

COLLABORATIVE AGREEMENT
BETWEEN
JAMES COOK UNIVERSITY
AND
CHINA UNIVERSITY OF GEOSCIENCES

October 17, 2015



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THIS AGREEMENT is made on the 17th day of Oct. 2015

BETWEEN:

JAMES COOK UNIVERSITY ABN 46 253 211 955 a body corporate established under the *James Cook University Act 1997* of Townsville in the State of Queensland
("JCU")

and

CHINA UNIVERSITY OF GEOSCIENCES of No. 388 Lumo Road, Wuhan, Hubei Province, People's Republic of China 430074
("CUG")

BACKGROUND

- A. JCU and CUG are parties to a Memorandum of Understanding dated 23 January 2015 whereby they expressed their desire to carry out programs and activities in cooperation with each other.
- B. JCU and CUG have agreed to collaborate on a program for post graduate CUG students who wish to complete a PhD degree at James Cook University.
- C. This Agreement sets out the terms and conditions of the PhD collaboration program.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms have the meaning set out below:

Business Day means a day that is not a Saturday, Sunday or public holiday in Townsville or Wuhan.

Collaborative PhD Program means the program agreed between the parties to collaborate with regard to doctoral education.

Strand 1 means the strand described in clauses 3.2(a) and 4.

Strand 2 means the strand described in clauses 3.2(b) and 5.

1.2 Interpretation

In the interpretation of this Agreement:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, government authority, or any legal entity;
- (d) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders in council, rules, by-laws and ordinances made under those statutes;
- (e) headings and the table of contents (if any) are used for convenience only and are to be disregarded in interpretation;
- (f) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (g) covenants by each party include an obligation to procure compliance by each of the parties' employees and all other persons under the control of that party;
- (h) where a party consists of more than one person the covenants on the part the party bind each two or more persons jointly and each person severally. The release of one of the persons from an obligation does not release any other person who may be jointly liable;
- (i) any undertaking by a party not to do any act or thing is taken to include an undertaking not to permit or suffer the doing of the act or thing;
- (j) where under this Agreement the day on or by which any act or thing is to be done is not a Business Day that act or thing must be done on the next Business Day following the due day;
- (k) all annexes, schedules and other attachments (if any) form part of this Agreement;
- (l) references to "writing" include all means of reproducing words in a tangible, permanently visible form in the English language;
- (m) a reference to anything after the words "includes" or "including" does not limit what else might be included.

2. TERM

This Agreement shall commence on the date this document is executed by all parties and shall remain in force for a period of 10 years unless terminated earlier in accordance with the terms of this Agreement.

3. COLLABORATIVE PHD PROGRAM

3.1 The parties have agreed that, subject to the terms and conditions of this Agreement, post graduate students of CUG may apply to JCU to undertake a PhD degree at James Cook University.

3.2 The parties have agreed that the Collaborative PhD Program will consist of the following three different strands:

(a) Strand 1 – JCU PhD Degree

- (i) The candidate will apply for admission to JCU to undertake a JCU PhD degree.
- (ii) Upon successful completion of the JCU PhD Degree, the candidate will receive a JCU testamur without any reference to CUG.

(b) Strand 2 - JCU PhD Degree and CUG PhD Degree

- (i) The candidate will successfully complete one year of JCU and CUG approved post graduate coursework study at CUG and will then apply for admission to JCU to undertake a JCU PhD degree.
- (ii) Whilst undertaking the JCU PhD degree:
 - (A) the candidate will undertake additional research and will collect additional data which is not required for the JCU PhD degree;
 - (B) the candidate will comply with the JCU Intellectual Property policy; and
 - (C) the candidate will retain ownership of intellectual property directly related to their research (including their thesis), unless other arrangements have been agreed to in writing by the candidate and JCU.
- (iii) Upon successful completion of the JCU PhD Degree, the candidate will receive a JCU testamur without any reference to CUG.
- (iv) Following completion of the JCU PhD Degree, the candidate

will apply for admission to CUG to undertake a CUG PhD degree using the additional research and data collected whilst undertaking the JCU PhD degree.

