GENERAL CONDITIONS FOR RECEIPT OF CONSULTANCY SERVICES FROM A THIRD PARTY

1. Performance of Consultancy Services

1.1 The Consultant agrees to perform the Consultancy Services.

1.2 The Consultant warrants that the Consultancy Services will be performed with professional care and skill and in accordance with the standards of the industry in which the Consultant carries on business.

1.3 Where the Consultant agrees to assign a person to complete a task (the “Specified Personnel”), the Consultant must ensure that the Specified Personnel do not delegate any part of that task without UQ’s prior written consent.

1.4 The Consultant agrees to keep UQ’s Representative regularly informed as to the progress of the Consultancy Services and to meet with UQ’s Representative when reasonably requested by UQ’s Representative.

1.5 The Consultant agrees that, in carrying out the Consultancy Services, the Consultant will comply with UQ’s reasonable directions.

2. Ownership

2.1 The title to and ownership of all IPR in all Contract Material and the Deliverables vests upon its creation in UQ. The Consultant hereby assigns the IPR in all Contract Material and the Deliverables to UQ.

2.2 The title to and ownership of all IPR in the Pre-existing Material remains vested in the party who provides such Pre-existing Material. The Consultant hereby grants a licence (including the right to grant sub-licences) to UQ of the Pre-existing Material to the extent it is incorporated in the Contract Material and/or the Deliverables to use solely in relation to UQ’s use, reproduction, adaptation and exploitation of the Contract Material and the Deliverables.

2.3 Neither party will use the other party’s Pre-existing Material for any purpose other than performance of the Consultancy Services and the licence granted in clause 2.2.

2.4 The Consultant indemnifies and will at all times keep UQ, its officers, employees and agents indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party’s IPR relating to the provision of Consultancy Services and/or supply of the Contract Material, the Deliverables or the Pre-existing Material under this Agreement.

3. Confidential Information

3.1 Subject to clause 3.2, each party must not:

(a) disclose any information about this Agreement or any Confidential Information received from the other party; and

(b) make any use of the other party’s Confidential Information other than for the purposes of performance of this Agreement.

3.2 Each party may disclose Confidential Information to its employees, consultants and authorised sub-contractors who need to receive the information in the course of performance of this Agreement and who have agreed not to disclose such Confidential Information.

3.3 The confidentiality obligations in this clause do not apply to any information which:
(a) is or subsequently becomes available to the general public other than through a breach by the receiving party;
(b) is already known to the receiving party before disclosure by the disclosing party;
(c) is developed through the independent documented efforts of the receiving party;
(d) the receiving party rightfully receives from a third party without restrictions as to use; or
(e) is required to be disclosed pursuant to an order or requirement by a Court or other government body.

4. Invoice Procedure

4.1 UQ agrees to pay the Consultant’s fees as set out in the Engagement Letter.

4.2 UQ agrees to pay the Consultant’s reasonable expenses, including travel and subsistence expenses as set out in the Engagement Letter or as otherwise agreed in writing.

4.3 UQ agrees to pay the Consultant’s fees and expenses within 30 days of receipt of a correctly rendered invoice to UQ. The Consultant will be entitled to invoice for the Consultant’s fees and expenses upon completion of the Consultancy Services.

4.4 The parties acknowledge that GST may be payable on the Consultancy Services supplied pursuant to this Agreement. If GST is payable, the relevant amounts payable by UQ will be increased by the amount equal to that which the Consultant is obliged to remit as GST on the supply of the Consultancy Services.

4.5 Despite clause 5.3, UQ is not obligated to pay the Consultant’s fees and expenses until UQ has received an invoice in accordance with clause 5.6 and UQ’s Representative is satisfied that the work to which the invoice relates has been completed satisfactorily.

4.6 The invoice must:
(a) identify the title of the Consultancy Services and the contract number or purchase order (if any);
(b) provide sufficient detail of expenses (if any) for which reimbursement is requested as UQ reasonably requires (which may include receipts); and
(c) be a valid tax invoice.

4.7 Despite anything set out in this Agreement or any other arrangement, UQ will not be obliged to pay any fees or expenses to the Consultant until reasonably satisfied with the Consultancy Services provided by the Consultant.

4.8 Payment of an invoice by UQ does not constitute acceptance of the Consultancy Services.

5. Assignment

5.1 This Agreement may not be assigned or any obligations sub-contracted by either party without the other party’s prior written consent, which must not be unreasonably withheld.

6. Negation of Employment and Agency

6.1 The Consultant will not:
(a) represent itself as being an employee or agent of UQ; or
(b) by virtue of this Agreement become an employee or agent of UQ.

