



James Cook University

[insert name of Other Party]

Confidentiality Agreement

(two-way)

Reference Schedule

Item	Description	Detail	
1.	JCU	Postal address:	1 James Cook Drive, Douglas, Queensland 4811
		Representative:	
		Representative's position:	Director, JCU Connect
		Email:	directorjcuconnect@jcu.edu.au
2.	Other Party	Name:	
		ACN or ABN:	
		Postal address:	
		Representative:	
		Representative's position:	
		Email:	
3.	Permitted Purpose (clause 3.2)	[Drafting note: Insert a detailed description of the purpose of the disclosure or exchange of information.]	
4.	Specific Documents (clause 1)	[insert list or description of any specific documents that contain Confidential Information] or [Not applicable]	

Parties

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

The party identified in item 2 of the Reference Schedule (**Other Party**)

Background

- A The parties wish to exchange and use confidential information for the Permitted Purpose.
- B The parties agree to disclose confidential information to each other on the terms of this Agreement.
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Agreed terms

1 Definitions

In this document, these terms have the following meanings:

- | | |
|---------------------------------|--|
| Agreement | this agreement, including the Reference Schedule. |
| Associates | of a party means: <ul style="list-style-type: none">(a) Related Corporations of the party; and(b) officers, employees, agents, contractors, students and advisers of the party and its Related Corporations. |
| Confidential Information | any information of the Discloser regardless of its form, created at any time, which: <ul style="list-style-type: none">(a) is Specific Confidential Information;(b) is by its nature confidential;(c) is designated by the Discloser as being confidential; or(d) the Recipient knows or ought to know is confidential, |

but does not include information that:

- (e) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (f) is in the possession of the Recipient without restriction in relation to disclosure before the information is received from the Discloser; or
- (g) has been independently developed or acquired by the Recipient.

Discloser

- (a) JCU, in respect of JCU's Confidential Information; and
- (b) the Other Party in respect of the Other Party's Confidential Information.

Permitted Purpose

the purpose specified in **item 3** of the Reference Schedule.

Recipient

- (a) JCU, where it receives Confidential Information of the Other Party; and
- (b) the Other Party, where it receives Confidential Information of JCU.

Reference Schedule

the schedule titled 'Reference Schedule' at the start of this Agreement.

Related Corporation

in relation to a body corporate, means any body corporate which is, under section 50 of the *Corporations Act 2001* (Cth), related to the first body.

Specific Confidential Information

- (a) information relating to the Discloser or any Related Corporation of the Discloser;
- (b) information relating to the Permitted Purpose or its existence (including such information obtained by the Recipient from a third party);
- (c) information obtained or created by the Recipient or any Associate of the Recipient in the course of the Permitted Purpose;
- (d) the terms and conditions of this Agreement and its subject matter or existence;
- (e) the fact that the Recipient or any Associate of the Recipient may be, or has been, participating in discussions with the Discloser in the course of the Permitted Purpose; and
- (f) information disclosed in Specific Documents.

Specific Documents the documents specified in **item 4** of the Reference Schedule.

2 Interpretation

Unless expressed to the contrary, in this Agreement:

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

3 Confidential Information

3.1 Duty of confidentiality

The Recipient must:

- (a) keep confidential, and ensure that its Associates keep confidential, all Confidential Information; and
- (b) not disclose or allow to be disclosed any Confidential Information to any person except:
 - (i) as required by law;
 - (ii) as required by the listing rules of any securities exchange, where the listing rules are enforceable against the Recipient;
 - (iii) with the prior written consent of the Discloser; or
 - (iv) to the Associates of the Recipient to the extent that they need to know for the Permitted Purpose, and subject to the requirements of **clause 4.2**.

3.2 Use of Confidential Information

The Recipient must ensure that all Confidential Information in the possession or control of the Recipient or any of its Associates is only used for the Permitted Purpose.

3.3 Uncertainty

If there is any uncertainty as to whether any information is Confidential Information, the Recipient must treat that information as Confidential Information unless the Discloser notifies the Recipient in writing to the contrary.

3.4 Proof of excluded information

If the Recipient claims that information is not Confidential Information because it is excluded information under the definition of Confidential Information in **clause 1**, the Recipient must prove that the information is excluded under that definition, beyond reasonable doubt. Failing this proof, the information must be treated as Confidential Information.

3.5 Security of Confidential Information

The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient or any of its Associates from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or

actual unauthorised disclosure or misuse of the Confidential Information by the Recipient or any Associate of the Recipient.

3.6 No unauthorised copies

- (a) The Recipient may make copies of the Confidential Information to provide only a sufficient number of working copies necessary for the Permitted Purpose.
- (b) The Recipient must obtain the Discloser's prior written consent before making any other copies of the Confidential Information.
- (c) The Recipient must ensure that all copies of the Confidential Information in the possession or control of the Recipient or any of its Associates are marked as confidential.
- (d) Without limiting **clause 5**, the Recipient must comply with any reasonable directions of the Discloser in relation to the protection and/or disposal of any copies of the Confidential Information made by the Recipient.