- (v) Upon successful completion of the CUG PhD Degree, the candidate will receive a CUG testamur without any reference to JCU.

3.3 Post graduate CUG students who wish to participate in the Collaborative PhD Program may apply to JCU and CUG to undertake a JCU PhD degree through one of the two strands.

3.4 JCU and CUG agree that during the last two (2) years of the terms of this Agreement, no post graduate CUG students may commence participation in either Strand 1 or Strand 2 of the Collaborative PhD Program.

4. STRAND 1

4.1 This clause 4 sets out the terms and conditions of the Collaborative PhD Program as agreed between parties which relate directly to Strand 1.

4.2 In order for a candidate to be eligible for Strand 1 the candidate must meet all of the entry requirements for a PhD degree at JCU including the English language requirements of IELTS Band 2 (6.5 with no band below 6.0) or equivalent as defined by the University.

4.3 If a candidate is participating in the Collaborative PhD Program under Strand 1 then:

- (a) the candidate must apply to JCU for admission to the PhD degree, must meet all of the entry requirements for a PhD degree at JCU and must be approved through the normal JCU procedures;
- (b) the candidate will be enrolled only at JCU for the duration of the candidate's candidature;
- (c) the candidate must be supported by the China Scholarship Council for three years or for the duration of the candidate's enrollment at JCU, whichever is the shorter;
- (d) JCU agrees to waive tuition fees for no more than four (4) years of the duration of the PhD degree;
- (e) the candidate must pay the Student Services and Activities Fee charged by JCU, all Australian overseas health cover charges and fees such as travel insurance;

- (f) a draft project budget for the PhD degree (which includes information about where project funding will be sourced) must be approved by JCU before the candidate is enrolled at JCU;
- (g) JCU will provide funding for the candidate's research project in accordance with and subject to the terms of JCU's Minimum Standard of Resources, Facilities and Other Support Provided for Research Higher Degree Students Policy;
- (h) in accordance with JCU's relevant policies and procedures, JCU will administer:
 - (i) the application for admission and enrollment of the candidate to the JCU PhD degree;
 - (ii) the candidature of the candidate; and
 - (iii) the examination of the candidate's thesis; and
- (i) the advisory panel which will supervise the candidate whilst he/she is undertaking the PhD degree will consist of JCU staff members but may, at the discretion of JCU, include CUG staff members as external advisors. All members of the advisory panel which will supervise the candidate whilst he/she is undertaking the PhD degree must (at the cost of their institution) be involved in candidature milestones in person or by telecommunication means.

4.4 The thesis produced by the candidate for the purpose of the PhD degree must be written in English and a final copy of the thesis will be lodged with JCU only.

4.5 Upon successful completion of the JCU PhD degree, the candidate will receive a JCU testamur and transcript, which will not make any reference to CUG.

5. STRAND 2

5.1 This clause 5 sets out the terms and conditions of the Collaborative PhD Program as agreed between parties which relate directly to Strand 2.

5.2 In order for a candidate to be eligible for Strand 2 the candidate must:

- (a) no more than 3 years before applying for admission to a JCU PhD degree, have successfully completed one year of post graduate coursework study at CUG;
- (b) meet all of the entry requirements for a PhD degree at CUG; and
- (c) meet all of the entry requirements for a PhD degree at JCU including

the English language requirements of IELTS Band 2 (6.5 with no band below 6.0) or equivalent as defined by the University.

