



Mutual Confidentiality Deed

James Cook University

ABN 46 253 211 955

and

ABN _____

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	2
1.1 Definitions	2
1.2 Rules for interpreting this document	4
1.3 The rule about "contra proferentem"	5
1.4 Non Business Days	5
1.5 Benefit of Deed	5
1.6 Receiving Group	5
2. CONFIDENTIALITY	5
2.1 Obligations in relation to Confidential Information	5
2.2 Limitations	6
3. RETURN OF CONFIDENTIAL INFORMATION	6
3.1 If ROI not pursued or upon request	6
3.2 Confidential Information held by Third Parties	6
4. ACKNOWLEDGMENTS	7
4.1 In relation to Confidential Information	7
4.2 Independent assessment	7
4.3 No representations	7
5. REMEDIES	7
6. PUBLIC ANNOUNCEMENTS	7
7. DURATION OF OBLIGATIONS	7
8. SENIOR EXECUTIVES	8
9. INDEMNITY	8
10. RIGHTS OF OTHER PERSONS	8
11. COSTS	8
12. NOTICES	8
12.1 How to give a notice	8
12.2 When a notice is given	9
12.3 Address for notices	9
13. AMENDMENT AND ASSIGNMENT	9
13.1 Amendment	9
13.2 Assignment	9
14. GENERAL	9
14.1 Governing law	9
14.2 Giving effect to this Deed	10
14.3 Waiver of rights	10
14.4 Operation of this Deed	10
14.5 Operation of indemnities	10
14.6 Counterparts	10

THIS DEED is made on _____

BETWEEN

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

and

(" _____ ") ABN _____

RECITALS:

- (A) JCU is one of the world's leading institutions focusing on the tropics and is dedicated to creating a brighter future for life in the tropics world-wide, through graduates and discoveries that make a difference.
- (B) The parties wish to assess the viability of a mutually beneficial Codesign Process following the Registration of Interest (ROI).
- (C) In doing so, the parties may disclose Confidential Information to each other. The parties have agreed to execute this Deed to confirm the basis on which Confidential Information is provided to each other.
- (D) The parties agree to keep Confidential Information in connection with the ROI confidential and only use it for the Approved Purpose pursuant to the terms of this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this Deed.

"Approved Purpose" means evaluation of the ROI.

"Business Day" means a day other than a Saturday, Sunday or public holiday on which banks are open for general banking business in Perth, Western Australia.

"Confidential Information" means information of every kind:

- (a) concerning or in any way connected with:
 - (i) the Approved Purpose or its existence;
 - (ii) the ROI;
 - (iii) the subject matter of the ROI;
 - (iv) the Discloser;
 - (v) any of the Discloser's Related Entities; or
 - (vi) this Deed and its subject matter or existence; or
- (b) which is the property (including, but not limited to, intellectual property) of the Discloser or any of its Related Entities,

and which:

- (c) is disclosed in writing, orally or by any other means (whether tangible or intangible) by the Discloser or by any person on the Discloser's behalf to the Recipient or an employee, officer, contractor, adviser or agent of the Recipient; or
- (d) comes to the knowledge of the Recipient or an employee, officer or agent of the Recipient by any means.

"Corporations Act" means the Corporations Act 2001 (Cth).

"Deed" means this document, including any schedule or annexure to it.

"Discloser" means:

- (a) _____ in respect of _____'s Confidential Information; and
- (b) JCU in respect of JCU's Confidential Information.

"Disclosing Group" means the Discloser, each of its Related Entities and their respective officers, employees and advisers;

"Government Agency" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charge with the administration of law.

"Land" means all the land owned, or contracted to be owned, by JCU between Charles St, Digger St, Grove St and the Captain Cook Highway in Cairns, Queensland.

"Loss" or **"Claim"** means in relation to any person, a damage, loss, cost, expense, or liability incurred by the person or a claim, action, proceeding or demand made against this person including a claim for negligence, but excluding any indirect or consequential losses.

"Notes" means notes which relate to summaries and copies of and extracts from any Confidential Information whether in documentary, visual, machine readable or other form.

"Recipient" means:

- (a) _____ in respect of JCU's Confidential Information; and
- (b) JCU in respect of _____'s Confidential Information.

"Receiving Group" means the Recipient, each of its Related Entities and their respective officers, employees and advisers.

"Related Entity" means:

- (a) a Related Body Corporate; and
- (b) in the case of the Discloser only, any entity in which the Discloser or a Related Body Corporate of the Discloser has at least a 25% interest.

“Representative” means an officer, employee or adviser of the Recipient who will be engaged in the Approved Purpose.

“Securities” has the meaning given in section 92(2) of the Corporations Act.

“Third Party” means any person who is not the Recipient and includes advisers and financiers or proposed financiers of the Recipient.

“ROI” means _____’s registration of interest in the development of a portion of the Land owned by JCU.