6.2 The Consultant is solely responsible for payment of any taxes imposed on the Consultant and its personnel arising directly or indirectly from the provision of the Services (including without limitation, income tax). The Consultant and its personnel have no claim upon UQ in respect of (a) remuneration to employees (if any) including superannuation, leave, taxes or duties; (b) claims under workers compensation, industrial relations or anti-discrimination legislation; and (c) claims under any other law affecting or relating to the relationship between an employer and employee.

7. Termination of Agreement

7.1 UQ may terminate this Agreement or suspend its operation by giving 2 working days’ prior notice in writing to the Consultant. Termination or suspension under this clause will be without prejudice to any rights that may have accrued for either party before termination or suspension.

7.2 The Consultant may terminate this Agreement by giving 2 working days’ prior notice in writing to UQ if UQ fails to rectify a breach of this Agreement within 7 working days of receipt from the Consultant of a written notice requiring UQ to remedy such breach within 7 working days or within such other period as the parties agreed in writing.

7.3 The following clauses of these General Conditions will survive expiry or termination of this Agreement: 2, 3, 6, 8, 9 and 10.

8. Indemnity, Insurance, Limitation of Liability

8.1 The Consultant indemnifies UQ, its employees and agents from and against all damages, costs, expenses, loss or damage which they may incur or sustain and all actions, proceedings, claims and demands whatsoever which may be brought or made
against it or them by any person in respect of or by reason of or arising out of:

(a) any negligence or other wrongful act or omission of the Consultant, its employees, sub-Consultants, agents, licensees, invitees or visitors or of any other persons for whose acts or omissions the Consultant is vicariously liable;

(b) death, injury, loss of or damage to the Consultant, or its other employees, agents, sub-Consultants, licensees, invitees or visitors; or

(c) any material breach of this Agreement by the Consultant.

The Consultant’s liability under this clause will be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of UQ or its employees or agents.

8.2 The Consultant must take out and maintain for the duration of the Consultancy Services and in relation to Professional Indemnity Insurance for a period of 7 years after the conclusion of the Consultancy Services the following insurance at least to the level set out in the table below, based on the total of the fees payable for the Consultancy Services:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Public Liability Insurance</th>
<th>Professional Indemnity Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $30,000.00</td>
<td>$10 million per event</td>
<td>$2 million per event</td>
</tr>
<tr>
<td>$30,000.00 - $50,000.00</td>
<td>$10 million per event</td>
<td>$5 million per event</td>
</tr>
<tr>
<td>$50,000.00 - million</td>
<td>$10 million per event</td>
<td>$10 million per event</td>
</tr>
<tr>
<td>Over $2 million</td>
<td>$20 million per event</td>
<td>$20 million per event</td>
</tr>
</tbody>
</table>

8.3 The Consultant will produce a certificate of currency and copies of the insurance policies in relation to the above insurances on the request of UQ.

8.4 If the Consultant is required to travel in order to perform the Consultancy Services, the Consultant must take out and maintain for the duration of the Consultancy Services comprehensive travel insurance (including coverage for medical and dental treatment and medical evacuation) for any travel undertaken by the Consultant as part of the Services. The Consultant will provide a Certificate of Currency and copies of the travel insurance policies at the request of UQ. The Consultant is responsible for complying with any DFAT warnings in relation to travel.

8.5 In no event will UQ be liable for any damages if and to the extent caused by the Consultant’s failure to perform its responsibilities or for any of the following even if informed of their possibility to the Consultant under or in connection with this Agreement in contract, tort (including negligence) or otherwise in respect of:

(a) loss of, or damage to data;

(b) special, incidental or indirect damages or for any economic consequential damage;

(c) loss of profits, business revenue, goodwill or anticipated savings; or

(d) loss or liability incurred by the Consultant as a result of a third party claim.

9. Privacy

9.1 This clause applies only where the Consultant deals with Personal Information when, and for the purpose of, providing Consultancy Services under the Agreement.

9.2 The Consultant acknowledges that it is a “contracted service provider” within the meaning of section 34 of the Privacy Act.

9.3 UQ acknowledges that it is a “contracting agency” within the meaning of section 34 of the Privacy Act.

9.4 The Consultant and UQ acknowledge that the Agreement is a “service arrangement” within the meaning of section 34 of the Privacy Act.

