

Professional Services Agreement (short form)

Contract Details

Item No	Item	Details
1	Project	[#insert name of project and description]
2	JCU	Name: James Cook University Address: 1 James Cook Drive, Townsville, Queensland, 4811 ABN: 46 253 211 955
3	JCU's address for notice (clause 25(b)(iii))	Contact name: [#insert senior JCU representative. Generally this will be the Director, Estate Office] Position: [#insert] Address: [#insert] Ph: [#insert] Fax: [#insert] Email: [#insert]
4	Consultant	Name: [#insert] Address: [#insert] ABN/ACN: [#insert]
5	Consultant's address for notice (clause 25(b)(iii))	Contact name: [#insert] Position: [#insert] Address: [#insert] Ph: [#insert] Fax: [#insert] Email: [#insert]
6	Other documents forming part of the Agreement (clause 1.1)	[#insert or write 'nil']
7	Commencement Date (clause 4)	[#insert date or write 'Within [#insert] days of JCU being granted access to the Site and notifying the Consultant in writing']
8	Completion Date (clause 4)	[#insert date]
9	Site (clause 7)	[#insert address and other relevant location details of Site]
10	Policies (clause 1.1)	[#List any JCU policies or procedures that the Consultant must comply with]
11	Invoice Date (clause 13)	(a) On the [#insert date of the month on which invoice to be submitted] day of each month until Services are completed; and (b) Completion Date.
12	Qualifying Cause (clause 1.1 and 4)	(a) [#insert any events in addition to those in definition of Qualifying Cause that will justify an extension of time claim, or write 'Nil']
13	Representative (for information only)	[#insert details of other JCU and external consultant representatives e.g. Project Manager]
14	Key Personnel (clause 6)	Name: [#insert] Position: [#insert] Name: [#insert] Position: [#insert] Name: [#insert] Position: [#insert]
15	JCU supplied items (clause 2.3(a))	[#insert any equipment etc to be provided by JCU to the Consultant]
16	Do clauses 4.4 to 4.5 apply?	Yes/No [#the clauses would only apply where the Consultant is required to complete a defined scope of work by a nominated date and JCU wishes to have rights against the Consultant for failing to meet that date]

17	Other consultants (clause 7.4)	[#insert details of any other consultants and identify the design leader]
18	Insurance (clause 15.1)	Public liability insurance for an amount no less than \$[#insert] million for each and every occurrence, to be maintained from the Commencement Date to the Completion Date Workers' compensation insurance as required by law Professional indemnity insurance with a limit of liability of not less than \$[#insert] million for each and every occurrence that is to be maintained from the Commencement Date to six years after the Completion Date. The policy must contain one automatic reinstatement provision Third party comprehensive motor vehicle insurance, to be maintained from the Commencement Date to the Completion Date [#Delete any of the above insurances that are not required. Add any additional insurance policies that are required]

List of Attachments- [#insert "not applicable" if Schedule is not used ** DO NOT DELETE FROM AGREEMENT**]

- General Conditions
- Schedule 1
- Schedule 2
- Schedule 3
- Schedule 4
- Schedule 5

Execution

By executing this Agreement, JCU and the Consultant agree to contract on the terms contained in the Contract Details, the General Conditions, the Schedules and any documents referred to in Item 6 of the Contract Details.

James Cook University ABN 46 253 211 955
 signed on / /20 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 ACN]
 signed on / /20 by its duly authorised officer in the presence of:

	_____ ^ Signature
_____ ^ Signature of witness	_____ ^ Full Name
_____ ^ Name of witness (print)	_____ ^ Position Held

General Conditions

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means this document and any other documents stated in Item 6 of the Contract Details as forming part of the Agreement.

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

Brief means the document set out in Schedule 5.

Business Day means a day that is not:

- (a) a public holiday in the place in which the Services are being carried out; or
- (b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.

