness or unenforceability without invalidating any of the remaining provisions of this Agreement.

25.10 None of the terms of this Agreement, nor any act, matter or thing done under this Agreement operates as a merger of any of the rights and remedies of the parties under this Agreement. Those rights and remedies continue in full force and effect until the rights and obligations of the parties under this Agreement have been fully satisfied and performed.

Schedule 1

Services

[Insert details of Services]

Schedule 2

Special Conditions

[Insert any special conditions]

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