

## MUTUAL CONFIDENTIALITY AGREEMENT

This agreement is made on \_\_\_\_\_ (“the Commencement Date”)

**PARTIES:**            *<insert name of party> ACN 000 000 000 of*  
                              *<insert registered street address>*(“the Prospective Vendor”)

**AND:**                **NAME OF THE COMPANY OR INDIVIDUAL/S**

of

\_\_\_\_\_  
\_\_\_\_\_  
 (“the Interested Party”)

### **BACKGROUND**

- A**     The Prospective Vendor and the Interested Party propose to enter into discussions and negotiations with a view to the Prospective Vendor selling to the Interested Party the whole or some part of the business of the Prospective Vendor.
- B**     In the course of the discussions and negotiations, each party may disclose to the other information relating to its business including information concerning its corporate and business structure, existing and proposed business contracts, products information, technical information and specifications, product and materials prices and costs, managerial, financial and marketing strategies, the identities of actual and target clients and customers, employee agreements, employee reward schemes (including share option and profit sharing arrangements) and the identities of present or proposed employees which is not known to the receiving party or which is not available in the public domain (“Confidential Information”).
- C**     The parties intend that each of them shall, at all times throughout the discussions and negotiations, and thereafter until this Agreement has been superseded by a subsequent written agreement, maintain the confidentiality of the Confidential Information for the purposes of protecting their respective interests in the Confidential Information and to advance the prospect of them concluding a mutually satisfactory commercial agreement contemplated by these recitals.

## **OPERATIVE PROVISIONS:**

1. This Agreement embodies the full agreement between the parties and any amendment of this Agreement must be in writing and signed by the parties.
2. The use of one gender includes other genders and the use of the singular includes the plural.
3. Words importing persons shall include firms and corporations.
4. The use of the terms “the Prospective Vendor” “Interested Party”, “party” and “parties” includes their subsidiaries, successors, assigns, shareholders, directors, officers, employees, agents and associated companies.
5. Where this Agreement is made between the Prospective Vendor and a company, partnership or other body, which is not a legal person, the Interested Party duly authorizes one of its senior officers to execute this Agreement on its behalf.
6. Each party shall keep the Confidential Information confidential and shall not disclose it or make it available directly or indirectly to any third party in any form or medium whatsoever without the express written consent of the disclosing party.
7. Each party acknowledges that the Confidential Information is commercially sensitive and valuable and that any unauthorized disclosure or use of it could give rise to considerable damage to the disclosing party.
8. The Parties agree not to use or exploit the Confidential Information for any purpose other than that for which it was disclosed without the express written consent of the disclosing party.
9. Neither party shall permit any employee, agent or subcontractor of that party to have access to the Confidential Information until such time as that employee, agent or subcontractor shall have entered into a confidentiality agreement with the disclosing party in a form approved by the disclosing party.
10. Each party shall immediately notify the other party of any information, which comes to its attention regarding any actual or potential unauthorized disclosure or use of the Confidential Information. Each party shall co-operate with the other in any investigation, prosecution, litigation or other action taken regarding the subject of any such information.
11. In the event of any actual or alleged unauthorized disclosure or use of Confidential Information by any future, existing or former employee, agent or subcontractor of a party, that party shall enforce its rights to injunctive or other relief to the fullest extent possible or, if requested by the other party, assign such

rights to the other party. Each party shall reasonably assist the other party in enforcing those rights.

12. Upon termination or completion of the discussions and negotiations, each party shall deliver up to the other party any Confidential Information in that party's possession or control, which is capable of delivery up. Each party shall delete, erase or otherwise destroy any Confidential Information contained in any computer memory, magnetic, optical, laser, electronic or other recording media in its possession or control which is not capable of delivery up to the other party.
13. Each party shall protect the Confidential Information from unauthorized access or use. Neither party shall be obliged to provide access to its computer or other business systems unless and until the other party satisfies it that the method of proposed access provides sufficient security and safety procedures. Any consent, whether oral or written, by one party to the other party regarding access may be confidential and may be withdrawn at any time without the necessity of giving any reason therefore.
14. Each party shall comply with all the other party's security and safety procedures and will permit and co-operate with any additional security or safety procedures, which either party may wish to implement.
15.
  - (a) Unless the context otherwise requires, words which are defined in the *Privacy Act* 1988 ("the Act") mean the same thing in this clause.
  - (b) If a part is a small business operator, it must ensure that it is entered in the register of operators maintained under section 6EA(3) of the Act at all times that it holds confidential information that includes personal information.
  - (c) Without limiting any other provision of this Deed, the parties must comply with the Act in all respects and without limitation:
    - i use personal information it obtains from the other party only for the Approved Purpose;
    - ii not collect, use, disclose or otherwise deal with personal information in a manner that would breach a National Privacy Principle or an applicable Approved Privacy Code;
    - iii take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorized access, modification or disclosure; and

- iv ensure that all of its officers, employees and approved subcontractors are aware of and comply with their obligations under the Act.
  
- 16. Each party shall assist the other party in its evaluation, investigation or implementation of security and safety procedures including, but not limited to, providing information which might be relevant to the disclosing party's assessment of whether it should approve access to the Confidential Information by an employee, agent or subcontractor of the receiving party.
  
- 17. The provisions of this Agreement are in addition to and not in substitution for or derogation of any duty of confidence imposed upon the parties generally at law, in equity or under any other agreement, arrangement or understanding already in place between the parties. Where any inconsistency in those duties occurs, the provisions of this Agreement shall prevail.
  
- 18. The provisions of this Agreement shall remain in force indefinitely beyond the termination of the discussions and negotiations. All Confidential Information shall remain confidential until the earlier of:-
  - (a) the time it becomes known to the receiving party through an authorized disclosure to the receiving party by a third party; or
  - (b) the time it becomes available in the public domain other than through the act, neglect or default of the receiving party.
  
- 19. If for any reason a provision of this Agreement or part of it shall be illegal, voidable or unenforceable in any jurisdiction, it shall be read down or severed to the extent necessary so that it may not be so construed. The illegality or unenforceability of any provision or part of one in any jurisdiction shall not effect the legality, validity or enforceability of any other provision, or of that provision, in any other jurisdiction.
  
- 20. The Agreement shall be governed by and construed in accordance with the laws in force from time to time in the State of <insert state>, Commonwealth of Australia.
  
- 21. This Agreement shall commence and be of full force and effect on and from the Commencement Date.

**Execution Page**

**SIGNED** for and on behalf of  
the Prospective Vendor by its duly  
authorized officer

Signature .....

Name .....

Title .....

In the presence of (witness)

Signature .....

Name .....

Date .....

**SIGNED** for and on behalf of  
the Interested Party by its  
duly authorized officer

Signature .....

Name .....

Title .....

In the presence of (witness):

Signature .....

Name .....

Date .....