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James Cook University

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[insert name of Principal]

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# Research Services Agreement

Project title: [insert]

Agreement no: [insert]

# Schedule 1

## Reference Schedule

Item	Description	Detail	
1.	Principal	Name:	
		ACN or ABN:	
		Address:	
		Representative:	
		Representative position:	
		Phone:	
		Email:	
2.	JCU	Address:	1 James Cook Drive, Douglas, Queensland 4811
		Representative:	
		Representative's position:	Director, JCU Connect
		Phone:	(07) 4781 5376
		Email:	directorjcuconnect@jcu.edu.au
3.	Commencement Date <b>(clause 3)</b>	[insert date] or [The date that this Agreement has been executed by both parties, as determined by the dates applied to the execution clauses.]	
4.	Completion Date <b>(clause 3)</b>	[insert date] or [The date that JCU completes performance of the Research Services.]	

Item	Description	Detail																		
5.	Principal Materials <b>(clause 9)</b>	[insert description of tangible materials (goods) to be provided by Principal], which must be delivered by the Principal to JCU within [5 Business Days] of [the Commencement Date][the date that this Agreement is executed by both parties].																		
6.	Non-tangible contributions or resources to be provided by Principal <b>(clause 9)</b>	[Insert description of any other non-tangible contributions (services) that the Principal may provide, such as in-kind support or other resources.]																		
7.	Research Services <b>(clause 6)</b>	See <b>schedule 2</b> toward the end of this Agreement.																		
8.	Is ethics approval required? <b>(clause 5)</b>	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> [insert details of: <ul style="list-style-type: none"> <li>• the parts of the Research Services (if any) for which approval by an ethics committee is required; and</li> <li>• the period within which that approval is required.]</li> </ul>																		
9.	Key Personnel <b>(clause 6.3)</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="657 1138 865 1209">Name</th> <th data-bbox="865 1138 1060 1209">Title</th> <th colspan="2" data-bbox="1060 1138 1370 1209">Email</th> </tr> </thead> <tbody> <tr> <td style="height: 20px;"></td> <td></td> <td colspan="2"></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td colspan="2"></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td colspan="2"></td> </tr> </tbody> </table>			Name	Title	Email													
		Name	Title	Email																
10.	Reports <b>(clause 6.4)</b>	[insert details of any reports that JCU will provide to the Principal. If no reports will be provided, insert "NIL".]																		
11.	Title and risk in Contract Material <b>(clause 10.2)</b>	<b>[Drafting note:</b> Remove the highlighted options which do not apply. This field is about ownership and risk in the tangible Contract Material, not intellectual property rights subsisting in that material. Ownership of intellectual property rights is the subject of <b>item 12</b> below.]																		

Item	Description	Detail
		<p>Title to the Contract Material vests in the Principal upon [delivery to the Principal] [the Completion Date][payment of all Fees payable by the Principal].</p> <p>Risk in the Contract Material vests in the Principal upon [such material being created or developed] [delivery of the Contract Material by JCU to the Principal].</p>
12.	<p>Ownership and licensing of Intellectual Property Rights subsisting in Contract Material <b>(clause 12.2)</b></p>	<p><b>[Drafting note:</b> Delete the options that do not apply.]</p> <p><b>[Option 1 – Ownership by the Principal]</b></p> <p>(a) Upon completion of the Research Services, and provided that the Principal is not overdue on the payment of any Fees and is not otherwise in breach of this Agreement, all Intellectual Property Rights subsisting in any Contract Material will vest in the Principal.</p> <p>(b) The Principal grants to JCU a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence (including the right to sub-licence without the Principal's consent) to use, communicate, reproduce, publish, adapt and modify the Contract Material for the Permitted Purpose.</p> <p><b>[Option 2 – Ownership by JCU]</b></p> <p>(a) All Intellectual Property Rights subsisting in any Contract Material will vest, upon creation, in JCU.</p> <p>(b) JCU grants to the Principal a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence (including the right to sub-licence without JCU's consent) to use, communicate, reproduce, publish, adapt and modify the Contract Material for the Permitted Purpose.</p> <p><b>[Option 3 – Joint Ownership]</b></p> <p>(a) All Intellectual Property Rights subsisting in any Contract Material will vest, upon creation, jointly in JCU and the Principal as tenants in common in the following proportions:</p> <p>(i) [insert%] ownership by JCU; and</p> <p>(ii) [insert%] ownership by the Principal.</p> <p>(b) The parties agree that they may each use, communicate, reproduce, publish, adapt, modify and sub-license the Contract Material for the Permitted Purposes allocated to them under <b>item 13 of schedule 1</b>.</p>
13.	<p>Permitted Purposes for which JCU</p>	<p>[Insert the purposes for which JCU and/or the Principal (as appropriate) can use and retain copies of the Contract Material. Where the Principal will own part or all of the</p>

