Conditions of Contract
For the Provision of Services
Contents
1. DEFINITIONS AND INTERPRETATION .............................................................................................. 3
2. FORMATION OF CONTRACT ............................................................................................................ 5
3. TERM ............................................................................................................................................... 5
4. ROLE OF THE PROJECT MANAGER .................................................................................................. 5
5. PROVISION OF SERVICES ................................................................................................................. 6
6. PERFORMANCE OF SERVICES BY KEY PERSONNEL .......................................................................... 6
7. FEE AND APPROVED EXPENSES ....................................................................................................... 7
8. PAYMENT ......................................................................................................................................... 7
9. GENERAL RIGHT OF SET-OFF BY QIMR Berghofer ................................................................. 8
10. COMMISSIONS AND INCENTIVES ................................................................................................. 8
11. CONFLICT OF INTEREST ................................................................................................................ 8
12. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS .......................................................... 8
13. CONFIDENTIALITY .......................................................................................................................... 10
14. PRIVACY AND PERSONAL INFORMATION ................................................................................. 10
15. SECURITY AND ACCESS ................................................................................................................. 11
16. LIABILITY & INDEMNITY ............................................................................................................... 11
17. INSURANCE ................................................................................................................................... 11
18. LICENSING REQUIREMENTS ......................................................................................................... 12
19. RESOLUTION OF DISPUTES .......................................................................................................... 12
20. VARIATION ................................................................................................................................... 12
21. SUSPENSION OF PAYMENT .......................................................................................................... 13
22. SUSPENSION OF SERVICES ......................................................................................................... 13
23. TERMINATION ............................................................................................................................... 13
24. NOTICES .................................................................................................................................... 14
25. GENERAL PROVISIONS ............................................................................................................... 15
26. CLAUSES TO SURVIVE TERMINATION ....................................................................................... 15
1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Conditions of Offer, unless the context otherwise requires, the following definitions will apply:

“Acceptance” means a document so entitled by which QIMR Berghofer notifies the Contractor that its Offer is accepted by QIMR Berghofer;

“Additional Provisions” means any terms and conditions, that are agreed between QIMR Berghofer and Contractor and specified in Schedule C;

“Approved Expenses” means the Contractor’s expenses (if any) which have been agreed between the Parties and approved by QIMR Berghofer prior to any expenditure being incurred, as specified in item 3 of Schedule A;

“Business Day” means between 9.00am and 4.00pm on a weekday other than a Saturday, Sunday or public holiday in Brisbane;

“Claim” includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages, and expenses, including those arising out of the terms of any settlement;

“Commencement Date” means the date specified in item 4 of Schedule A;

“Completion Date” means the expiry date specified in item 5 of Schedule A or as otherwise agreed in writing between QIMR Berghofer and Contractor;

“Conditions of Contract” means these terms and conditions, and includes the attached Schedules and any additional conditions of contract as specified in Part 5 of the Invitation;

“Confidential Information” means information that is not trivial and:

a) is by its nature confidential;

b) is communicated by QIMR Berghofer to the Contractor;

c) the Contractor knows or ought to know is confidential;

d) all information obtained by the Contractor in the course of submitting an Offer and includes the New Contract Material.

“Conflict of Interest” means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform the Services fairly and objectively;

“Contract” means the contract referred to in clause 2.1;

“Contract Material” means New Contract Material and Existing Contract Material;

“Contractor” means the entity specified in item 2 of Schedule A, from whom the Services are being procured;

“Correctly Rendered Invoice” means an invoice:

a) in which the amount claimed is due for payment in accordance with the Contract;

b) in which the amount claimed is correctly calculated in accordance with the Contract;

c) which correctly identifies the Services supplied;

d) which is a valid tax invoice under the GST Legislation; and

e) which complies with clause 8.3

“Deliverable” means the reports and other things (if any) specified in Schedule B;

“Existing Contract Material” means any material that:

a) exists at the Commencement Date; or

b) is produced after the Commencement Date, independently of this Contract, and which is provided in connection with or forms part of a Deliverable;

“Fee” means the itemised fees calculated by reference to a schedule of rates payable as specified in Schedule B, and unless otherwise specified in Schedule B is inclusive of GST and all other duties, taxes and charges;

“GST” means a goods and services tax imposed by or through the GST Legislation;

“GST Legislation” means the A New Tax System (Goods and Services Tax) Act 1999;
“**Intellectual Property Rights**” includes all inventions, discoveries, works in which copyright subsists, trademarks, designs, circuit layout rights, patents, any rights to apply for any of the foregoing, trade secrets and know how, but excludes Moral Rights;

“**Invitation**” means the documentation issued by QIMR Berghofer, inviting offers for the provision of the Services;

“**Key Personnel**” means the representative/s of the Contractor specified in item 6 of Schedule A (if applicable);