- 5.3** If a candidate is participating in the Collaborative PhD Program under Strand 2 then:
- (a) the candidate will be enrolled only at JCU for the duration of the candidate's candidature in the JCU PhD degree;
 - (b) the candidate will be enrolled only at CUG for the duration of the candidate's candidature in the CUG PhD degree;
 - (c) the candidate must be supported by the China Scholarship Council for at least 2 years during the candidate's enrollment at JCU;
 - (d) JCU agrees to waive tuition fees for no more than four (4) years of the duration of the JCU PhD degree;
 - (e) for the duration of the candidate's enrollment in the JCU PhD degree, the candidate must pay the Student Services and Activities Fee charged by JCU, all Australian overseas health cover charges and fees such as travel insurance;
 - (f) a draft project budget for the JCU PhD degree (which includes information about where project funding will be sourced) must be approved by JCU before the candidate is enrolled at JCU;
 - (g) JCU will provide funding for the candidate's JCU research project (but not the additional research conducted by the candidate whilst undertaking his/her JCU PhD degree) in accordance with and subject to the terms of JCU's Minimum Standard of Resources and Facilities and Other Support Provided for Research Higher Degree Students Policy and JCU's Intellectual Property Policy;
 - (h) CUG will meet the research costs for the candidate's CUG PhD degree;
 - (i) for the purposes of a candidate's JCU PhD degree, JCU will administer:
 - (i) the application for admission and enrollment of the candidate to the JCU PhD degree;
 - (ii) the candidature of the candidate; and
 - (iii) the examination of the candidate's thesis.
 - (j) for the purposes of a candidate's CUG PhD degree, CUG will administer:

- (i) the application for admission and enrollment of a candidate to the JCU PhD degree;
- (ii) the candidature of the candidate; and
- (iii) the examination of the candidate's thesis; and
- (k) the advisory panel which will supervise the candidate whilst he/she is undertaking the JCU PhD degree will consist of JCU staff members but may, at the discretion of JCU, include CUG staff members as associate advisors. All members of the advisory panel which will supervise the candidate whilst he/she is undertaking the JCU PhD degree must (at the cost of their institution) be involved in candidature milestones in person or by telecommunication.

5.4 The parties agree that, for the purposes of the CUG PhD degree, the candidate must not submit the same research material and data and written work as was submitted for the JCU PhD degree.

5.5 The thesis produced by the candidate for the purpose of the JCU PhD degree must be written in English and a final copy of the thesis will be lodged with JCU only.

5.6 Upon successful completion of the JCU PhD degree, the candidate will receive a JCU testamur and transcript, which will not make any reference to CUG.

5.7 Upon successful completion of the CUG PhD degree, the candidate will receive a CUG testamur only, which will not make any reference to JCU.

6. INTELLECTUAL PROPERTY AND COPYRIGHT

6.1 Candidates must comply with the relevant Intellectual Property policies of each party.

6.2 In accordance with applicable JCU policies, candidates enrolled at JCU will retain ownership of intellectual property directly related to their research (including their thesis) created whilst enrolled at JCU, unless other arrangements have been agreed to in writing by JCU, CUG and a candidate.

6.3 In the event of potential commercialisation arising from a candidate's research and intellectual property, JCU and CUG, with approval of the candidate, will negotiate in good faith with the relevant parties to establish an agreement.

7. TERMINATION

7.1 Subject to clause 7.2, either party may terminate this Agreement by giving three (3) months' notice in writing to the other party.

7.2 The parties agree that if, upon the expiry or earlier termination of this Agreement, one or more candidates are participating in the Collaborative PhD Program under any of the three strands:

(a) the parties will support those candidates in accordance with the terms of this Agreement until:

(i) the last of those candidates successfully completes their JCU PhD degree; or

(ii) the last of those candidates is excluded from the JCU PhD degree in accordance with the then current rules and policies of JCU,

whichever is the later; and

(b) no new candidates will be permitted to commence participation in Collaborative PhD Program after the date of termination.

8. RELATIONSHIP BETWEEN THE PARTIES

Nothing contained in this Agreement shall be construed as constituting a joint venture, partnership or formal business arrangement of any kind between the parties or of appointing either party as an agent of the other.

9. CONTACTS

9.1 During the term of this Agreement, JCU's contact persons for the purposes of this Agreement will be:

(a) Dean, Graduate Research
Division of Research and Innovation
James Cook University
Angus Smith Drive
Townsville Qld 4811; or

(b) Dr Zhaoshan Chang.

9.2 During the term of this Agreement, CUG's contact person for the purposes of this Agreement will be:

Vice Dean - Graduate School
China University of Geosciences

Xu Feng
No.388 Lumo Road, Wuhan, Hubei, China,430074

10. NOTICES

Any notices, or any form of communication between the parties shall be in writing and shall be considered to have been served:

- (a) in the case of delivery by hand, on the day of delivery;
- (b) in the case of delivery by post, on the 7th business day after posting;
- (c) in the case of communication by facsimile, upon the send receiving a transmission report confirming the successful transmission of that facsimile; and
- (d) in the case of communication by email, at midday on the day following the successful despatch of the message.