Item	Description	Detail	
	and/or the Principal (as appropriate) may use and retain copies of the Contract Material <b>(item 12 above, clause 10.2 and clause 12.2)</b>	intellectual property rights in the Contract Material, consider whether JCU (and its students) will need to be permitted to use the Contract Material (or aspects of it such a raw data) for unrelated research purposes in the future – is so that will need to be made clear in this field.]	
14.	Insurance obligations of JCU <b>(clause 16)</b>	<b>Insurance</b>	<b>Cover</b>
		Public liability insurance	\$20 million per event
15.	Insurance obligations of the Principal <b>(clause 16)</b>	<b>Insurance</b>	<b>Cover</b>
		Public liability insurance	[\$20 million per event] or [not applicable]
		Professional indemnity insurance	[\$20 million per event] or [not applicable]
16.	Special Conditions <b>(clause 4)</b>	<p><b>[Drafting note:</b> Special Conditions take precedence over the terms of the Agreement. If no Special Conditions insert “Nil”.]</p> <p>[Insert, if applicable. Special Conditions may relate to (for example):</p> <ul style="list-style-type: none"> <li>• specific requirements for dealing with the Principal Materials, which may have particular biological, chemical and/or hazardous properties; or</li> <li>• arrangements for the ownership of Intellectual Property Rights that are different to what is set out above in <b>item 12</b> or in <b>clause 12.3.</b>]</li> </ul>	

## Parties

**James Cook University** ABN 46 253 211 955 of 1 James Cook Drive, Douglas, Queensland 4811, Australia (**JCU**)

The party identified in **item 1 of schedule 1 (Principal)**

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## Background

- A The Principal wishes to engage JCU to perform the Research Services.
- B [insert additional background information if you believe it is necessary to give some further context to the Agreement. If none, delete this line.]
- C JCU has agreed to perform the Research Services on the terms and conditions of this Agreement.
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## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document, these terms have the following meanings:

**Agreement** this Agreement, including its schedules.

**Background IP** Intellectual Property Rights of a party, or which a party is licensed to use, which are made available by the party for the purpose of carrying out the Research Services and that are:

- (a) in existence at the Commencement Date; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Research Services,

and includes:

- (c) in the case of the Principal, the Intellectual Property Rights subsisting in the Principal Materials; and
- (d) in the case of JCU, the Intellectual Property Rights subsisting in the JCU Existing Materials.

<b>Business Day</b>	a day that is not a Saturday, Sunday or public holiday in Townsville, Queensland.
<b>Commencement Date</b>	the date specified in <b>item 3</b> of the <b>schedule 1</b> .
<b>Completion Date</b>	the date specified in <b>item 4</b> of the <b>schedule 1</b> , or such later date agreed between the parties in writing.
<b>Confidential Information</b>	<p>all information that:</p> <ul style="list-style-type: none"><li>(a) is by its nature confidential;</li><li>(b) is designated by a party as being confidential; or</li><li>(c) a party knows or ought to know is confidential;</li></ul> <p>but does not include information that:</p> <ul style="list-style-type: none"><li>(d) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;</li><li>(e) is in the possession of a party without restriction in relation to disclosure before the information is received from the other party; or</li><li>(f) has been independently developed or acquired by a party.</li></ul>
<b>Contract Material</b>	any Deliverables and other Material created, developed, written or otherwise brought into existence in the course of carrying out the Research Services, excluding JCU Existing Material, Principal Materials and Student Material.
<b>Deliverables</b>	the deliverables (if any) specified in <b>schedule 2</b> .
<b>Discloser</b>	<ul style="list-style-type: none"><li>(a) JCU, in respect of a disclosure by or on behalf of JCU of its Confidential Information; and</li><li>(b) the Principal, in respect of a disclosure by or on behalf of the Principal of its Confidential Information.</li></ul>
<b>Fees</b>	the fees determined in accordance with <b>schedule 3</b> .
<b>Force Majeure</b>	<p>an event or circumstance:</p> <ul style="list-style-type: none"><li>(a) which is beyond the reasonable control of the party claiming the event has occurred; and</li><li>(b) the adverse effects of which could not have been prevented or mitigated against by the party by reasonable diligence or reasonable precautionary measures,</li></ul> <p>and includes:</p>

- (c) any member of the Key Personnel ceasing to be available to perform the Research Services;
- (d) an order or mandatory direction of a government authority or regulator;
- (e) an act of God, lightning strike, meteor strike, earthquake, cyclone, storm, flood, landslide, explosion or fire;
- (f) stoppages, lockouts, strikes or other industrial action;
- (g) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, pandemic or epidemic; and
- (h) any event which would, at common law, frustrate this Agreement.

**Information  
Privacy Act**

the *Information Privacy Act 2009* (Qld) and any regulations, guidelines or privacy principles made pursuant to that law.

**Insolvency  
Event**

in respect of a party, means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation;



- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

**Intellectual Property Rights**

all copyright (including future copyright) and all other intellectual property rights anywhere in the world, including, but not limited to, trade marks, logos, domain names, patents, designs, trade secrets, eligible layout rights, processes, inventions, specifications, databases, confidential information, know how, research data, discoveries and similar rights and any other intangible proprietary rights whether registered or unregistered whether created before or after the date of this Agreement both in Australia and throughout the world.

**JCU Existing Materials**

Material owned or made available by JCU for the purposes of performing the Research Services.