“**Moral Rights**” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, and rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date;

“**New Contract Material**” means any material that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Services, and includes the Deliverables;

“**Notice**” means notice in writing which may be given by personal delivery, pre-paid postage or facsimile to the Party's business address or registered office or, except for a notice under clause 22 or 23, notice given by email to a Party's nominated email address;

“**Offer**” means the offer submitted by the Contractor in response to the Invitation;

“**Order**” means a written order given by QIMR Berghofer for the supply of the Services by the Contractor to QIMR Berghofer;

“**Parties**” means QIMR Berghofer and the Contractor;

“**Project Manager**” means the person nominated by QIMR Berghofer to oversee and supervise the Services, as specified in item 7 of Schedule A, or other person nominated from time to time by QIMR Berghofer as the Project Manager;

“**QIMR Berghofer**” means The Council for the Queensland Institute of Medical Research whose particulars are set out in Item 1 of Schedule A

“**Records**” means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by QIMR Berghofer to the Contractor in connection with the performance of this Contract and includes a copy of any Records;

“**Schedule**” means the schedules which are part of the Contract;

“**Services**” means the services specified in Schedule B.

**1.2 Interpretation**

1.2.1 In these Conditions of Contract, the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Conditions of Contract.

1.2.2 The following rules shall apply in interpreting these Conditions of Contract, unless the context otherwise requires:

a) words importing a gender include the other gender;

b) words in the singular include the plural and vice versa;

c) all dollar amounts refer to Australian Currency;

d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;

e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;

f) a party includes its executors, administrators, liquidators, successors and permitted assigns;

g) “consent” means prior written consent;

h) “in writing” means either by letter, email or facsimile;

i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to these Conditions of Offer;

j) if a day on which an act is to be done is not a Business Day in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;

k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;

l) a clause is a reference to all of its sub-clauses; and
m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated

2. FORMATION OF CONTRACT
2.1 The following documents will constitute the entire Contract between QIMR Berghofer and the Contractor:

a) the Acceptance or Order which incorporates by reference these Conditions of Contract including Schedules A, B and C as completed by QIMR Berghofer which are attached to the Acceptance or Order;
b) the Contractor’s Offer; and
c) any other documentation forming part of the Contract, as agreed in writing between QIMR Berghofer and the Contractor.

2.2 In the event of any conflict between the documents specified in clause 2.1, the order of precedence to resolve the conflict will be the above order. In the event of any inconsistency between the Acceptance or Order and Schedules A, B and C, the Acceptance or Order will prevail to the extent of the inconsistency.

2.3 Any Additional Provisions which have been agreed between QIMR Berghofer and Contractor are in Schedule C.

2.4 Any Additional Provisions which take away or reduce QIMR Berghofer entitlements under this Contract are void.

2.5 This Contract supersedes all prior representations, agreements, statements and understandings between QIMR Berghofer and the Contractor, whether oral or in writing relating to the subject matter of this Contract.

3. TERM

3.1 This Contract will commence on the Commencement Date and, unless terminated sooner, will continue until the date when all Deliverables have been provided by the Contractor to QIMR Berghofer and the Contractor has performed the Services to QIMR Berghofer reasonable satisfaction.

3.2 The Contractor will use its reasonable efforts to complete the Services by the Completion Date.

3.3 If the Deliverables have not been supplied by their due dates or the Services have not been performed by the Completion Date, the Contractor must seek an extension of the Completion Date from QIMR Berghofer.

4. ROLE OF THE PROJECT MANAGER

4.1 The Project Manager is QIMR Berghofer representative responsible for this Contract. The Project Manager is NOT authorised either apparently or ostensibly to amend this Contract on behalf of QIMR Berghofer.

4.2 The Contractor must:

a) liaise with and report to the Project Manager about the performance of the Services;
b) attend meetings with, or provide briefings to, the Project Manager as required from time to time; and
c) promptly comply with any request or direction given by the Project Manager, in accordance with the Contract, about the performance of the Services.
5. **PROVISION OF SERVICES**

5.1 The Contractor agrees to carry out the Services, as an independent contractor, in a competent and professional manner.

5.2 The Contractor must perform the Services:

   a) so as to achieve the milestones by the milestone dates (if any) specified in Schedule B;
   b) by the Completion Date; or
   c) if the Services are periodic or recurrent Services, at the times, intervals and frequency as specified in item 8 of Schedule A.

5.3 In performing the Services, the Contractor must:

   a) inform itself of QIMR Berghofer requirements in respect of the Services;
   b) consult regularly with QIMR Berghofer Project Manager; and
   c) exercise due skill, care and diligence.

5.4 In performing the Services, the Contractor must deliver the Deliverables to QIMR Berghofer by the dates specified for their delivery in Schedule B.

5.5 The Contractor must ensure that:

   a) the Services are performed in accordance with any key performance indicators or performance standards specified in item 13 of Schedule A; and
   b) all Services are of a high quality and professional standard.

