CONFIDENTIALITY AGREEMENT

BETWEEN **James Cook University** ABN 46 253 211 955 of James Cook Drive, Townsville 4811, in the State of Queensland, Australia

AND * of *, in the State of *

BACKGROUND:

A. The parties wish to have discussions in relation to the Project.

B. In the course of those discussions there will be disclosure of Confidential Information.

C. The Confidential Information has a unique value to the Discloser, and may be the basis of applications for patents.

D. The Discloser will be prejudiced by any unauthorised use or disclosure of the Confidential Information, may be precluded from being granted patents, and may suffer financial loss as a result of unauthorised disclosure or unauthorised use of the Confidential Information.

THIS AGREEMENT PROVIDES

1. MEANINGS

In this Agreement, the following words have the following meanings:

Confidential Information means information relating to the Project (whether disclosed in writing or orally) including inventions; discoveries; facts; data; ideas; manner, method or process of manufacture; method or principle of construction; chemical composition or formulation; techniques; products; prototypes; processes; names; know how; routines; specifications; drawings; trade secrets; technology methods; computer programs; works in respect to which copyright subsists; circuit board layouts; business plans; and other knowledge and includes any information developed or derived from the information disclosed

Discloser means a party to this Agreement which discloses Confidential Information to the other party

Project means * [insert detailed definition of Project sufficient to accurately and clearly define the extent of the area to which the Confidential Information relates; eg technologies/methods/devices for curing the common cold developed at the University of Queensland by the research group led by Prof Plum, including such technologies/methods/devices relating to Utopian patent application 12345.67]

Purpose means * [insert detailed description of the purpose for which the Confidential Information may be used eg. the Recipient evaluating the Confidential Information to enable the parties to explore a commercial relationship in relation to the Project]

Recipient means a party to this Agreement to whom Confidential Information is disclosed.

2. DISCLOSURE

2.1 The Discloser will disclose the Confidential Information to the Recipient as soon as practicable after the date of this Agreement.

2.2 The Recipient acknowledges that all of the Confidential Information disclosed to it by the Discloser shall at all times remain the absolute property of the Discloser.

3. USE OF CONFIDENTIAL INFORMATION

3.1 The Recipient must use the Confidential Information only for the Purpose, and must not use the Confidential Information for any other purpose.

3.2 The Recipient must not lodge any patent application or any other application for the statutory protection of the Confidential Information.

4. EMPLOYEES AND DIRECTORS

The Recipient may only disclose Confidential Information to a director, officer or employee who is bound by obligations of confidentiality to the Recipient at least to the extent imposed upon the Recipient by this Agreement and who has a need to know the Confidential Information for the Purpose.

5. CONFIDENTIALITY

5.1 Other than under clause 4, the Recipient must keep the Confidential Information secret and confidential and ensure that unauthorised persons do not have access to the Confidential Information.

5.2 The Recipient must not disclose to any person or make known in any manner any part of the Confidential Information.

6. ENDING OF CONFIDENTIALITY

The Recipient shall be relieved from the Recipient's obligations of confidentiality in this Agreement in respect to any part of the Confidential Information which:

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(a) the Recipient can show was in the possession of the Recipient as at the date of the disclosure; or

(b) the Recipient can show is or becomes part of the public domain otherwise than by a breach of this Agreement; or

(c) the Recipient can show was received in good faith from a person entitled to provide it to the Recipient; or

(d) the Recipient can show was independently developed by the Recipient's employees who did not have access to the Confidential Information.

7. DISCLOSURE BY REASON OF LEGAL OBLIGATION

(a) If the Recipient is required by law to make a disclosure of any part of the Confidential Information the Recipient must immediately notify the Discloser of that requirement and provide full particulars relating to the requirement to disclose, and its extent.

(b) The Recipient must postpone any disclosure required pursuant to paragraph (a) for as long as the Recipient is able to, without prejudicing the Recipient's own position.

(c) Unless the Discloser is able to secure some relief to the Recipient to any legal obligation to disclose the Confidential Information, the Recipient is relieved from its obligations in this Agreement, but only to the extent of the legal obligation to disclose, and not further.

8. INFRINGEMENT OF CONFIDENTIALITY

If the Recipient learns or believes that:

(a) any unauthorised person has come into possession of any part of the Confidential Information;

(b) any unauthorised person is doing any thing in contravention of rights that attach to and arise from the Confidential Information,

the Recipient must immediately report full particulars to the Discloser, and must provide to the Discloser all reasonable assistance and information it may request with respect to that information.

9. DURATION OF CONFIDENTIALITY

[OPTION 1 or OPTION 2 needs to be selected.

Select OPTION 1 if obligations of confidentiality are to cease after a fixed period of time (in this case 5 years).

Select OPTION 2 if obligations of confidentiality are to subsist indefinitely which is the preferred model for one-way confidentiality agreements where JCU is the disclosing party.

Once one of the options is selected, the other option should be deleted.

[OPTION 1]

The duration of the obligations in this Agreement is five years from the date of last signature of this Agreement.

[OPTION 2]

9.1 The parties acknowledge that the confidential nature of the Confidential Information can subsist for an indefinite period of time.

9.2 The parties acknowledge that the elapsing of a predetermined period of time does not by reason of that alone cause the Confidential Information to cease having its confidential character, and that the passage of any particular period of time does not extinguish the need to maintain the secrecy of the Confidential Information.

9.3 The parties acknowledge that the obligations upon the Recipient in this Agreement continue to subsist until one of the events set out in this Agreement ending the obligation of confidentiality occurs.

10. RETURN OF CONFIDENTIAL INFORMATION

10.1 The Discloser may at any time by notice in writing to the Recipient require the return to it of the Confidential Information.

10.2 Within 14 days of receipt of such a notice or if the obligations in this Agreement cease, the Recipient must deliver to the Discloser all Confidential Information in its possession disclosed or provided by the Discloser together with all copies of all Confidential Information in its possession:

(a) provided by the Discloser; or

(b) which the Recipient has for any reason made.

10.3 Any part of the Confidential Information which cannot conveniently be returned by the Recipient to the Discloser shall be completely destroyed in such manner and at such time as directed by the Discloser, including by deletion from all computer records and electronic or magnetic storage devices.

11. MISCELLANEOUS

11.1 This Agreement is made and entered into in Queensland.

11.2 No variation to this Agreement shall be binding upon the parties unless that variation is in writing, and is signed by all the parties to this Agreement.

11.3 Any waiver shall be an effective waiver only if the waiver is expressly set out in writing and signed by the party making the waiver.

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SIGNATURES OF PARTIES

This Agreement shall be effective when signed by all parties, and its effective date is the latest of the dates set out below.

SIGNED on behalf of James Cook University

BY its authorised delegate

JASPER TAYLOR, Director, Research Services

Signature Date

Print Name of Witness

Signature of Witness

SIGNED on behalf of *

BY its authorised delegate

Print Name

Signature Date

Print Name of Witness

Signature of Witness

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