**Key Personnel**

the JCU Personnel specified in **item 9 of schedule 1**.

**Legislative Requirement**

any:

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

**Material**

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

<b>Permitted Purpose</b>	the permitted purposes specified in <b>item 13</b> of <b>schedule 1</b> .
<b>Personal Information</b>	the meaning given in the <i>Information Privacy Act 2009</i> (Qld) and <i>Privacy Act 1988</i> (Cth) (as applicable).
<b>Personnel</b>	of a party, means that party's directors, officers, employees and agents, and in the case of JCU, includes Students.
<b>Policies</b>	JCU policies and procedures including, without limitation, its 'Code of the Responsible Conduct of Research' and the 'Child Safety Policy' as amended or replaced from time to time.
<b>Principal Contributions</b>	the contributions specified in <b>item 6</b> of <b>schedule 1</b> .
<b>Principal Materials</b>	the Materials specified in <b>item 5</b> of <b>schedule 1</b> .
<b>Privacy Act</b>	the <i>Privacy Act 1988</i> (Cth) and any regulations, guidelines or privacy principles made pursuant to that law.
<b>Publish</b>	to publish by way of a paper, thesis, article, manuscript, report, poster, internet posting, presentation, abstract, outline, video, instruction material or other disclosure, in printed, electronic, oral or other form, and <b>Publication</b> has a similar meaning.
<b>Recipient</b>	<p>(a) JCU, where it receives Confidential Information of the Principal; and</p> <p>(b) the Principal, where it receives Confidential Information of JCU.</p>
<b>Research Services</b>	the research services and Deliverables specified in <b>schedule 2</b> .
<b>Special Conditions</b>	the special conditions (if any) set out in <b>item 16</b> of <b>schedule 1</b> .
<b>Student</b>	a student enrolled with JCU and who participates in part or all of the Research Services.
<b>Student Material</b>	any copyright in any work, or subject matter other than a work, created and/or submitted by a Student for examination for the award of a research degree at JCU.
<b>Term</b>	the period specified in <b>clause 3</b> .

## 2 Interpretation and priority

### 2.1 Construction

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of the Agreement;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) 'includes' means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) a right includes a benefit, remedy, discretion or power;
  - (v) time is to local time in Townsville, Queensland;
  - (vi) '\$' or 'dollars' is a reference to Australian currency;
  - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and
  - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
- (h) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

### 2.2 Priority

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) the agreed terms of the Agreement; or
- (c) any other schedules or annexures of this Agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

### 3 Term

This Agreement commences on the Commencement Date and expires on the Completion Date, unless terminated earlier in accordance with **clause 19**.

### 4 Special Conditions

The parties have the rights and obligations specified in the Special Conditions.

### 5 Ethics approval

- (a) The Principal acknowledges and agrees that:
  - (i) JCU's performance of the Research Services may require approval by an ethics committee before JCU can commence performing any of the Research Services; and
  - (ii) JCU does not represent or warrant that ethics approval will be granted.
- (b) If **item 8 of schedule 1** specifies that any part of the Research Services requires approval by an ethics committee, JCU will use reasonable endeavours to promptly obtain that approval within the period specified in **item 8 of schedule 1**.
- (c) JCU will not commence the relevant portion of the Research Services until such approvals are obtained.
- (d) If approval is not able to be obtained by JCU within the period specified in **item 8 of schedule 1** or such longer period agreed in writing between the parties, JCU may terminate this Agreement without liability by notice to the Principal, in which case this Agreement will terminate on the date specified in the notice given by JCU.

### 6 Research Services

#### 6.1 Delivery of Research Services

Subject to **clause 5**, JCU will perform the Research Services during the Term:

- (a) with due care and skill; and
- (b) in accordance with applicable Policies and Legislative Requirements.

## 6.2 Labour, plant and equipment

JCU will, subject to any obligations of the Principal under **clause 9**, supply all equipment, services, utilities and labour that JCU requires to perform its obligations under the Agreement.

## 6.3 Key Personnel

- (a) JCU will ensure that the Key Personnel are directly involved in and supervise the delivery of the Research Services.
- (b) JCU will:
  - (i) not remove or replace any Key Personnel without the Principal's prior written consent, other than in circumstances where the relevant member of the Key Personnel ceases to be available due to circumstances beyond JCU's control, including illness or death; and
  - (ii) use reasonable endeavours to ensure that any replacement Key Personnel have appropriate skills, qualifications and experience, and promptly provide information reasonably requested by the Principal about any proposed replacement Key Personnel.

## 6.4 Reports

JCU agrees to prepare and deliver the reports specified in **item 10** of **schedule 1**.

## 6.5 No warranties

The Principal acknowledges and agrees:

- (a) that there is a fundamental uncertainty with respect to the undertaking of research, and that any date and time periods for the work to be carried out specified in **schedule 2** are estimates only and may need to be revised by JCU (acting reasonably);
- (b) JCU does not represent or warrant that the Research Services will result in any particular outcome or results; and
- (c) that, without limiting the terms of **clause 23.2**, this Agreement does not create or give rise to an exclusive relationship between the parties, and JCU may undertake itself or provide the same or similar Research Services to third parties outside of this Agreement.