Claim means any claim, action, proceeding, suit, cause of action, defence, set-off or demand arising out of or in connection with the Services or the Agreement, or either party's conduct under or before the Agreement, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence) or for restitution, including any claim, action, proceeding, suit, cause of action, defence, set-off or demand for:

- (a) an extension of time, delay, disruption, acceleration or associated costs and damages;
- (b) a variation or an increase or adjustment in the Fee; or
- (c) damages.

Confidential Information means any information relating to the business or affairs of JCU whether provided to or obtained by the Consultant prior to or after the Agreement is formed, including the Agreement and information about JCU's Personnel.

Commencement Date means the date stated in Item 7 of the Contract Details or otherwise notified by JCU to the Consultant.

Completion Date means the date or dates specified in Item 8 of the Contract Details for completion of the Services, or for completion of a Deliverable or a stage of the Services as may be extended in accordance with this Agreement.

Deliverable means any report, plan, design, drawing, specification, program, model or document required to be produced by the Consultant as part of the Services, including as may be described in Schedule 3.

Fee means the amount payable for the performance of the Services, calculated in accordance with Schedule 4, as adjusted under this Agreement.

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 Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

Invoice Date means the date for submission of an invoice stated in Item 11 of the Contract Details.

Item means an item in the Contract Details.

Key Personnel means the Personnel of the Consultant listed in Item 14 of the Contract Details.

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.

Personnel means the employees, agents, subcontractors, suppliers and consultants of a party, 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 of JCU listed in Item 10 of the Contract Details or notified to the Consultant from time to time.

Project means the project described in Item 1 of the Contract Details.

Qualifying Cause means:

- (a) delay directly caused by any act, default or omission of JCU or JCU's Personnel; or
- (b) any cause specified in Item 12 of the Contract Details that is outside the reasonable control of the Consultant.

Services means the services to be performed by the Consultant for JCU as set out in Schedule 2, and includes the creation and delivery of any Deliverable.

Site means the site stated in Item 9 of the Contract Details and any other land or places made available to the Consultant by JCU.

Special Conditions means the special conditions (if any) set out in Schedule 1 which takes precedence over these General Conditions.

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 this Agreement, unless the context indicates otherwise:

- (a) headings are, in the interpretation of this Agreement, to be disregarded;
- (b) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Agreement and references to this Agreement include any schedules or annexures;
- (c) a reference to a party to this Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a document or agreement (including a reference to this Agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this Agreement is not a Business Day, then the person must do it on or by the next Business Day;
- (h) no provision of this Agreement is to be construed against the interests of JCU merely because JCU prepared or relies on this Agreement; and
- (i) wherever the words 'include', 'included' or 'including' are used in this Agreement, they are not to be interpreted as words of limitation.

1.3 No acceptance

Review, perusal of or comment (or any failure to do so) on any document or information submitted by the Consultant does not relieve the Consultant of any of its obligations or liabilities, including responsibility for the correctness of any Deliverable or information submitted by the Consultant.

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 it will carry out the Services:

- (a) using appropriately qualified and trained Personnel;
- (b) 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;
- (c) in accordance with relevant professional principles and standards; and
- (d) in accordance with all Legislative Requirements, 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 15 of the Contract Details, 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 Fee

3.1 Payment

In consideration of the proper performance of the Services by the Consultant in accordance with the Agreement, JCU will pay the Consultant the Fee.

3.2 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;
- (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; and
- (e) 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 by the Agreement.

3.3 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;
- (e) it has examined the Project Brief and the Services are appropriate and adequate for the purpose set out in the Project Brief; and
- (f) where JCU has furnished information for the purpose of the Project 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.

4 Time and completion

4.1 Progress

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;
- (c) complete the Services by the Completion Date; and
- (d) within 14 days of signing the Agreement, produce and provide to JCU a program for the Services setting out the times at which parts of the Services must be performed (with critical path if applicable).

4.2 Delay

If the Consultant believes that anything, including any breach, act or omission of JCU, may delay the completion of the Services or the provision of Deliverables, the Consultant must promptly notify JCU in writing with details of the estimated extent of the delay and the cause.