Rules for interpreting this document

1.2

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document, agreement or deed (including this Deed), or a provision of a document, agreement or deed (including this Deed), is to that document, agreement, deed or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Deed or to any other document, agreement or deed includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The words **controller, deal, subsidiary, holding company, related body corporate** and **substantial holder** have the same meanings as in the Corporations Act.

1.3 **The rule about "contra proferentem"**

This Deed is not to be interpreted against the interests of a party merely because that party proposed this Deed or some provision in it or because that party relies on a provision of this Deed to protect itself.

1.4 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

1.5 **Benefit of Deed**

The Discloser is entering into and holds the benefit of and may enforce this Deed in its own capacity and as trustee for each person in the Disclosing Group. The Recipient acknowledges and agrees that each of the undertakings and obligations of the Recipient under this Deed are given and are owed to each person in the Disclosing Group.

1.6 **Receiving Group**

- (a) The Recipient declares that it enters this Deed on behalf of itself and each other person in the Receiving Group. The Recipient acknowledges and agrees that each of its undertakings and obligations under this Deed are given on behalf of the Recipient and each other person in the Receiving Group. The Discloser may enforce this Deed against the Recipient in respect of the act or omission of the Recipient or any other person in the Receiving Group.
- (b) The Recipient must ensure that Representatives and Third Parties who receive any Confidential Information observe the Recipient's obligations under this Deed.

2. **CONFIDENTIALITY**

2.1 **Obligations in relation to Confidential Information**

In return for continued access to or the provision of Confidential Information, the Recipient must:

- (a) hold all Confidential Information and all Notes in strict confidence and not disclose, or cause or permit the disclosure of the Confidential Information to any person or entity except:
 - (i) to Representatives or Third Parties of the Recipient who need to have access to the Confidential Information for the Approved Purpose;
 - (ii) as permitted under this Deed; or
 - (iii) with the prior written consent of the Discloser;
- (b) not use the Confidential Information for any purpose other than the Approved Purpose;
- (c) not make Notes or allow Notes to be made except as necessary in connection with the Approved Purpose;
- (d) take all precautions necessary to prevent accidental disclosure of any of the Confidential Information and Notes;
- (e) ensure that all its Representatives or Third Parties of the Recipient who receive or have access to Confidential Information or Notes observe all of Recipient's obligations and undertakings contained in this Deed;

- (f) subject to clause 2.2, not disclose Confidential Information to any person, including any person to whom the Recipient may otherwise disclose it under this Deed, if the Discloser objects to its disclosure to that person;
- (g) not without the prior written consent of the Discloser refer to or use any of the Confidential Information in any discussions with any Government Agency or officer of a Government Agency;
- (h) keep confidential the fact that Confidential Information has been provided by or on behalf of the Discloser to the Recipient;
- (i) not grant access to or disclose directly or indirectly any Confidential Information to any Representative or Third Party other than on the terms of this Deed;
- (j) not introduce any Confidential Information into any computer system or other device operated, controlled or which may be accessed to any extent by any person other than the Recipient and its Representatives involved in the Approved Purpose; and
- (k) keep confidential the existence of the ROI and the fact that the Discloser and the Recipient are having discussions or negotiations in relation to the ROI or to the Confidential Information or the subject matter of it.

2.2 Limitations

- (a) Clause 2.1 does not impose obligations on the Recipient concerning Confidential Information which the Recipient proves to the reasonable satisfaction of the Discloser:
 - (i) at the date of this Deed is publicly available; or
 - (ii) was already in the Recipient's possession (as evidenced by written records) when provided by or on behalf of the Discloser.
- (b) It is not a breach of clause 2.1 for the Recipient to disclose Confidential Information or Notes which it is obliged to disclose by law, court order or the rules of a securities exchange to the person to whom it is disclosed. If the Recipient is required, or anticipates that it may be required by law or court order to disclose Confidential Information or Notes, the Recipient must immediately notify the Discloser in writing of the actual or anticipated requirement and, where possible, use reasonable endeavours to delay and withhold disclosure until the Discloser has had a reasonable opportunity to oppose disclosure by lawful means.

3. RETURN OF CONFIDENTIAL INFORMATION

3.1 If ROI not pursued or upon request

If the ROI is not pursued or if the Discloser asks for it, all documents and other media which contain Confidential Information and all Notes must be returned or to the extent reasonably practicable destroyed (at the Discloser's option), together with all copies, notes and memoranda relating to it, as directed.

3.2 Confidential Information held by Third Parties

The Recipient must also at the same time as it returns the documents and Notes referred to in clause 3.1, ensure that all Representatives and Third Parties return any of the documents or other media which contain Confidential Information and Notes held by them.