## 7 Student involvement

Each party acknowledges and agrees that:

- (a) notwithstanding any provision in this Agreement to the contrary, copyright in the Student Material of a Student involved in the Research Services will vest in that Student; and

- (b) a Student involved in the Research Services will have a right to have a thesis examined and published in accordance with JCU's Policies including, without limitation, the right for a copy of such thesis to be deposited into the library of JCU, subject to the Student and JCU complying with:
  - (i) the notification and approval process for Publications set out in **clause 13.2**; and
  - (ii) the confidentiality obligations set out in **clause 14**.

## 8 Subcontracting

- (a) JCU may engage any subcontractor or otherwise arrange for another person to perform, or to discharge, any of JCU's obligations under any part of this Agreement without notice to the Principal.
- (b) Despite any subcontracting by JCU under **clause 8(a)**, JCU remains liable for the performance of all of its obligations under the Agreement.

## 9 Principal's materials and contributions

- (a) Unless it has already done so, the Principal must provide to JCU:
  - (i) the Principal Materials (if any) within the time period specified in **item 5 of schedule 1**;
  - (ii) the Principal Contributions (if any); and
  - (iii) such other assistance, information, data, equipment, resources or materials as may be reasonably requested by JCU, or which may be required by JCU in order to perform or complete the Research Services and which are only available from the Principal.
- (b) The Principal represents and warrants that it has the right and authority to provide the Principal Materials to JCU.
- (c) JCU has no obligation, and is not liable for any failure, to perform the Research Services to the extent that JCU is hindered or prevented from doing so due to any delay or failure by the Principal to provide any of the Principal Materials or Principal Contributions.

## 10 Title and risk

### 10.1 Title and risk in Principal Materials

- (a) At all times, title to the Principal Materials remains with the Principal.
- (b) Risk in the Principal Materials:
  - (i) will pass to JCU upon delivery of the Principal Materials to JCU; and

- (ii) if JCU has an obligation to return the Principal Materials, will revert to the Principal upon return of the Principal Materials to the Principal.
- (c) The Principal acknowledges and agrees that some or all of the Principal Materials may be used up or consumed in the course of JCU performing the Research Services and JCU is not liable to pay any costs or amounts to the Principal for the use or consumption of any of the Principal Materials in the course of performing the Research Services.

## 10.2 Contract Material

- (a) Title to the Contract Material vests in the Principal in accordance with **item 11 of schedule 1**.
- (b) Risk in the Contract Material vests in the Principal in accordance with **item 11 of schedule 1**.

## 10.3 Right to retain and use copies of Contract Material

Notwithstanding any other clause of this Agreement, the Principal agrees that JCU may retain and use a copy of the Contract Material after the expiry or termination of this Agreement including any data, raw data, records and reports generated as a result of the performance of the Research Services) for the following purposes:

- (a) as required by law or any Legislative Requirements;
- (b) in connection with any audit by a statutory authority of JCU, this Agreement or the Research Services;
- (c) for the purposes of its own internal record keeping; and
- (d) for the purposes of considering, taking advice from advisors on and responding to any claim or proceedings in connection with, this Agreement or the Research Services, including any claim by the Principal or any third party.

## 11 Fees

- (a) In consideration for JCU performing the Research Services, the Principal must pay the Fees to JCU.
- (b) JCU will invoice the Principal for the Fees in accordance with the invoicing terms specified in **schedule 3** and this **clause 11**.
- (c) The Principal will pay invoices issued by JCU under this Agreement in accordance with the payment terms specified in **schedule 3**.
- (d) The Principal must notify JCU within 14 days of receipt of a tax invoice that the Principal considers not to be correctly rendered, and must provide the reason why the Principal does not consider the invoice to be correctly rendered.

## 12 Intellectual Property Rights

### 12.1 Background IP

- (a) Nothing in this Agreement assigns or transfers the ownership of any Background IP of a party.
- (b) Each party warrants that, to the best of its knowledge and belief as at the Commencement Date, it owns or has a right to use the Background IP that it makes available for the purposes of this Agreement and the Research Services.
- (c) Each party grants to the other party (**Licensee**) a non-exclusive, non-transferable, royalty-free licence to use each other's Background IP solely for the purposes of:
  - (i) where JCU is the Licensee, carrying out the Research Services; and
  - (ii) where the Principal is the Licensee, exercising its rights in the Contract Material however only insofar as Background IP of JCU forms part of the Contract Material.

### 12.2 Contract Material

The terms of **Item 12** of **schedule 1** determine the ownership and/or licensing of the Intellectual Property Rights subsisting in the Contract Material.

### 12.3 Student Material

Unless otherwise agreed in writing between JCU and a Student or Students, all Intellectual Property Rights subsisting in the Student Material will vest, upon creation, in the Student(s) responsible for the creation of that Student Material.

### 12.4 Knowledge and skills

The general knowledge and skill that JCU's Personnel will use to carry out the Research Services may be further developed while performing the Research Services. JCU and its Personnel are free to use such knowledge and skill in the future either alone or with third parties provided that in doing so they do not disclose any of the Principal's Confidential Information.