4.3 Application

Clauses 4.4 to 4.5 apply if so nominated in the Contract Details.

4.4 Extension of time

- (a) Subject to clause 4.4(c), the Consultant will only be entitled to an extension of time to the Completion Date where:
 - (i) the Services or Deliverable are delayed by any Qualifying Cause;
 - (ii) within ten Business Days after the commencement of the Qualifying Cause, the Consultant gives written notice to JCU setting out the Qualifying Cause, the particular activities that are delayed and the extension of time to the Completion Date that is claimed; and
 - (iii) if the delay continues beyond the extension of time claimed by the Consultant under clause 4.4(a)(ii), the Consultant gives JCU an updated notice every ten Business Days that satisfies the requirements of clause 4.4(a)(ii) until the delay ends.
- (b) Provided that the requirements of clause 4.4(a) are satisfied, JCU will determine the period of the delay to the Completion Date caused by the Qualifying Cause referred to in a notice given by the Consultant under clause 4.4(a)(ii) or (iii) and extend the Completion Date by that period. If an extension of time is granted, JCU will notify the Consultant of the revised Completion Date.
- (c) JCU may in its sole discretion (without being obliged to do so) at any time and for any reason it thinks fit, extend the Completion Date.
- (d) If the Consultant does not make any Claim for an extension of time within the time or in the form specified in clause 4.4(a), the Consultant is not entitled to an extension of time, or to later Claim an extension of time, for that delay.

4.5 Delay costs

Except to the extent that this Agreement otherwise expressly provides, the Consultant will not be entitled to any additional

payment or to any Claim as a result of the granting of an extension of time.

5 Management

5.1 Directions

The Consultant must comply with any direction of JCU in respect to the Services within the time nominated, or if no time is nominated, as soon as reasonably possible. Except as expressly provided in the Agreement, the Consultant has no Claim arising from or in connection with any direction.

5.2 Meeting

JCU and the Consultant must meet as reasonably required by JCU to discuss the progress of the Services and any other matters which JCU may wish to raise at a meeting concerning the Services and this Agreement.

5.3 Progress reports

The Consultant must, if requested by JCU, provide JCU with progress reports as to the provision of the Services, and any other information about the Services reasonably required by JCU, in such detail as allows JCU to ascertain whether the Services are being performed in accordance with this Agreement. The progress reports must be provided, prior to any meeting requested under clause 5.2, and at other intervals reasonably requested by JCU.

6 Personnel

6.1 Key Personnel

The Consultant must ensure that the Key Personnel perform their roles and responsibilities in accordance with this Agreement. 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.

6.2 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 6.1, as soon as practicable and unless otherwise agreed in writing, at no extra cost to JCU.

7 Site matters

7.1 Consultant's access

JCU will give the Consultant sufficient access to the Site as is necessary to enable the Consultant to perform the Services. The Consultant may only use the Site for the purpose of providing the Services.

7.2 Coordination

The Consultant will not have exclusive access to the Site or any part of it and must coordinate the Services with activities of JCU and JCU's Personnel. The Consultant acknowledges that it has allowed in the Fee and is not entitled to any Claim arising from the impact of any interference caused to the Consultant or the Services by any person on the Site.

7.3 Obligation to prevent damage and harm

The Consultant must take all necessary steps to prevent damage to any property, and to prevent harm or nuisance to any persons, on or near the Site. If any damage is caused by the Consultant or its

Personnel, the Consultant must, at its own cost, remedy the damage as soon as possible to the satisfaction of JCU.

7.4 Others

JCU has or may appoint other consultants to perform their respective specialist services for the Project as stated in Item 17 of the Contract Details. The Consultant shall cooperate and coordinate its Services with the other consultants to ensure that the Services are properly carried out and coordinated. The Consultant shall fully comply with any instructions and directions given by the design leader in relation to the coordination of the design of the Project.