5.6 QIMR Berghofer will provide the assistance (if any) described in item 10 of Schedule A to the Contractor.

5.7 The Contractor will be responsible for the supply and/or performance of all personnel and/or equipment, necessary for the proper performance of the Services.

5.8 The Contractor:

   a) warrants that it has the necessary skills and expertise to perform the Services; and
   b) will ensure that its officers, employees and sub-Contractors have the necessary skills and expertise to perform that part of the Services, which are allotted to them by the Contractor.

6. **PERFORMANCE OF SERVICES BY KEY PERSONNEL**

6.1 The Services must be performed by the Key Personnel as specified in item 6 of Schedule A, unless QIMR Berghofer has consented otherwise. A person replacing one of the Key Personnel, with QIMR Berghofer consent, will be considered to be one of the Key Personnel during the person’s engagement to provide the Services.

6.2 The Contractor must ensure that the Key Personnel are competent and have the necessary skills to perform the Services on which they will be engaged.

6.3 The Contractor must not without consent from QIMR Berghofer:

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

6.4 If any of the Key Personnel are not available to perform any of the Services allocated to them the Contractor must immediately:

   a) notify QIMR Berghofer of the circumstances; and
b) if so requested by QIMR Berghofer, arrange for replacement of that person with a person satisfactory to QIMR Berghofer, at no additional cost to QIMR Berghofer.

6.5 QIMR Berghofer may, on reasonable grounds, give notice to the Contractor to remove any Key Personnel from working on the Services. Upon receipt of such notice, the Contractor must, at no additional cost to QIMR Berghofer, promptly remove and replace the Key Personnel mentioned in the notice with another person approved by QIMR Berghofer.

7. FEE AND APPROVED EXPENSES

7.1 If the Services are provided in accordance with the Contract, QIMR Berghofer will:
   a) pay the Fee to the Contractor; and
   b) reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.

7.2 QIMR Berghofer will not be liable to reimburse the Contractor for expenses other than the Approved Expenses, unless the Contractor has obtained QIMR Berghofer consent.

7.3 The Fee will be payable in the manner and at the time specified in Schedule B and the Contractor must submit invoices for the Fee at the times specified in Schedule B.

8. PAYMENT

8.1 QIMR Berghofer is not obliged to pay the Contractor for any part of the Services until the:
   a) Contractor has delivered to QIMR Berghofer any Deliverables that are due to be delivered;
   b) QIMR Berghofer has certified that the Deliverables have been supplied.

8.2 Despite any certification under clause 8.1 b) the Contractor must promptly perform or perform again, any part of the Services, certified by QIMR Berghofer as not having been performed in accordance with this Contract. QIMR Berghofer may, without limiting any other rights it may have, defer payment for that part of the Services until QIMR Berghofer is satisfied that the Services have been performed or performed again, in accordance with this Contract.

8.3 The Correctly Rendered Invoice submitted by the Contractor must:
   a) identify the title of the Services and the name of the Project Manager (if applicable);
   b) identify the Order number and specific details pertaining to that Order (if applicable);
   c) include sufficient details to allow QIMR Berghofer to assess progress against milestones (if applicable);
   d) for Services carried out on a time basis, be supported by records of time spent by individuals involved in the Services and verified by the Contractor; and
   e) itemise Approved Expenses claimed.

8.4 Upon Receipt of an invoice, QIMR Berghofer may require the Contractor to provide additional information or documentary evidence to enable QIMR Berghofer to determine whether or not an amount is payable.

8.5 Unless otherwise specified in Schedule B, QIMR Berghofer will make payment at the end of the following month after receipt of a Correctly Rendered invoice, or if additional information or evidence is required by QIMR Berghofer pursuant to this clause, 30 days after the additional information or evidence is supplied and QIMR Berghofer is satisfied with that additional information or evidence.
9. GENERAL RIGHT OF SET-OFF BY QIMR Berghofer

9.1 QIMR Berghofer may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to QIMR Berghofer whether or not QIMR Berghofer right to payment arises by damages, debt, restitution or otherwise and whether or not the basis giving rise to QIMR Berghofer right to payment arises out of this Contract, any other contract/s, or is independent of any contract.

9.2 Nothing in this clause will affect the right of QIMR Berghofer to recover from the Contractor the whole of such moneys or any balance that remains owing.

10. COMMISSIONS AND INCENTIVES

10.1 The Contractor will not offer anything to QIMR Berghofer or any officer or employee of QIMR Berghofer, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence QIMR Berghofer actions in relation to the Contract.

11. CONFLICT OF INTEREST

11.1 The Contractor warrants that, to the best of its knowledge, as at the Commencement Date neither the Contractor nor any of its officers, employees or sub-contractors have, or are likely to have, a Conflict of Interest in the performance of the Contractor’s obligations under this Contract.