4. **ACKNOWLEDGMENTS**

4.1 **In relation to Confidential Information**

The Recipient acknowledges and agrees that:

- (a) the Confidential Information is secret, confidential and valuable to the Discloser;
- (b) it will not derive any right, title or interest of any nature in any of the Confidential Information provided to it as contemplated by this Deed or otherwise; and
- (c) nothing in this Deed requires the Discloser to make any Confidential Information available to the Recipient and the making of any Confidential Information available is at the absolute discretion of the Discloser.

4.2 **Independent assessment**

The Recipient acknowledges that it is making an independent evaluation of the ROI and assessment of the Confidential Information and that it must verify all information upon which it intends to rely to its own satisfaction.

4.3 **No representations**

None of the Discloser or any other person in the Disclosing Group:

- (a) make any representation as to the accuracy or completeness of the Confidential Information;
- (b) is liable for any Loss arising from any defect in the Confidential Information, including errors, inaccuracies or incompleteness; or
- (c) is liable for any Loss arising from any default, lack of care or negligence in relation to the preparation or provision of the Confidential Information.

5. **REMEDIES**

The Recipient acknowledges that:

- (a) the Confidential Information is at all times the property of the Discloser;
- (b) a breach of this Deed would be harmful to the Discloser's interests; and
- (c) damages may be an inadequate remedy for the Discloser, and that the Discloser may commence proceedings to seek an injunction or other equitable relief.

6. **PUBLIC ANNOUNCEMENTS**

Neither party may make any public announcement in relation to the ROI, except as required by law, court order or the rules of a stock exchange or after obtaining the other party's written consent. If a party considers that it is required by law or court order to make a public announcement, it must provide the other party with reasonable prior notice of such announcement, and such notice must be accompanied by a copy of the proposed announcement and written legal advice supporting the relevant party's contention that the announcement is required by law or court order.

7. **DURATION OF OBLIGATIONS**

- (a) Subject to clause 7(b), each obligation which is capable of having future operation continues in force although this Deed has otherwise been fully performed.

- (b) The obligations imposed on the Recipient under this Deed in relation to the Confidential Information will continue to apply until the expiry of 2 years after the date of this Deed.

8. **SENIOR EXECUTIVES**

Each party, its Related Bodies Corporate and their respective officers, employees and advisers must not solicit, offer to employ or engage, employ or engage any senior executive of the other party or its Related Bodies Corporate for a period of 2 years from the date of this Deed, except when appointments are made in response to bona fide advertisements of employment from either newspaper or website or are agreed by the parties.

9. **INDEMNITY**

The Recipient indemnifies, and must hold harmless, each person in the Disclosing Group against:

- (a) all Losses suffered by any person in the Disclosing Group; and
- (b) the costs of all demands, actions and other proceedings against any person in the Disclosing Group (including legal costs on a solicitor and client basis) but excluding indirect or consequential loss or damage,

arising directly or as a result of or in connection with any breach or non-performance of the obligations of the Recipient or a Representative or any Third Party to whom the Recipient has disclosed Confidential Information (and in the case of Representatives and Third Parties, as if that person were a party to this Deed) under this Deed.

10. **RIGHTS OF OTHER PERSONS**

Neither the Discloser nor any person in the Disclosing Group make any representation, warranty, assurance or inducement that Confidential Information does not infringe the rights of other persons.

11. **COSTS**

Except as otherwise expressly provided in this Deed, each party must pay its own expenses incurred in negotiating, preparing, executing, completing and carrying into effect this Deed.

12. **NOTICES**

12.1 **How to give a notice**

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

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email to that person's email address.

12.2 When a notice is given

A notice, consent or other communication that complies with this clause 12 is regarded as given and received:

- (a) if it is delivered or sent by email:
 - i. by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
 - ii. after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting.

12.3 Address for notices

A person's mail address and email address are those set out below, or as the person notifies the sender:

	Address	Email address	Attention
JCU	1 James Cook Drive, James Cook University Queensland 4811, Australia	dvcsr@jcu.edu.au	Patricia Brand, Deputy Vice Chancellor, Services and Resources

13. AMENDMENT AND ASSIGNMENT

13.1 Amendment

This Deed can only be amended or replaced by another document executed by the parties.

13.2 Assignment

A party may only assign, encumber or otherwise deal with its rights under this Deed with the written consent of the other party.

14. GENERAL

14.1 Governing law

- (a) This Deed is governed by the laws of Queensland.

- (b) Each party submits to the non-exclusive jurisdiction of the courts of the State of Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Deed.

14.2 **Giving effect to this Deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Deed.

14.3 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.4 **Operation of this Deed**

- (a) This Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.
- (b) Any right that a person may have under this Deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

14.5 **Operation of indemnities**

- (a) Each indemnity in this Deed survives for a period of 6 years following the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

14.6 **Counterparts**

This Deed may be executed in counterparts. Delivery of a counterpart of this deed by email attachment or fax constitutes an effective mode of delivery.

EXECUTED as a deed.

Executed for and on behalf of **James Cook University**

Authorised Delegate

Executed by _____

Director

Director/ Secretary