8 Legislative and policy requirements

8.1 Health and safety

- (a) The Consultant and its Personnel must comply with all Legislative Requirements relating to health and safety, including the WH&S Act.
- (b) Without limiting the generality of clause 8.1(a), the Consultant must:
 - (i) attend any inductions or such other safety meetings required by JCU;
 - (ii) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to workplace health and safety;
 - (iii) comply with any relevant health, safety, environment and quality management plans of JCU;
 - (iv) take all reasonable care to provide and maintain a workplace free of accidents and injuries;
 - (v) immediately notify JCU of any accidents or incidents involving its Personnel and, within one Business Day, give JCU a detailed report of the circumstances and consequences of the accident or incident;
 - (vi) cooperate in any investigations relating to workplace incidents; and
 - (vii) assist and cooperate with JCU in relation to its commitment to maintaining a safe workplace, including by performing its obligations under the WH&S Act.

8.2 Industrial relations

The Consultant acknowledges that it is responsible for industrial relations involving its Personnel. The Consultant must keep JCU fully informed of any disputes with or demands by its Personnel or their representatives and any other circumstances which could result in industrial action affecting the Site or any part of the Services.

8.3 Sustainability

JCU is committed to sustainability as required under the State Procurement Policy. In addition to complying with all the Legislative Requirements, including the *Environmental Protection Act 1994*(Qld), the Consultant, must comply with JCU's sustainability requirements as notified to the Consultant from time to time.

8.4 Audit

The Consultant must provide all assistance and access to its offices, workers and records to enable JCU to conduct audits on the Consultant's compliance with the Consultant's obligations under this clause 8, the Policies or any Legislative Requirements relating to safety or the environment. If any non-conformance is detected, the Consultant must immediately rectify them at its cost.

8.5 Consequences of breach

- (a) If the Consultant fails to comply with an obligation under this clause 8, JCU may suspend all or any of the Services until the relevant non-compliance has been rectified; and
- (b) The Consultant indemnifies JCU against any Claim, liability, loss, damage or expense suffered or incurred by JCU arising from or in connection with the Consultant's breach of its obligations under this clause 8.

9 Deliverables

9.1 Development and submission of Deliverables

The Consultant must produce, update and deliver all Deliverables to JCU in accordance with this Agreement. The Deliverables must:

- (a) comply with all Legislative Requirements, Policies and all directions given by or on behalf of JCU under this Agreement and otherwise meet the requirements of this Agreement; and
- (b) be fit for the purposes stated in the Agreement.

9.2 Deliverable review

- (a) JCU may provide the Consultant with such comment, information or advice as it considers appropriate to provide about a Deliverable. Any comment, information or advice provided:
 - (i) is intended to be of assistance to the Consultant and must not be construed as a direction from JCU to the Consultant;
 - (ii) must not be taken as approval of Services or Deliverables that do not conform to the Agreement; and
 - (iii) does not waive any provisions of this Agreement or release the Consultant from its obligations under the Agreement.
- (b) If JCU provides the Consultant with notice that a Deliverable does not comply with this Agreement, the Consultant must revise the Deliverable and resubmit it to JCU within the period specified in the notice (which must not be less than five Business Days).

10 Inspection and information

10.1 JCU to be kept fully informed

The Consultant must keep JCU fully informed in respect to all aspects of the Services.

10.2 Records

The Consultant must keep and maintain accurate accounts, records (including information stored by or accessible by computer or other electronic means or technology) and timesheets of the Services.

10.3 Inspection and review

At all reasonable times, JCU (by itself or by its agents) will have the right to inspect and review performance of the Services and the records and information created by the Consultant in the performance of the Services, including those referred to in this Agreement at the Site, the Consultant's premise and at the premises of any of the Consultant's Personnel and on request by JCU, JCU may itself (or may require the Consultant to) take or arrange for copies of any such records and information to be taken for its use.

11 Variations

11.1 Variation of Services

- (a) JCU may direct the Consultant at any time to amend, increase, decrease, omit or change the quality, character or

extent of the Services (**Variation**). No Variation directed by JCU will invalidate the Agreement.