### 12.5 Survival of obligations

This **clause 12** survives the expiry or termination of this Agreement.

## 13 Publicity and Publications

### 13.1 Publicity

Subject to clause 13.3, except as required by law, no party may make any public announcement or media statement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).



## 13.2 Publications

Without limiting **clause 7** or **clause 13.1**, the Principal acknowledges and agrees that JCU may Publish, and may permit its employees and Students to Publish, information and data (including the Contract Material and Student Material) generated in the course of the performing the Research Services, provided that those Publications do not contain any Confidential Information of the Principal.

## 13.3 Principal's name and logo

The Principal consents to JCU making reference to this Agreement and to the Research Services and using the Principal's name and logo in publicity and promotional material relating to JCU and JCU's researchers involved in the performance of the Research Services (including, without limitation, online researcher profiles).

# 14 Confidential information

## 14.1 Obligations of confidentiality

Subject to **clause 14.2**, the Recipient must:

- (a) keep confidential and not allow, make or cause any public announcement or other disclosure of any Confidential Information of the Discloser without the prior written consent of the Discloser, which consent may be given or withheld, or given with conditions, in the Discloser's sole discretion;
- (b) use, copy and retain the Confidential Information of the Discloser solely for the purposes of performing its obligations under this Agreement;
- (c) without limiting **clause 14.1(a)** or **14.1(b)**, not use any Confidential Information of the Discloser for its own business purposes without the prior written consent of the Discloser;
- (d) on the expiry or termination of this Agreement promptly return to the Discloser or destroy (and certify such destruction) all Confidential Information of the Discloser then in the Recipient's possession or under its control, provided that the Recipient may retain a copy of the Confidential Information of the Discloser:
  - (i) for the Recipient's internal record-keeping purposes; or
  - (ii) where the copy of the Confidential Information of the Discloser is contained in the Recipient's computer system back-ups, which are not generally accessible (including by employees of the Recipient) and which cannot readily be deleted; or
  - (iii) where the Recipient is JCU, Contract Material the subject of **clause 10.3**; or
  - (iv) if the Recipient is required to do so by:

- (A) law or Legislative Requirements;
- (B) its insurance policies; or
- (C) any applicable professional standard or government policy.

## **14.2 Exceptions**

The obligations of each party (as a Recipient) under **clause 14.1** do not apply to a disclosure or announcement by the Recipient to the extent that the disclosure or announcement is:

- (a) to a related body corporate of the Recipient, including that related body corporate's officers, employees and/or agents on a need to know basis and only if the disclosure is made on a confidential basis;
- (b) to any bona fide proposed assignee of all or part of the rights and obligations of the Recipient under this Agreement subject to the proposed assignee undertaking to treat the information as confidential;
- (c) required by the listing rules of Australian Stock Exchange Limited or any relevant overseas stock exchange;
- (d) reasonably necessary to comply with any request, instruction, direction of any Minister of the Commonwealth or of the Queensland Government;
- (e) required by law, provided that the Recipient notifies the Discloser prior to the disclosure required to enable the Discloser to seek a protective order or other appropriate remedy in respect of the Confidential Information;
- (f) to any professional adviser of the Recipient, subject to that adviser agreeing to maintain the confidentiality of the relevant Confidential Information;
- (g) required for the Recipient to perform its obligations under this Agreement, including disclosures to officers, employees, agents and subcontractors; or
- (h) made by the Recipient with the written consent of the Discloser.

## **14.3 Survival**

This **clause 14** survives termination or expiry of this Agreement.

# **15 Privacy**

## **15.1 Obligations if a party is subject to Information Privacy Act**

- (a) If a party is subject to the Information Privacy Act with respect to any Personal Information, that party agrees to:
  - (i) use Personal Information collected or obtained from, through or on behalf of the other party in connection with this Agreement:
    - (A) only for the purposes of fulfilling its obligations under this Agreement, unless required or authorised by law; and

- (B) in accordance with the Information Privacy Act.
  - (ii) comply with the relevant privacy principles set out in the Information Privacy Act governing the collection, security, access, data quality, relevance, use and disclosure of Personal Information to the extent that those principles apply to the activities undertaken under this Agreement;
  - (iii) take all reasonable measures to ensure that Personal Information is protected against loss and unauthorised access, use, modification, disclosure or other misuse, and that access to the Personal Information is restricted to Personnel who require access in order to perform their duties under this Agreement;
  - (iv) ensure that any Personnel or Subcontractors who deal with Personal Information for the purposes of this Agreement are made aware of and comply with the obligations set out in this **clause 15.1**;
  - (v) promptly notify the other party if it becomes aware of a breach or possible breach of the Information Privacy Act or the obligations contained in, or referred to in this **clause 15.1**;
  - (vi) comply with any reasonable directions, guidelines, determinations or recommendations of the Principal in relation to privacy issues, to the extent that they are not inconsistent with the requirements of the Information Privacy Act; and
  - (vii) upon request by the other party, promptly return all Material of the other party in its possession, custody or control containing Personal Information collected or obtained from, through or on behalf of the other party upon expiry or termination of this Agreement or when the Personal Information is no longer required.
- (b) Nothing in this **clause 15.1** is intended to limit any obligation of a party that it may have as an organisation with respect to Personal Information.