11.2 If a Conflict of Interest or risk of Conflict of Interest arises (without limitation, because of work undertaken by the Contractor for any person other than QIMR Berghofer) the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to QIMR Berghofer.

11.3 The Contractor must:
   a) take all reasonable measures to ensure that its officers, employees and sub-Contractors do not engage in any activity or obtain any interest which is in conflict with the Contractor’s ability to perform the Services for QIMR Berghofer in good faith and objectively; and
   b) immediately give notice to QIMR Berghofer of any Conflict of Interest relating to the activities or interests of any of its officers, employees or sub-Contractors.

11.4 Upon receipt of a notice under this clause or QIMR Berghofer otherwise identifying a Conflict of Interest, QIMR Berghofer may either:
   a) direct the Contractor as to how to manage the Conflict of Interest and the Contractor must comply with any reasonable direction so given by QIMR Berghofer;
   b) suspend this Contract in accordance with clause 22.1; or
   c) terminate this Contract in accordance with clause 23.5 (a).

12. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS

12.1 Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest in QIMR Berghofer.

12.2 The Contractor warrants that the use of New Contract Material will not infringe the copyright of another person.
12.3 The Contractor warrants that to the best of its actual knowledge, the use of New Contract Material will not infringe the Intellectual Property Rights (other than copyright) of another person.

12.4 The Contractor must ensure that
   a) the New Contract Material and Records are used, copied, supplied or reproduced only for the purposes of this Contract; and
   b) after the expiration or sooner termination of this Contract (or some earlier date if required by QIMR Berghofer), the Contractor must deliver to QIMR Berghofer, in a format specified by QIMR Berghofer, all New Contract Material and Records.

12.5 This Contract does not affect Intellectual Property Rights in Existing Contract Material but the Contractor grants, and will ensure that relevant third parties grant, to QIMR Berghofer a paid up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) to Intellectual Property Rights in the Existing Contract Material but only as part of the Contract Material (and any future development of the Contract Material), without additional cost to QIMR Berghofer to:
   a) use, exploit and otherwise exercise all rights comprised in the copyright, for any purpose of QIMR Berghofer; and
   b) use or exploit (whether commercially or otherwise) for any purpose of QIMR Berghofer.

12.6 Other than in relation to the copyright licensed under clause 12.5, the Contractor warrants that the use of the Existing Contract Material does not infringe the copyright of another person.

12.7 Other than in relation to the Intellectual Property Rights which is licensed under clause 12.5 the Contractor warrants that to the best of its actual knowledge, the use of the Existing Contract Material does not infringe the Intellectual Property Rights (other than copyright) of another person.

12.8 Intellectual Property Rights in Records will vest in QIMR Berghofer.

12.9 If the Contractor is an individual, the individual consents to any act or omission done by QIMR Berghofer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the individual’s Moral Rights and without limiting this, the individual consents to:
   a) QIMR Berghofer determining in its entire discretion whether or not the individual will be attributed as author of the Contract Material and if the individual will be attributed, that attribution will occur in a manner acceptable to QIMR Berghofer;
   b) any amendments, deletions/destruction, alteration, relocation or selection of the Contract Material (or any part thereof) at the discretion of QIMR Berghofer;
   c) the publication or communication of the Contract Material or any part.

12.10 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Contractor must, prior to allowing that individual to commence work in respect of a Deliverable, obtain from that individual who is to create New Contract Material:
   a) all consents, permissions and assignments necessary to enable QIMR Berghofer to exercise the Intellectual Property Rights granted under this Contract in full, without impediment or cost to QIMR Berghofer; and
   b) a consent from the individual to any act or omission by QIMR Berghofer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the person’s Moral Rights, including a consent to the acts or omissions specified in clause 17.9 (a) to (d).

12.11 The Contractor must sign any document which QIMR Berghofer may reasonably request to further assure QIMR Berghofer title and rights pursuant to this clause.
13. CONFIDENTIALITY

13.1 The Contractor must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose any Confidential Information without QIMR Berghofer consent, other than in accordance with this clause.

13.2 The Contractor may disclose Confidential Information to its officers, employees, agents and sub-Contractors to the extent necessary for the performance of this Contract, provided that the Contractor:
   a) makes sure persons are aware that the information is confidential; and
   b) if specified in item 11 of Schedule A or directed by QIMR Berghofer, obtains from such persons a confidentiality undertaking in a form acceptable to QIMR Berghofer.

13.3 QIMR Berghofer and Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.

13.4 Upon receipt of a written request by QIMR Berghofer either during the Term or upon termination or expiration of this Contract, the Contractor must deliver to QIMR Berghofer any Records in the Contractor’s power, possession or control.