- (b) If JCU directs a Variation omitting all or any part of the Services, JCU will not be in breach of this Agreement if it thereafter either performs the omitted Services or employs or engages a third party to perform the omitted Services.
- (c) The Consultant must not vary the Services except as directed in writing by JCU under this clause 11.1(a).

11.2 Valuation

- (a) Within ten Business Days of receiving a direction under clause 11.1(a), the Consultant must provide to JCU a detailed quotation for the Variation supported by measurements or other evidence of cost.
- (b) Where the Agreement provides for a valuation to be made under this clause, and the parties have not already agreed on the relevant increase or decrease to the Fee, then JCU will determine the increase or decrease in the Fee using reasonable rates or prices.
- (c) Except as provided in this clause 11, the Consultant has no right to Claim as a result of any Variation directed by JCU.

11.3 Directions

- (a) If the Consultant is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, then the Consultant must notify JCU of its opinion in writing within ten Business Days of receipt of the direction or instruction.
- (b) If the Consultant fails to notify JCU in accordance with this clause, the Consultant will not be entitled to make any Claim with respect to the instruction or direction.

11.4 No Variation

Despite any other provision of this Agreement, the Consultant will not be entitled to any Claim if a variation results from:

- (a) the performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively complete the Services;
- (b) the Consultant being in breach of this Agreement; or
- (c) any negligence of the Consultant or its Personnel.

12 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.

13 Payment

13.1 Invoices

The Consultant must submit to JCU, on the Invoice Date, its monthly invoice for Services performed since the last Invoice Date, 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.

13.2 Additional information

Upon receipt of a valid invoice, JCU may require the Consultant to provide additional information to assist in determining the amount payable.

13.3 Payment

Subject to clauses 13.4 and 13.5, JCU will pay the amount of the invoice within 20 Business Days of receipt of the valid invoice. Any payment by JCU is on account only, and is not evidence of any Services having been carried out in accordance with the requirements of the Agreement.

13.4 Disputed amounts

JCU is not required to pay any amounts which it disputes until after the dispute has been resolved in accordance with clause 18 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 18.

13.5 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.

13.6 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.

14 GST

14.1 GST exclusive

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

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

14.3 Definitions

In this clause 14, the terms 'GST', 'Input Tax Credit', 'Joint Venture Operator', 'Recipient', 'Representative Member', '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).

15 Insurance and indemnity

15.1 Insurances

- (a) Before the Commencement Date, the Consultant must take out and maintain the insurance policies set out in the Contract Details 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 15.1(a).
- (d) If the Consultant fails to obtain or maintain any insurance required under clause 15.1(a) or fails to provide satisfactory evidence of insurance under clause 15.1(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.

15.2 Indemnity

The Consultant indemnifies JCU against from and against all claims, costs, expenses, losses and damages (including reasonable legal expenses) in respect of injury (including death) to any person or damage to any property caused or contributed to by any acts, errors or omissions of the Consultant or its employees, sub-consultants or agents. The Consultant's liability to indemnify JCU under this clause shall be reduced proportionately to the extent that any acts, errors or omissions of JCU, JCU's employees, sub-contractors or agents caused such claims, costs, expenses, losses or damages.

16 Suspension

- (a) JCU may at any time direct the Consultant in writing on five Business Days notice to suspend the performance of all or any part of the Services, for such time as JCU reasonably determines.
- (b) JCU may at any time direct the Consultant to resume the performance of the Services and the Consultant must promptly comply with such a direction.
- (c) If the suspension is due to a breach of contract or the negligence of JCU or its Personnel, the Consultant's costs related to the suspension will be valued under clause 11.2 and added to the Fee.
- (d) The Completion Date shall be extended by a period equivalent to the duration of the suspension.

17 Termination

17.1 Termination by notice

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

17.2 Termination for default by Consultant

If the Consultant:

- (a) is subject to an Insolvency Event;
- (b) breaches any Legislative Requirements;
- (c) breaches any other term of this Agreement and fails to remedy that breach within ten Business Days of being directed in writing to do so by JCU; or
- (d) 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.