## 15.2 Principal obligations

- (a) If the Principal is subject to the Privacy Act, the obligations under **clause 15.1** do not apply to the Principal and, instead, the obligations under **clauses 15.2(b)** and **15.2(c)** will apply to the Principal.
- (b) The Principal agrees to:
  - (i) use Personal Information collected or obtained from, through or on behalf of JCU in connection with this Agreement:
    - (A) only for the purposes of fulfilling its obligations under this Agreement, unless required or authorised by law or Legislative Requirements; and
    - (B) in accordance with the Privacy Act.

- (ii) comply with the relevant privacy principles set out in the Privacy Act governing the collection, security, access, data quality, relevance, use and disclosure of Personal Information to the extent that those principles apply to the activities undertaken under this Agreement;
  - (iii) take all reasonable measures to ensure that Personal Information is protected against loss and unauthorised access, use, modification, disclosure or other misuse, and that access to the Personal Information is restricted to Personnel who require access in order to perform their duties under this Agreement;
  - (iv) ensure that any Personnel or Subcontractors who deal with Personal Information for the purposes of this Agreement are made aware of and comply with the obligations set out in this **clause 15.2(b)**;
  - (v) promptly notify JCU if it becomes aware of:
    - (A) a breach or possible breach of the Privacy Act or the obligations contained in, or referred to in this **clause 15.2(b)**;  
or
    - (B) any data breach affecting, or any unauthorised access to or disclosure or loss of any Personal Information collected or obtained from, through or on behalf of JCU, held by the Principal;
  - (vi) comply with any reasonable directions, guidelines, determinations or recommendations of JCU in relation to privacy issues, to the extent that they are not inconsistent with the requirements of the Privacy Act; and
  - (vii) upon request by JCU, promptly return all Material of JCU in its possession, custody or control containing Personal Information collected or obtained from, through or on behalf of JCU upon expiry or termination of this Agreement or when the Personal Information is no longer required.
- (c) Nothing in **clause 15.2(b)** is intended to limit any obligation of the Principal that it may have as an organisation with respect to Personal Information.

### **15.3 Survival**

This **clause 15** survives termination or expiry of this Agreement.

## **16 Insurance**

### **16.1 Obligation to hold insurance**

- (a) Each party must, on and from the Commencement Date and for the period specified below, hold, maintain and keep current, at its own cost:

- (i) workers compensation insurance during the Term in accordance with applicable law and awards;
  - (ii) public liability insurance during the Term appropriate to the party's activities for no less than the amount of cover specified in **items 14 and 15** (as applicable) of **schedule 1**; and
  - (iii) professional indemnity insurance during the Term and for a period of 7 years from the last day of the Term for no less than the amount of cover specified in **items 14 and 15** (as applicable) of **schedule 1**.
- (b) If requested to do so by a party, the other party must provide a copy of the certificate of currency for the insurance policies required to be held under this Agreement.

## **16.2 Survival**

**Clause 16.1(a)(iii)** survives termination or expiry of this Agreement for a period of 7 years from the date of expiry or termination.

# **17 Indemnity and liability**

## **17.1 Indemnity**

The Principal indemnifies JCU and JCU's officers, employees, contractors, Students and agents against all loss or damage (howsoever caused and including in connection with any third party intellectual property infringement claims) arising from any use by JCU of the Principal Materials for the purposes of this Agreement or in its performance of the Research Services. This indemnity is independent of any right or other obligation of the Principal under this agreement.

## **17.2 Liability**

- (a) The total liability of JCU for any failure by JCU to comply with any guarantee under the Australian Consumer Law (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law) is limited to JCU electing to do one or more of the following:
- (i) in the case of goods supplied by JCU:
    - (A) JCU replacing the goods or supplying equivalent goods;
    - (B) JCU repairing the goods;
    - (C) JCU paying the cost of replacing the goods or acquiring equivalent goods;
    - (D) JCU paying the cost of having the goods repaired; and
  - (ii) in the case of services supplied by JCU:
    - (A) JCU supplying the services again; or
    - (B) JCU paying the cost of having the services supplied again.

- (b) Subject to **clause 17.2(a)**:
  - (i) JCU's total liability to the Principal for any loss or damage suffered by the Principal in connection with:
    - (A) the negligence of JCU, its officers, employees, contractors, students or agents;
    - (B) any breach by JCU of this Agreement; and
    - (C) the performance of the Research Services,is limited in the aggregate and for all claims made whenever made to the amount of the Fees payable to JCU under this Agreement; and
  - (ii) neither party will be liable under or in connection with this Agreement for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise.
- (c) Nothing in this **clause 17.2** excludes, restricts or modifies any obligations of a party that are not permitted by law to be excluded, restricted or modified.

### **17.3 Survival**

This **clause 17** survives termination or expiry of this Agreement.