13.5 Clauses 13.1 to 13.3 do not apply to Confidential Information:
   a) which was already known by the Contractor without any prior obligation of confidentiality to QIMR Berghofer
   b) which has become public knowledge (other than through a breach of an obligation of confidence);
   c) to the extent the Supplier is required by law to disclose it.

14. PRIVACY AND PERSONAL INFORMATION

14.1 If the Contractor collects or has access to Personal Information in order to provide the Services, the Contractor must:
   a) comply with Parts 1 and 3 of Chapter 2 of the Information Privacy Act 2009 in relation to the discharge of its obligations under this Contract, as if the Contractor was QIMR Berghofer;
   b) not use Personal Information other than for the purposes of the performance of the Services, unless required or authorised by law;
   c) not disclose Personal Information without the consent of QIMR Berghofer, unless required or authorised by law;
   d) not transfer Personal Information outside of Australia without the consent of QIMR Berghofer;
   e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
   f) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties;
   g) ensure that its sub-Contractors who have access to Personal Information comply with the same obligations as those imposed on the Contractor under this clause;
   h) full co-operate with QIMR Berghofer to enable QIMR Berghofer to respond to applications for access to, or amendments of a document containing an individual’s Personal Information and to privacy complaints; and
   i) comply with such other privacy and security measures as QIMR Berghofer reasonably advises the contractor in writing from time to time.

14.2 On request by QIMR Berghofer, the Contractor must obtain from its employees, officers or sub-Contractors an executed deed of privacy in a form acceptable to QIMR Berghofer.

14.3 The Contractor must immediately notify QIMR Berghofer on becoming aware of any breach of clause 14.1.
15. SECURITY AND ACCESS

15.1  The Contractor, and any employee, agent or sub-contractor of the Contractor, must, when entering upon QIMR Berghofer premises, dealing with QIMR Berghofer employees or members of the public, or using QIMR Berghofer facilities, equipment or resources, comply with all directions made by QIMR Berghofer, and all applicable rules, policies, standards, codes of conduct, and procedures brought to its attention, including those relating to security, workplace health and safety and appropriate use of information and communication technology.

15.2  The Contractor must give the Project Manager and/or any other person authorised in writing by QIMR Berghofer reasonable access to inspect any Contract Material.

15.3  The Project Manager and/or any other person authorised in writing by QIMR Berghofer must, when attending the Contractor’s premises or facilities, comply will all applicable rules, directions and procedures as notified by the Contractor, including those relating to security or workplace health and safety, that are in effect at the premises or facilities.

16. LIABILITY & INDEMNITY

16.1  The Contractor’s liability to QIMR Berghofer for loss or damage sustained shall be reduced proportionately to the extent that the loss or damage was caused or contributed to by QIMR Berghofer negligence.

16.2  The Contractor’s liability arising under and/or in connection with this Contract, shall exclude any liability for loss of profit, revenue, goodwill or business opportunities and any indirect or consequential loss.

16.3  The Contactor releases, discharges and indemnifies QIMR Berghofer and its officers and employees from and against any claim by the Contractor, or a third party which may be brought against or made upon or incurred by any of them in connection with any:

a)  negligent act or omission of the Contractor, its officers or employees or sub-contractors;

b)  breaches of this Contract by the Contractor;

c)  contravention of any legislative requirement by the Contractor, its officers or employees or sub-contractors; or

d)  infringement by the Contractor or its officers or employees of the Intellectual Property Right or Moral Rights of any third party;

e)  breach by the Contractor of any warranty in this Contract,

except to the extent the claim is due to the negligence of QIMR Berghofer, its officers or employees.

17. INSURANCE

17.1  If Item 12 of Schedule A specifies that professional indemnity insurance is required, the Contractor warrants that it will hold and maintain for the duration of this Contract the professional Indemnity insurance specified in item 12 of Schedule A for the amount specified in item 12 of Schedule A, which shall be maintained by the Contractor for a continuous period of four years, after the Completion Date or termination of the Contract, unless otherwise specified in item 12 of Schedule A.

17.2  The insurance must be affected with an insurer that is authorised and licensed to operate in Australia.

17.3  The Contractor must, if required by QIMR Berghofer, promptly provide a certificate of currency for each insurance policy.

17.4  The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this clause, will not impact on the Contractor’s ability to meet any claim or otherwise
17.5 The Contractor must immediately advise QIMR Berghofer if any insurance policy, as required by this clause, is materially modified or cancelled. The Contractor must provide full details of any changes in writing to QIMR Berghofer.

18. LICENSING REQUIREMENTS

18.1 The Contractor warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Services.

18.2 The Contractor must, if requested by QIMR Berghofer, provide evidence of compliance with its obligations under this clause to the satisfaction of QIMR Berghofer.