4 Disclosure

4.1 Disclosure by law

If the Recipient is required by law or by the listing rules of any securities exchange (where the listing rules are enforceable against the Recipient) to disclose any Confidential Information, the Recipient must:

- (a) promptly give notice to the Discloser and provide all reasonable assistance to enable the Discloser to intervene in any process by which disclosure may be compelled;
- (b) disclose no more Confidential Information than is strictly required; and
- (c) do whatever it reasonably can to ensure that the disclosed Confidential Information is treated confidentially.

4.2 Disclosure to Associates

- (a) The Recipient must not disclose Confidential Information to an Associate of the Recipient unless the Recipient has informed the Associate:
 - (i) that the information being disclosed is confidential;
 - (ii) that the information must not be disclosed to any other person and must not be used other than for the Permitted Purpose; and
 - (iii) that the Associate is required to comply with the terms and conditions of this Agreement as if it were the Recipient.
- (b) Whenever an Associate of the Recipient ceases to be an Associate of the Recipient, or otherwise no longer needs Confidential Information for the Permitted Purpose, the Recipient must obtain from the former Associate (or have the former Associate destroy) all materials containing

or derived from or commenting on any of the Confidential Information in the former Associate's possession or control.

5 Return or destruction of Confidential Information

5.1 Return or destruction

Subject to **clause 5.2(b)**, whenever the Discloser requests, the Recipient must immediately return to the Discloser (or if the Discloser requests, destroy) all documents or materials containing or derived from or commenting on any of the Confidential Information in the Recipient's (or any of its Associates') possession or control.

5.2 Recipient must certify destruction of materials

- (a) Without limiting **clause 5.1** but subject to **clause 5.2(b)**, if the Discloser requests the Recipient to destroy any documents or materials containing Confidential Information:
 - (i) the Recipient must promptly destroy all hard copy documents or materials containing the Confidential Information in the possession or control of the Recipient or any of its Associates;
 - (ii) the Recipient must promptly erase all electronic or computer data or programs containing the Confidential Information from all storage media on which they are stored so that they cannot be recovered or reconstructed in any way; and
 - (iii) if specifically required in the requested by the Discloser, the Recipient must certify in writing to the Discloser that the Confidential Information has been destroyed in accordance with this Agreement.
- (b) The parties agree that the Recipient may retain a copy of documents or materials containing or based on Confidential Information of the Discloser, to the extent that they are:
 - (i) contained in the Recipient's computer system back-ups which are not generally available to Associates of the Recipient and which cannot readily be deleted; or
 - (ii) required to be retained by the Recipient for the purposes of complying with applicable laws, professional standards or practices, government policies, codes or insurance policies.

5.3 Obligations to continue after materials returned

The Recipient's obligations under this Agreement will continue and will be enforceable at any time by the Discloser, even if the documents or materials containing the Confidential Information are returned to the Discloser or destroyed.

6 Discloser's liability

6.1 Exclusion of warranties by Discloser

- (a) All implied conditions and warranties on the part of the Discloser in relation to the Confidential Information and this Agreement are excluded to the maximum extent permitted by law. Without limiting the previous sentence, the Recipient acknowledges that the Discloser does not represent or warrant that the Confidential Information is accurate or complete.
- (b) In respect of any implied conditions or warranties which the Discloser cannot exclude, to the extent permitted by law, the Discloser's liability is limited, at its option, to the replacement, repair or resupply of the relevant goods or services, or a refund of the cost of the relevant goods or services.

6.2 Discloser not liable

Subject to **clause 6.1(b)**, the Discloser is not liable (including in negligence) to the Recipient, its Associates or any other person in relation to the use of the Confidential Information by the Recipient, its Associates or any other person.

7 General

7.1 Legal costs

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

7.2 Relationship

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

7.3 Amendment

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

7.4 Assignment

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

7.5 Waiver and exercise of rights

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

7.6 Rights cumulative

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

7.7 Consents

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

7.8 Further steps

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

7.9 Execution warranty

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

7.10 Governing law and jurisdiction

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

7.11 Severability

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

7.12 Liability

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

7.13 Counterparts

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

7.14 Entire understanding

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral Agreement, warranty or understanding between any of the parties.

Execution

Executed as an agreement.

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

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

.....
Name of Officer (print)

.....
Date

.....
Position of Officer (print)

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

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

.....
Date

.....
Date

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

.....
Witness

.....
Officer

.....
Name of Witness (print)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of James Cook University.

.....
Name of Officer (print)

.....
Date

.....
Position of Officer (print)