## **18 Force Majeure**

- (a) Delay in or failure of performance by a party does not constitute a breach of this Agreement by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:
  - (i) promptly gives notice to the other party following the occurrence of the Force Majeure, providing details of the Force Majeure and its anticipated likely duration and effect; and
  - (ii) uses its best endeavours to resume fulfilling its obligations as promptly as possible and gives written notice to the other party within five days of the cessation of the Force Majeure.
- (b) If Force Majeure substantially prevents or delays performance of this Agreement for more than 60 days:
  - (i) either party may terminate this Agreement by giving 14 days' written notice to the other party; and
  - (ii) the rights and obligations of the parties will be treated in the same manner as if the Agreement has been terminated under **clause 19**.

## 19 Termination

### 19.1 Termination for convenience

Either party may terminate this Agreement for convenience, in its absolute discretion, by giving 30 days' notice in writing to the other party.

### 19.2 Termination for cause

Without limiting its rights at law, a party may terminate this Agreement in whole or part immediately by giving notice in writing to the other party if:

- (a) the other party breaches a term of this Agreement and the breach is not capable of being remedied;
- (b) the other party breaches a term of this Agreement which is capable of being remedied, and fails to remedy that breach within 20 days after receiving notice requiring it to do so; or
- (c) to the extent permitted by law, an Insolvency Event occurs in relation to the other party.

### 19.3 Consequences of Termination

- (a) Termination of the Agreement will not affect any accrued rights or remedies of the parties under, or in respect of any breach of, the Agreement.
- (b) If the Agreement is terminated by the Principal under **clause 19.1**, the Principal agrees to pay to JCU:
  - (i) all Fees and expenses payable in accordance with this Agreement for all Research Services supplied by JCU in accordance with this Agreement up to the effective date of termination; and
  - (ii) any demobilisation costs suffered or incurred by JCU.

## 20 Dispute Resolution

### 20.1 Dispute

Subject to **clause 20.5**, the parties agree to follow the procedures in this **clause 20** prior to the commencement of litigation or other external dispute resolution procedure in relation to any dispute between the parties concerning this Agreement.

### 20.2 Procedure

The parties agree that any dispute concerning this Agreement will be dealt with as follows:

- (a) either party may notify the other in writing of the occurrence of a dispute;
- (b) the parties must meet within five Business Days after receipt of the notice at a mutually convenient time and place, either face to face or by electronic means (**First Meeting**);

- (c) if the parties fail to hold the First Meeting within the required time, or fail to resolve the dispute as agreed in writing within 14 Business Days after the First Meeting, then the parties must ensure that senior representatives with authority to settle the dispute meet within 14 Business Days at a mutually convenient time and place, either face to face or by electronic means (**Second Meeting**).

### **20.3 Mediation**

- (a) If the dispute is not resolved under **clause 20.2(c)** as agreed in writing within five Business Days after the Second Meeting, then either party may refer the dispute to mediation under **clause 20.3(b)** and the other party must participate in the mediation.
- (b) The mediation will be administered by the Australian Centre for International Commercial Arbitration in Townsville in accordance with the ACICA Mediation Rules operating at the time the dispute is referred to mediation. The parties:
  - (i) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the ACICA will determine the mediator;
  - (ii) may be legally represented at the mediation; and
  - (iii) will each bear their own costs concerning the mediation, and will bear the costs of the mediation venue and the mediator equally.
- (c) If the mediation does not resolve the dispute, either party may commence any other form of action to resolve the dispute, including court proceedings.

### **20.4 Continuity during dispute**

Unless otherwise specified in this Agreement, notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

### **20.5 Urgent interlocutory relief**

Nothing in this **clause 20** prevents either party from commencing court proceedings in relation to a dispute arising under or in relation to this Agreement at any time, where that party seeks urgent interlocutory relief.

### **20.6 Survival**

This **clause 20** survives termination or expiry of this Agreement.

## **21 GST**

### **21.1 GST definitions**

In this **clause 21.1**:



- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
  - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
  - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

#### **21.2 Consideration GST exclusive**

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

#### **21.3 Payment of GST**

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**GST Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the GST Supplier an amount equal to the GST payable on the supply.

#### **21.4 Timing of GST payment**

The amount referred to in **clause 21.3** must be paid in addition to and at the same time and in the same manner (without any set off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

#### **21.5 Tax invoice**

The GST Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the GST Supplier is entitled to payment of an amount under **clause 21.3**

#### **21.6 Adjustment event**

If an adjustment event arises in respect of a supply made by a GST Supplier under or in connection with this document, any amount that is payable under **clause 21.3** will be calculated or recalculated to reflect the adjustment event

and a payment will be made by the recipient to the GST Supplier or by the GST Supplier to the recipient as the case requires.

## **21.7 Reimbursements**

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 21.7** does not limit the application of **clause 21.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 21.7(a)**.

## **21.8 No merger**

This **clause 21** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

## **22 Notices**

### **22.1 General**

Each party must send all notices relating to the Agreement to the other party's nominated representative.

### **22.2 How to give a communication**

In addition to any other lawful means, a communication may be given by being:

- (a) delivered by hand at the party's current address for notices;
- (b) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (c) sent by email to party's current email address for notices.