19. RESOLUTION OF DISPUTES

19.1 If a dispute or difference arises between the Parties in relation to the Contract or concerning the performance or non-performance by either Party of their obligations under this Contract a Party may give notice of a dispute to the other Party. The Parties must, if requested by either Party within 10 Business Days of receipt of a notice of dispute by a Party, refer the dispute to mediation before commencement of any litigation, other than for injunctive relief, in relation to the dispute.

19.2 The mediator shall be:
   a) mutually agreed upon by the Parties in writing; or
   b) in the absence of agreement, appointed by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.

20. VARIATION

20.1 This Contract may only be varied by written agreement between the Parties. The Parties must act reasonably in deciding whether to agree to a variation, as requested by the other Party.

20.2 QIMR Berghofer may at any time serve a notice on the Contractor requiring the Contractor to decrease or omit the performance of any part of the Services.

20.3 Following issue of such notice, the Contractor will comply with the notice and immediately take steps necessary to minimise the loss suffered by it as a result of the notice.

20.4 Where the supply of any part of the Services have been decreased or omitted under this clause, QIMR Berghofer will pay the Contractor:
   a) for the Services supplied as varied by the notice under this clause; and
   b) any reasonable costs incurred by the Contractor which are directly attributed to the reduction in the Services.

20.5 QIMR Berghofer shall not be liable to the Contractor for any loss of profits arising from any variation under this clause.

20.6 If the Contractor rejects the proposed variation, including any variation to the Fee, this Contract will remain unvaried.
21. SUSPENSION OF PAYMENT

21.1 QIMR Berghofer may suspend payments to the Contractor if the Contractor refuses, neglects or fails to supply and/or perform any part of the Contract, until the Services have been performed in the manner acceptable to QIMR Berghofer and in accordance with this Contract.

22. SUSPENSION OF SERVICES

22.1 QIMR Berghofer may without having cause, at any time by Notice direct the Contractor to:
   a) suspend work on the supply of all or any part of the Services for a specified period; or
   b) recommence work on the supply of all or any part of the suspended Services.

22.2 Where QIMR Berghofer suspends the supply of the Services:
   a) the Contractor shall, following receipt of that Notice, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the suspension, including taking all reasonable steps to prevent or minimise its liabilities to its suppliers, Contractors and sub-contractors; and
   b) the Contractor and QIMR Berghofer must negotiate in good faith as to reasonable compensation payable to the Contractor for any additional costs that were reasonably and properly incurred by the Contractor as a direct result of the suspension but the compensation must not include loss of profit, revenue, goodwill or business opportunities, damage to reputation nor any indirect or consequential loss, and, where the suspension is the result of any act or omission of the Contractor, the Contractor will not be entitled to payment by QIMR Berghofer of any costs, expenses or any other compensation arising out of such suspension; and
   c) any previous agreed completion dates for the Services will be postponed by a period equivalent to the duration of the suspension.

22.3 Where the Contractor commits a breach of the Contract, QIMR Berghofer may without limiting any right of action or remedy which has accrued or may accrue in favour of QIMR Berghofer:
   a) give notice to the Contractor, by a notice of suspension, that the Contract is suspended in whole or in part from the date specified in the Notice for a nominated period; and
   b) provide the Contractor with reasonable directions in relation to subsequent performance of the Contract.

22.4 The Contractor must immediately comply with any reasonable directions given by QIMR Berghofer, pursuant to this clause.

22.5 Prior to the period of suspension expiring, QIMR Berghofer shall notify the Contractor in writing that the:
   a) period of suspension shall cease to be effective from the date specified in the Notice based on QIMR Berghofer being satisfied that the issues/concerns which gave rise to the suspension have been resolved, upon which, each Party must resume its performance under the Contract from that date; or
   b) period of suspension shall be extended for a further period of time specified in the Notice; or
   c) the Contractor must show cause, pursuant to a notice issued by QIMR Berghofer, why QIMR Berghofer should not terminate the Contract from the date specified in the notice.

22.6 If QIMR Berghofer fails to notify the Contractor in writing, pursuant to clause 22, the period of suspension shall expire at the end of the nominated period and each Party must then resume its performance under this Contract.

23. TERMINATION

23.1 QIMR Berghofer may terminate this Contract for convenience by giving 30 days prior Notice or such other reasonable period as specified by QIMR Berghofer.
23.2 If the Contract is terminated pursuant to clause 23.1:
   a) the Contractor shall, following receipt of that Notice from QIMR Berghofer, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its Contractors and sub-Contractors;
   b) QIMR Berghofer must pay to the Contractor the fees and expenses reasonable incurred by the Contractor in carrying out the Contract to the date of termination; and
   c) QIMR Berghofer will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation and indirect or consequential loss, or any other reason in relation to termination nor shall QIMR Berghofer be liable for payment to the Contractor for any amount greater than the amount that QIMR Berghofer would have paid to the Contractor had this Contract been completely performed.

23.3 Where a Party commits any breach of the Contract or, the non defaulting Party may by Notice, require the defaulting Party to remedy that breach within 14 days.

