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James Cook University

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[insert name of Other Party]

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# Deed of Variation

## Parties

**James Cook University** ABN 46 253 211 955 a body corporate pursuant to the *James Cook University Act 1997* (Qld) of 1 James Cook Drive, Townsville in the State of Queensland, Australia (**JCU**)

**[insert name of other party]** ABN [insert] of [insert address] (**Other Party**)

**[Drafting note:** If the Original Document has more than one counterparty, include additional counterparties as required. In these circumstances, additional amendments will need to be made to the terminology of this deed to replace references to “Other Party” with references to all counterparties. The cover page will also need to set out each counterparty.]

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## Background

- A JCU and the Other Party are parties to the Original Document.
- B The parties have agreed to vary the terms of the Original Document as set out in this deed.

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## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

- (a) In this deed, these terms have the following meanings:

**Original Document** The [insert document name and number] between JCU and the Other Party made on [insert date the agreement was executed (the date that the last party executed the agreement)].

**[Drafting note:** If the Original Document has previously been varied, also include those details – for example, by including the following at the end of the above drafting “, as varied by [insert document name] dated [insert date]”.]

**Variation Date** [insert date]

or

[The date that this deed has been executed by both parties,

as determined by the dates applied to the execution clauses.]

- (b) Unless the context otherwise requires, terms defined in the Original Document have the same meanings in this deed.

## 1.2 Interpretation

This deed must be interpreted in accordance with the rules for interpretation and priority set out in the Original Document.

## 2 [Optional] Consideration

**[Drafting note:** If there is to be no consideration paid by either party this clause should be deleted. Because the document is made as a deed, there is no requirement for consideration in order for it to be effective.]

[insert first party] enters into this deed for valuable consideration from [insert second party] and [insert first party] acknowledges receipt of that consideration.

**[End option]**

## 3 Variation of Original Document

### 3.1 Variations

On and from the Variation Date, the parties agree to vary the terms of the Original Document as specified in **schedule 1** to this deed.

### 3.2 Original Document continues

The parties acknowledge and agree that:

- (a) except as specifically amended by this deed, all terms and conditions of the Original Document remain in full force and effect on and from the Variation Date;
- (b) the Original Document as amended by this deed will, on and from the Variation Date, be read a single document incorporating the amendments effected by this deed; and
- (c) nothing in this deed:
  - (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Original Document before the Variation Date; or
  - (ii) discharges, releases or otherwise affects any liability or obligation arising under the Original Document before the Variation Date.

### 3.3 Inconsistencies

If there is any inconsistency, ambiguity or discrepancy between the terms of this deed and any other document making up the Original Document, this deed will prevail to the extent of that inconsistency, ambiguity or discrepancy.

## 4 Warranties

### 4.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Variation Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed;
- (c) this deed is its valid and legally binding obligations and is enforceable against it by each other party in accordance with its terms, subject to principles of equity and rules affecting creditors' rights generally; and
- (d) its unconditional execution and delivery of this deed and compliance with its obligations under this deed do not contravene:
  - (i) any law or directive from a government entity;
  - (ii) its constituent documents;
  - (iii) any agreement or instrument to which it is a party; or
  - (iv) any obligation of it to any other person.

### 4.2 Survival of warranties

The warranties and representations in **clause 4.1** survive the execution of this deed and the variation of the Original Document.

## 5 [Optional] GST

**[Drafting note:** If there is no consideration payable under this deed, this clause should be deleted.]

### 5.1 GST definitions

In this **clause 5.1**:

- (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.

## **5.2 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**).

## **5.3 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.

## **5.4 Timing of GST payment**

The amount referred to in **clause 5.3** 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.

## **5.5 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 5.3**

## **5.6 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 5.3** 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.

## **5.7 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 5.7** does not limit the application of **clause 5.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 5.7(a)**.

## **5.8 No merger**

This **clause 5** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

**[End option]**

## **6 General**

### **6.1 Legal costs**

Each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

### **6.2 Amendment**

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

### **6.3 Further steps**

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

### **6.4 Governing law and jurisdiction**

- (a) This deed is 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.

### **6.5 Counterparts**

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

### **6.6 Effect of execution**

This deed is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this deed.

### **6.7 Headings**

Headings do not affect the interpretation of this deed.

### **6.8 Deed**

This document is a deed. Factors which might suggest otherwise are to be disregarded.

# Schedule 1

## Variations

[insert details of the particular clauses to be amended or added to the Original Document]

# Execution

**Executed** as a deed.

**SIGNED, SEALED AND DELIVERED** 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 deed the signatory warrants that the signatory is duly authorised to execute this deed on behalf of James Cook University.

.....  
Name of Officer (print)

.....  
Position of Officer (print)



**[OPTION ONE: If the Other Party wishes to execute via an authorised officer.]**

**SIGNED, SEALED AND DELIVERED** for )  
 and on behalf of **[insert name of Other** )  
**Party]** by its duly appointed officer in the )  
 presence of:

.....  
 Witness

.....  
 Officer

.....  
 Name of Witness (print)

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

.....  
 Name of Officer (print)

.....  
 Date

.....  
 Position of Officer (print)

**[OPTION TWO: If Other Party is a company]**

**EXECUTED** by **[name of Other Party]** in )  
 accordance with section 127 of the )  
*Corporations Act 2001* (Cth):

.....  
 Company Secretary/Director

.....  
 Director

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

.....  
 Name of Director (print)

.....  
 Date

.....  
 Date

**[Drafting note: If the Original Document has more than one counterparty, include additional execution blocks as required.]**