11. DISPUTES

11.1 Subject to clause 11.3 the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.

11.2 The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
- (c) the parties have ten (10) Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or

- (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the fifteen (15) Business Days,

then, either party may commence legal proceedings.

- 11.3** This clause 11 does not apply to the following circumstances where either party commences legal proceedings for urgent interlocutory relief.
- 11.4** Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this Agreement.
- 11.5** The operation of this clause 11 survives the expiration or earlier termination of this Agreement.

12. COSTS

Each party agrees to bear its own costs of and incidental to the preparation and execution of this Agreement including all related negotiations.

13. PROPER LAW

This Agreement must be construed in accordance with and governed by the laws of the State of Queensland, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland, Australia and the courts of appeal therefrom.

14. GENERAL PROVISIONS

14.1 Waiver

- (a) No failure, delay, relaxation or indulgence by a party in exercising any right arising under this Agreement and no custom or practice which exists between the parties operates as a waiver of that right.
- (b) If any rights arise from a breach by a party and these rights are waived, this waiver does not operate as a waiver of rights which arise from any later continuation of that breach or any further breach of the same or any other term.
- (c) This clause cannot be waived except in writing.

14.2 Entire Agreement and Variations

- (a) This Agreement constitutes the entire agreement between the parties, and supersedes all prior communications, negotiations, arrangements and agreements, whether oral or written, with respect to the subject matter.
- (b) No agreement or understanding varying, extinguishing or extending this Agreement is legally binding unless it is in writing signed by each party or on behalf of a party by a duly authorized representative.

14.3 Further Assurances

Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement.

14.4 Counterparts

This Agreement may be executed in a number of counterparts and all such counterparts taken together constitute one and the same agreement.

14.5 Third Party Rights

No person (including, but not limited to, any employee) other than the parties to this Agreement has or is intended to have any right, power or remedy or derives or is intended to derive any benefit under this Agreement.

14.6 Severability of Provisions

Any provision of this Agreement which is illegal, void or unenforceable is ineffective to the extent only of such illegality, voidness or unenforceability without invalidating any of the remaining provisions of this Agreement.

14.7 Discontinuance of Bodies or Associations

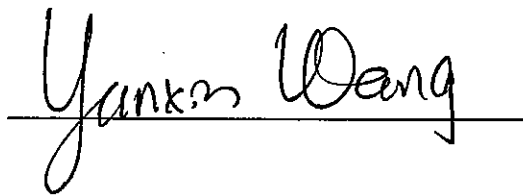
- (a) This clause applies to any references to any authority, institute, association or body whether statutory or otherwise ("**a Body**") if:
 - (i) the Body ceases to exist;
 - (ii) the Body is reconstituted, renamed or replaced; or
 - (iii) its powers or functions are transferred to another organization.
- (b) A reference to the Body is taken to include a reference to the organization established or constituted in lieu of it or to which its

powers or functions are transferred, or, in the absence of either of the above, to the organization which most closely serves the same purposes as the Body.

14.8 Non-merger

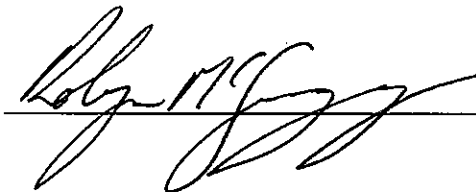
None of the terms of this Agreement nor any act, matter or thing done under this Agreement operates as a merger of any of the rights and remedies of the parties under this Agreement. Those rights and remedies continue in full force and effect until the rights and obligations of the parties under this Agreement have been fully satisfied and performed.

Executed by the parties as an Agreement on the date set out above.



Prof. Dr. Wang Yanxin
President
China University of Geosciences
Wuhan
Hubei Province
China

Date Oct. 17, 2015



Prof. Dr. Robyn McGuiggan
Deputy Vice Chancellor
James Cook University
Townsville
Queensland
Australia

Date 17th October 2015