23.4 If the defaulting Party fails to remedy that breach within 30 days the non defaulting Party may terminate this Contract by serving a Notice to that effect.

23.5 QIMR Berghofer may immediately terminate this Contract by Notice to the Contractor if:
   a) the Contractor gives Notice under clause 11.2 or 11.3(b);
   b) the Contractor breaches any part of clause 17 or 18; or
   c) the Contractor:
      i. becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
      ii. has a receiver or a receiver or manager appointed or a mortgage goes into possession of any of its assets or becomes subject to any form of external administration;
      iii. enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
      iv. is wound up, voluntarily or involuntarily; or
   d) the Contractor indicates that it is unable or unwilling to complete the Contract.

23.6 If QIMR Berghofer terminates this Contract under either clause 23.4 or 23.5, the termination is without prejudice to any rights of QIMR Berghofer under the Contract or at common law.

24. NOTICES

24.1 Any Notice or other form of communication (a “notice”) which may be given to or served on either Party under this Contract must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following respective addresses:
   a) for QIMR Berghofer – as specified in item 13 of Schedule A;
   b) for the Contractor – as specified in item 14 of Schedule A;

or such other address as a Party may subsequently notify to the other.

24.2 Notwithstanding clause 24.1, if the Contractor is a company then QIMR Berghofer may serve a notice at any time on the Contractor’s registered office.

24.3 A notice to be given or served pursuant to clauses 22 or 23 must not be sent via email.

24.4 A notice will be deemed to be given:
   a) if posted – two Business Days after the date of posting;
   b) if delivered by hand during a Business Day – on the date of delivery;
c) if faxed – on the date the sender’s facsimile machine notes a complete and successful transmission; or
d) if emailed – on the date of the email;

24.5 Where a fax or email received after 4.00pm (local time of the receiving Party) will be deemed to be given on the
next Business Day.

25. GENERAL PROVISIONS

25.1 Relationship of Parties
25.1.1 The relationship of the Parties under this Contract is one of customer and contractor and the Contractor is not
by virtue of this Contract in partnership or joint venture with QIMR Berghofer and must not represent itself or
allow itself to be represented as a partner, joint venture, officer or employee of QIMR Berghofer.

25.2 No Advertising
25.2.1 The Contractor will not make any public announcement or advertisement in any medium in relation to QIMR
Berghofer or this Contract without the consent of QIMR Berghofer.

25.3 Waiver
25.3.1 Any failure by a Party at any time to enforce a clause of this Contract, or any forbearance, delay or
indulgence granted by a Party to the other will not constitute a waiver of the Party’s rights.
25.3.2 No provision of this Contract will be deemed to be waivered unless that waiver is in writing and signed by the
waiving Party.
25.3.3 A waiver by a Party of a breach of any part of this Contract will not be a waiver of any subsequent breach of
the same part or a waiver of a breach of any other part.

25.4 No Sub-contracting
25.4.1 The Contractor shall not sub-contract the provision of any Services pursuant to this Contract, without the prior
consent of QIMR Berghofer. Any consent given by QIMR Berghofer to sub-contract:
a) may be conditional;
b) will not operate as an authority to transfer responsibility to the sub Contractor; and

c) will not relieve the Contractor from any of its liabilities or obligations under this Contract.

25.5 Governing Law
25.5.1 This Contract is governed by and construed in accordance with the laws of Queensland and the Parties
submit to the non-exclusive jurisdiction of the courts of Queensland.

25.6 Compliance with all Laws
25.6.1 The Contractor must comply with all relevant laws in the provision of the Services and in performing its
obligations under this Contract.

25.7 Severability
25.7.1 If any part of this Contract is determined to be invalid, unlawful or unenforceable for any reason then that
part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of this
Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent
permitted by law.

25.8 Further Assistance
25.8.1 The Contractor must do all things reasonably required by QIMR Berghofer to give effect to this Contract.

25.9 No Assignment
25.9.1 The Contractor may not assign its obligations or interest in this Contract, except with the consent of QIMR
Berghofer.

26. CLAUSES TO SURVIVE TERMINATION

26.1 The following clauses will survive termination or expiration of this Contract:

Clause 12 Intellectual Property Rights and Moral Rights
Clause 13 Confidentiality
Clause 16  Liability and Indemnity
Clause 17  Insurance
Clause 25  General Provisions
## SCHEDULE A – CONTRACT PARTICULARS