17.3 Costs

- (a) If JCU terminates the Agreement under clause 17.2, JCU will not be liable to make any further payment to the Consultant for the Services.
- (b) If JCU exercises its rights under clause 17.1, 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.

17.4 Return of Confidential Information

On the termination of this Agreement, or upon request at any time by JCU, the Consultant will immediately provide JCU with any Confidential Information, including any copies of such Confidential Information, and all Deliverables or other documents which the Consultant has prepared relevant to the Services. Subject to obtaining prior written approval from JCU, the Consultant may retain copies of Confidential Information required to be retained by law and one copy for the Consultant's records.

17.5 Effect of termination

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

18 Dispute resolution

18.1 Condition precedent to start of proceedings

If any dispute between the parties arises from or in connection with this Agreement (whether before or after termination of this Agreement) (**Dispute**), the parties agree to resolve it in the manner set out in this clause, and a party may not commence court proceedings concerning the Dispute unless:

- (a) the party has complied with this clause; or
- (b) the party seeks urgent interlocutory relief.

18.2 Notice of Dispute

A party claiming that a Dispute has arisen must notify the other party of the Dispute and specify the nature of the claim (**Dispute Notice**).

18.3 Resolution by negotiation

Within ten Business Days after the date the Dispute Notice is given (or a longer period as the parties may agree in writing), JCU and the Consultant must meet at least once to negotiate in good faith a resolution of the Dispute. If the parties are unable to resolve the Dispute at that meeting, either party may commence proceedings in relation to the Dispute.

18.4 Continued performance required

Each party must continue to perform its obligations under this Agreement despite the existence of a Dispute except to the extent that the matter is the subject of the Dispute.

18.5 Survival

Clause 18 survives the termination or expiry of this Agreement.

19 Notification of claims

19.1 Effect of failure

JCU will not be liable upon any Claim unless:

- (a) where the requirements for notification of the Claim are prescribed elsewhere in this Agreement, the Consultant has strictly complied with those requirements; or
- (b) where clause 19.1(a) does not apply, the Consultant has given JCU written notice of the Claim within 20 Business Days of the date on which the Consultant should have become

aware of the facts and circumstances on which the claim is based.

19.2 Notice requirements

A notice under clause 19.1(b) must be in writing and include:

- (a) the legal basis for the Claim, whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
- (b) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
- (c) details of the quantum of the Claim showing the calculations and their bases.

20 Intellectual property rights

20.1 Licence to use Intellectual Property Rights

The Consultant grants JCU an irrevocable, royalty free, transferable licence, including the right to sub-licence, to use the Intellectual Property Rights in the Services, any Deliverable or any other document created in the performance of the Services for any purpose.

The Consultant warrants to JCU that:

- (a) the performance of the Services; and
- (b) the exercise of any of the Intellectual Property Rights granted by the Consultant under this clause 20.1 will not infringe the Intellectual Property Rights of any third party.

20.2 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 may have, or become entitled to, in any Work created as part of the Services. For the purpose of this consent, 'Work' has the meaning given to that term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and 'Moral Rights' refers to any right arising under the provisions of that legislation.

20.3 Survival of obligations

The obligations of the Consultant under this clause 20 continue after expiry or termination of this Agreement.

21 Confidential information

21.1 Consultant obligation to keep confidential

The Consultant agrees to keep confidential, and not to use or disclose, the Confidential Information and must immediately notify JCU if the Consultant becomes aware of any unauthorised use or disclosure of the Confidential Information. The Consultant may disclose Confidential Information to its professional advisers and its Personnel who have a need to know the Confidential Information for the Consultant to be able to perform its obligations under the Agreement.