### **22.3 Particulars for delivery of notices**

- (a) The particulars for delivery of notices to each party are initially those set out in **item 1** and **item 2** of **schedule 1**.
- (b) Each party may change its particulars for delivery of notices by notice to the other party in accordance with this **clause 22**.

### **22.4 Time of delivery**

A notice will be deemed to be given:

- (a) if posted:
  - (i) within Australia to an Australian postal address, five Business Days after posting; or

- (ii) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting;
- (b) if delivered by hand during a Business Day – on the date of delivery;
- (c) if emailed – subject to **clause 22.5**, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00 pm (local time of the receiving party) will be deemed to be given on the next Business Day.

## **22.5 Process service**

Any notice under **clause 19** or **20** which is sent via email must also be sent by post, hand delivery or in any other way permitted by law.

## **23 General**

### **23.1 Legal costs**

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

### **23.2 Relationship**

Nothing contained in this Agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties. A party may not enter into any agreement or incur any liabilities on behalf of the other party and may not represent to any person that it has authority to do so.

### **23.3 Amendment**

This Agreement may only be varied or replaced by a document executed by the parties.

### **23.4 Assignment**

- (a) A party must not assign or deal with any right under this Agreement without the prior written consent of the other party (with such consent not to be unreasonably withheld).
- (b) Any purported dealing in breach of this clause is of no effect.

### **23.5 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **23.6 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### **23.7 Consents**

Except as expressly stated otherwise in this Agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

### **23.8 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

### **23.9 Execution warranty**

If this Agreement is executed by an officer of a party, that party warrants that the execution of the Agreement by that officer has been properly authorised, and is effective and binding on the party.

### **23.10 Governing law and jurisdiction**

- (a) This Agreement governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts.

### **23.11 Severability**

If any part of this Agreement is or becomes illegal, void or unenforceable, that part of the Agreement may be severed from the original, and that severance will not affect the validity or enforceability of the Agreement, and the remainder of the Agreement as the case may be otherwise continues to apply.

### **23.12 Liability**

An obligation of two or more persons binds them separately and together.

### **23.13 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### **23.14 Entire understanding**

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.

- (c) No oral explanation or information provided by any party to another:
  - (i) affects the meaning or interpretation of this Agreement; or
  - (ii) constitutes any collateral Agreement, warranty or understanding between any of the parties.

# Schedule 2

## Research Services

### 1 Services

[insert]

### 2 Deliverables

[insert][Note this section could also detail each milestone for the purpose of the payment terms in Schedule 3 (if applicable).]

### 3 Delivery schedule

Task	Target completion Date
[insert]	[insert]

# Schedule 3

## Fees and payment

### 1 Fees

[insert Fees payable by Principal and how they will be calculated, or reference the milestone payment schedule, below.]

### 2 **[Option #1]** Invoicing terms

**[Drafting note:** The appropriate invoicing and payment structure will depend on the Research Services being provided and the commercial agreement between JCU and the Principal in each case. The option that does not apply must be deleted. These are template examples for common payment terms and can be replaced if more bespoke payment arrangement have been agreed.]

#### 2.1 **When JCU will issue invoices**

**[Option one]** JCU will issue an invoice for the Fees within [14] days of the Commencement Date.

**[Option two]** JCU will issue invoices [monthly in arrears] for the Fees payable for each month.

#### 2.2 **When invoices must be paid by the Principal**

The Principal must pay the Fees within [30 days] of the date of each invoice issued by JCU.

### **[Option #2]** Milestone payment schedule

**[Drafting note:** This section may be used if the parties decide to proceed with option #1 above. Depending on the agreement between the parties, this payment schedule could simply refer to a single payment at the completion of the Research Services, or a range of dates linked to specific milestones across the Term of the Agreement. It is important that each milestone be defined in manner that makes clear when it is completed to reduce the risk of the Principal disputing whether or not a milestone has been reached.]

#### 2.3 **JCU to invoice upon completion of each milestone**

JCU will invoice the Principal for the milestone payment(s) upon the following milestones being reached:

<b>Milestone</b>	<b>Milestone payment amount</b>	<b>When payment must be made</b>
[insert details]	[insert details]	[Within 30 days of date of invoice.]
[insert details]	[insert details]	[insert details]
[insert details]	[insert details]	[insert details]



# Execution

**Executed** as an agreement.

**[OPTION ONE: If Principal wishes to execute via an authorised officer.]**

**Executed** for and on behalf of **[name of Principal]** by its duly appointed officer in the presence of:

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of **[name of Principal]**.

.....  
Name of Officer (print)

.....  
Date

.....  
Position of Officer (print)

**[OPTION TWO: If Principal is a company]**

**Executed** by **[name of Principal]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director (print)

.....  
Name of Director (print)

.....  
Date

.....  
Date

**Executed** for and on behalf of **James** )  
**Cook University** by its duly appointed )  
officer in the presence of: )

.....  
Witness

.....  
Name of Witness (print)

.....  
Date

.....  
Officer

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of JCU.

.....  
Name of Officer (print)

.....  
Position of Officer (print)