



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:	



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.







actual unauthorised disclosure or misuse of the Confidential Information



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 request 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 accessible (including by 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



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.





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**
[redacted]



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)