21.2 Exceptions

Clause 21.1 does not apply to information that:

- (a) was rightfully in the possession of the Consultant and not subject to an obligation of confidentiality owed by the Consultant to JCU;
- (b) is or becomes available in the public domain (other than as a result of a breach of this Agreement); or
- (c) is required to be disclosed by Legislative Requirements or the requirements of a stock exchange, but only to the extent that the information is required to be disclosed.

21.3 Survival

The obligations in this clause 21 survive for a period of two years from the earlier of the expiration or termination of this Agreement.

22 Assignment and subcontracting

22.1 Assignment or subcontracting by Consultant

The Consultant must not subcontract any of the Services or assign the Agreement or any right, benefit or interest under the Agreement without the prior written consent of JCU, which may not be unreasonably withheld. JCU 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.

22.2 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 clause 22.2.

23 Relationship

23.1 Independent contractor

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

23.2 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.

23.3 No entitlements

Apart from the Fee, 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.

24 General

- (a) This Agreement may only be amended by written agreement between all parties.
- (b) This Agreement may be executed in any number of counterparts. All counterparts together make one instrument.
- (c) 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.
- (d) Each party must do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.
- (e) 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.
- (f) 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.
- (g) A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.

- (h) If the Consultant comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons is joint and several.

25 Notice

- (a) A notice, consent or communication under this Agreement is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given by hand to that person's address, sent by prepaid mail to that person's address or sent by fax to that person's fax number.
- (b) A notice, consent or communication delivered under clause 25 is given and received:
 - (i) if it is hand delivered or sent by fax by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) if it is hand delivered or sent by fax after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
 - (iii) if it is sent by post, three Business Days after posting.
- (c) A party's address and fax number are those set out in the Contract Details, or as one party may notify the other of a change of such address or fax number in writing.

Schedule 1

Special Conditions

[#insert any other applicable Special Conditions]

1 Design within budget limits

- (a) The Consultant shall take all reasonable steps to ensure that the Project is designed to fall within the budget limits established as part of the Agreement and at the various phases of the project. If JCU knowingly or unknowingly, expands the scope of the Project such that the budget limits will be exceeded, the Consultant shall immediately advise JCU of the time and cost implications of the change in scope and seek agreement from JCU for a change in the Project budget.
- (b) In the event that the Project, at any phase, exceeds the Project budget or unless JCU specifically waived this requirement, the Consultant shall, at the Consultant's own cost, redesign the Project such that the Project is able to be constructed within the Project budget. Any variations to the scope of the Project to bring the Project within budget limits shall be agreed in advance with JCU. This paragraph does not apply where JCU has expanded the scope of the Project and the Consultant has given JCU the notice required by the first paragraph 1(a).

2 Site inspections

The Consultant shall undertake sufficient site inspections during the Agreement to enable the Consultant to complete the Form 16 'Compliance Certificate – Construction' under the *Sustainable Planning Act* to confirm construction complies with any development approval and standard building regulations.

3 Approval of external appearance and materials

A schedule of all proposed external and internal materials and colours is to be provided to JCU for approval. All Projects that effect a change to the external appearance of the campus must have the design and materials approved at the schematic design phase prior to commencement of developed design by JCU's facilities and infrastructure advisory committee.

4 Project Review

The Consultant must submit documents to JCU for review at the schematic design, design development and tender documentation phases of the Project. The review is based on compliance with good practice, the Agreement, JCU's design guidelines and the Project brief. A minimum of two weeks must be allowed for JCU to review submitted documentation.

Schedule 2

Services

[#insert description of the Services]

Schedule 3

Schedule of Deliverables

[#JCU to set out in this schedule]:

(a) the Deliverables that the Consultant must deliver to JCU and the date for which each Deliverable is required; and

(b) [#insert].

Schedule 4

Fee

[#insert basis for calculating 'Fee' and any qualifications]

[# Note: Clearly distinguish between:]

- (a) [#insert - lump sum prices;]
- (b) [#insert - percentage prices; and]
- (c) [#insert - rates that are payable based on a measurement of actual quantities of Services performed].

Schedule 5

Brief

[#insert]