<table>
<thead>
<tr>
<th>ITEM</th>
<th>INFORMATION</th>
<th>DETAILS</th>
</tr>
</thead>
</table>
| 1    | Customer    | Name: The Council of the Queensland Institute of Medical Research  
ABN: 314 118 13344  
Address: 300 Herston Road, Herston, Queensland 4006  
Contact Person: |
| 2    | Contractor (clause 1.1):  
[Insert the Contractor’s ABN]:  
[Insert the Contractor’s Address]:  
[Insert the name of the person representing the Contractor, who will be responsible for this Contract]:  
[Insert the Contractor’s contact person’s email] | Name: |
| 3    | Approved Expenses (clauses 1.1 & 7): | |
| 4    | Commencement Date (clauses 1.1 &3.1): | |
| 5    | Completion Date (clauses 1.1, 3.2): | |
| 6    | Performance of Services by Key Personnel (clauses 1.1 & 6):  
[Insert names of personnel who are to undertake the Services for the Contractor and their qualifications].  
Insert “Not Applicable” if there is no Key Personnel] | |
| 7    | Project Manager (clauses 1.1 & 4):  
[Insert the position title of the nominated Customer’s officer who will oversee the Contract on QIMR Berghofer behalf]. | |
| 8    | Provision of the Services – Periodic or recurrent Services (clause 5.2(c)):  
[Insert times/frequency/intervals for performance of periodic or recurrent Services. If Services are not periodic or recurrent, insert ‘Not Applicable’]. | |
| 9    | Provision of the Services – Key performance indicators or performance standards (clause 5.3):  
[Specify the key performance indicators with which the Services are required to comply]. | |
| 10   | Provision of the Services – Assistance to be provided by QIMR Berghofer (clause 5.6):  
[Specify if any assistance is to be provided by QIMR Berghofer to the Contractor in relation to the Goods or Services and specify details]. | |
<table>
<thead>
<tr>
<th>ITEM</th>
<th>INFORMATION</th>
<th>DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Confidentiality (clause 13): [Specify whether the Contractor is required to obtain from its officers, employees, agents and sub-Contractors a confidentiality undertaking in a form approved or provided by QIMR Berghofer].</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Insurance – Professional Indemnity (clause 17):</td>
<td>Yes ☐ No ☐</td>
</tr>
<tr>
<td></td>
<td>Insurance - Public Liability</td>
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<td></td>
<td>Sum Insured:</td>
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<td>Policy No.:</td>
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<td></td>
<td>Insurance Provider:</td>
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<td>Named Insured:</td>
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<td></td>
<td>Expiry Date of Policy:</td>
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<tr>
<td>13</td>
<td>Notices – QIMR Berghofer address for notices (clause 24.1(a)):</td>
<td>Address:</td>
</tr>
<tr>
<td></td>
<td>Facsimile No.:</td>
<td></td>
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<tr>
<td></td>
<td>Email Address:</td>
<td></td>
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<tr>
<td>14</td>
<td>Notices – Contractor’s address for notices (clause 24.1(a)):</td>
<td>Address:</td>
</tr>
<tr>
<td></td>
<td>Facsimile No.:</td>
<td></td>
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<tr>
<td></td>
<td>Email Address:</td>
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</table>
## SCHEDULE B – SERVICES INCLUDING FEE

The following Services including Fee forms part of this Contract.

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit Fee (Excluding GST) $</th>
<th>Fee (GST Component only) $</th>
<th>Total Fee (Including GST) $</th>
</tr>
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<tbody>
<tr>
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<table>
<thead>
<tr>
<th>SUB TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
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</table>

### List Key Deliverables

<table>
<thead>
<tr>
<th>Deliverables</th>
<th>Due Date</th>
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<tbody>
<tr>
<td>*</td>
<td>*</td>
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</table>

### List Key Milestones

<table>
<thead>
<tr>
<th>Milestones</th>
<th>Due Date</th>
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<tbody>
<tr>
<td>*</td>
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</table>

### Additional Charges applicable to this Contract:

<table>
<thead>
<tr>
<th>Additional Charges</th>
<th>Fee (GST Component only) $</th>
<th>Total Fee (Including GST) $</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Detail and list any additional charges applicable to this]</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Contract</td>
<td></td>
<td></td>
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<td>----------</td>
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<tr>
<td>[List any additional taxes, duties, or other charges and their details associated with each Service applicable to this Contract]</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>SUB TOTAL</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>Fee (GST Component only) $</td>
<td>Total Fee (Including GST) $</td>
</tr>
<tr>
<td>TOTAL CONTRACT FEE (ALL ELEMENTS)</td>
<td>$</td>
<td>$</td>
</tr>
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</table>
**SCHEDULE C – DEPARTURE DETAILS**

These terms and conditions reflect variations to the standard provisions of this Contract.

This Contract includes the following additional Provisions from the Specifications and/or Conditions of Contract – Version 002 – dated 8 August 2013.

<table>
<thead>
<tr>
<th>Parts</th>
<th>Clause Number</th>
<th>Departures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specifications:</td>
<td></td>
<td></td>
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<tr>
<td>Conditions of Contract:</td>
<td></td>
<td></td>
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</tbody>
</table>