9.5 The Consultant undertakes in respect of the provision of Consultancy Services under the Agreement:

(a) to use or disclose Personal Information however obtained during the course of providing the Consultancy Services under the Agreement, only for the purposes of the Agreement;

(b) not to do any act or engage in any practice that would breach an Information Privacy Principle contained in Schedule 3 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;

(c) to carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Privacy Act;
(d) to notify individuals whose Personal Information is in the possession or under the control of the Consultant for the purpose of the Agreement, that complaints about acts or practices of the Consultant may be adjudicated by the Qld Civil and Administration Tribunal which has power to award compensation against the Consultant in appropriate circumstances;

(e) to immediately notify UQ if the Consultant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 9, whether by the Consultant or any contractor or subcontractor to the Consultant;

(f) to comply as far as practicable with any reasonable inquiries, directions, guidelines, determinations or recommendations by UQ or the Information Commissioner concerning the discharge by the Consultant of its obligations under this clause 9, to the extent that such inquiries, directions, guidelines, determinations or recommendations are not inconsistent with the requirements of the Agreement;

(g) to ensure that any employee of the Consultant who is required to deal with Personal Information for the purposes of the Agreement is made aware of, and undertakes in writing to comply with, the Consultant’s obligations under this clause 9.

9.6 The Consultant shall ensure that any contract entered into for the purpose of fulfilling the Consultant’s obligations under the Agreement contains provisions to ensure that the contractor has the same awareness and obligations as the Consultant has under this clause 9 including the requirement in relation to subcontracts.

9.7 The Consultant shall not transfer Personal Information in its possession or control outside of Queensland without the written authority of UQ.

9.8 The Consultant agrees to indemnify UQ in respect of any loss, liability or expense suffered or incurred by UQ which arises directly or indirectly from a breach of any of the obligations of the Consultant under this clause 9, or a subcontractor under the subcontract provisions referred to in subclause 9.6.


10. Law and Jurisdiction

10.1 This Agreement shall be governed by, and construed in accordance with, the laws of Queensland.

10.2 The parties agree that the Courts of Queensland have jurisdiction to entertain any action in respect of, or arising out of, this Agreement and hereby irrevocably submit themselves to the jurisdiction of the Courts of Queensland.

11. Variation of Agreement

11.1 No agreement or understanding that varies or extends this Agreement (including extending the scope of the Consultancy Services) will bind either party unless in writing and signed by both parties.

12. Interpretation

12.1 In these Conditions -

‘Agreement’ means the Engagement Letter (including any attachments) and these General Conditions which form the Agreement under which the Consultancy Services are to be provided to UQ;

‘Confidential Information’ means information that: (a) is by its nature confidential; (b) is designated by that party as confidential; (c) the other party knows or ought to know is confidential, and includes without limitation Pre-existing Material, Contract Material and Deliverables;

‘the Consultant’ means the party identified in the Engagement Letter to provide the Consultancy Services and includes the officers, employees, agents and authorised sub-contractors (and their employees and agents) of such party;

‘Consultancy Services’ means the Services and Deliverables as set out in the Engagement Letter;

‘Contract Material’ means all material, including, but not limited to, documents, computer software, equipment, information and data stored by any means which is created in connection with or for the purpose of performing the Consultancy Services;

‘Deliverables’ means the item or items of work which are to be delivered by the Consultant to UQ as set out in the Engagement Letter and which may incorporate some or all of the Contract Material and Pre-existing Material;
‘Engagement Letter’ means the letter for delivery of the Consultancy Services by the Consultant to UQ;

‘GST’ means the goods and services tax which results from the enactment of A New Tax System (Goods and Services Tax) Act 1999 and related Acts;

‘Information Commissioner’ means the Information Commissioner under the Right to Information Act 2009 (Qld);

‘Information Privacy Principle’ means an information privacy principle stated as a section of Schedule 3 of the Privacy Act;

‘IPP’ means Information Privacy Principle;

‘IPR’ includes, without limitation, all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, Confidential Information (including trade secrets and know-how) and all necessary consents in relation to moral rights, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields or any rights to registration of such rights existing in Australia or elsewhere, whether created before on or after the date of this Agreement;

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

‘Pre-existing Material’ means material including, but not limited to, documents, computer software, equipment, information and data stored by any means which is created prior to the performance of the Consultancy Services by either party and is used in the performance of the Consultancy Services;

‘Privacy Act’ means the Information Privacy Act 2009 (Qld);

‘UQ’ means The University of Queensland; and

‘UQ’s Representative’ means the individual named in the Engagement Letter as being UQ’s point of contact for the Consultant in relation to the performance of the Consultancy Services.

12.2 In the event of any conflict between the terms of the Engagement Letter and these General Conditions, the Engagement Letter will prevail.