
CONFIDENTIALITY AGREEMENT

INTRODUCTION

Each party is prepared to disclose to the other party information which it regards as confidential and which the other party may use for the purpose of product feedback (“Permitted Purpose”) on the terms and conditions of this Agreement. Nothing in this Agreement commits either party to entering into such business dealings or arrangements.

AGREEMENT

1. DEFINITIONS

1.1 In this Agreement:

“Agreement” means this agreement;

“Confidential Information” means:

- (a) all information of whatever kind or nature which the Recipient obtains from the Discloser whether it is in tangible or documented form and whether it is marked or identified as being proprietary to or under the control of the Discloser;
- (b) all notes, records or copies of such information made by the Recipient; and
- (c) the fact that discussions are taking place between the parties;

“Discloser” means the party disclosing Confidential Information to the Recipient under this Agreement;

“Improvement” means any development, modification or improvement to or other invention relating to, the Confidential Information made by the Recipient;

“Protective Application” means any application for patents, designs or other form of intellectual property protection concerning Improvements;

“Recipient” means the party receiving Confidential Information from the Discloser under this Agreement; and

“Restricted Party” means any director or employee of the Recipient who needs to know the Confidential Information in order to carry out the Permitted Purpose.

2. RECIPIENT’S OBLIGATIONS

2.1 **Undertakings:** The Recipient will:

- (a) hold and maintain all Confidential Information in strict confidence and as a trade secret of the Discloser;
- (b) not use the Confidential Information in whole or in part for any purpose other than the Permitted Purpose;
- (c) not disclose, or permit the disclosure of, the Confidential Information to any person other than a Restricted Party, provided that such Restricted Party has entered into legally binding confidentiality obligations to the Recipient on terms equivalent to those set out in this Agreement (and such obligations extend to the Confidential Information);
- (d) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
- (e) if requested by the Discloser, ensure that any Restricted Party signs and delivers to the Discloser a confidentiality undertaking and acknowledgement in favour of the Discloser and in a form acceptable to the Discloser.

2.2 **Responsibility:** The Recipient will be responsible for ensuring that any Restricted Party complies with the provisions of this Agreement.

2.3 **Continuing obligations:** The Recipient’s obligations under this Agreement will continue in full force and effect until the Confidential Information enters the public domain other than directly or indirectly through the Recipient’s default, or the default of any Restricted Party. The release of part of the Confidential Information by the Discloser will not of itself cause the Recipient’s undertakings under this Agreement to cease.

- 2.4 **Exceptions to obligations:** The provisions of clause 2.1 shall not apply to Confidential Information that the Recipient can demonstrate:
- (a) was, prior to its receipt by the Recipient from the Discloser, in the possession of the Recipient and at its free disposal;
 - (b) is independently acquired or developed by the Recipient without breaching any of the Recipient's obligations under this Agreement and without use of the Confidential Information;
 - (c) is subsequently disclosed to the Recipient, without any obligations of confidence, by a third party who has not derived it directly or indirectly from the Discloser;
 - (d) is or becomes generally available to the public through no act or default of the Recipient or any of its employees, agents, or contractors; or
 - (e) is required to be disclosed to the courts of any competent jurisdiction, or to any government regulatory agency or financial authority, provided that the Recipient shall:
 - (i) immediately inform the Discloser that such a requirement has arisen; and
 - (ii) at the Discloser's request seek to persuade the court, agency or authority to have the information treated in a confidential manner (where this is possible under the court, agency or authority's procedures).

3. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 3.1 The Discloser will retain sole ownership of all Confidential Information and all intellectual property rights therein. The Recipient acknowledges and agrees that:
- (a) except as expressly provided in this Agreement, neither the signing of this Agreement nor the furnishing of any Confidential Information under this Agreement will be construed as granting to the Recipient any interest in, licence to or right to use any Confidential Information or any intellectual property rights therein for the Recipient's own benefit or for the benefit of any other person;
 - (b) all Improvements and all intellectual property rights therein will be owned exclusively by the Discloser; and
 - (c) to the extent that any Improvements and the intellectual property rights therein do not on their creation vest in the Discloser but vest in the Recipient, the Recipient will hold such Improvements and intellectual property rights on trust for the Discloser. The Recipient will at any time, upon the reasonable request of the Discloser and at the Recipient's expense, ensure all documents necessary to confirm such ownership of the Improvements and intellectual property rights therein or to file a Protective Application or to defend such Protective Application, are appropriately executed by the Recipient and/or its relevant agents, employees and contractors.

4. RETURN OF CONFIDENTIAL INFORMATION

- 4.1 **Return:** At the Discloser's written request, the Recipient will promptly, at the Discloser's election, return to the Discloser or destroy or erase, or procure the destruction or erasure of, any or all the Confidential Information. **Certificate:** Upon the return to the Discloser or destruction (as the case may be) of all such Confidential Information, the Recipient will provide to the Discloser a certificate stating that the Confidential Information returned or destroyed comprises all the Confidential Information in the Recipient's and any Restricted Party's possession or control.

5. NO IMPLIED RIGHTS

- 5.1 This Agreement will not be construed to require the Discloser to disclose any Confidential Information to the Recipient. No warranty or representation, express or implied, is given as to the accuracy, efficacy, completeness or capabilities of any materials or information provided under this Agreement.

6. REMEDY

- 6.1 The parties acknowledge that monetary damages alone may be an inadequate remedy for breach of the Recipient's obligations under this Agreement. In addition to any other remedy, which may be available in law or equity, the Discloser may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

7. GENERAL

- 7.1 **No assignment:** Neither party may assign, transfer, novate or subcontract this Agreement or any rights or obligations under this Agreement, without the prior written consent of the other party.

- 7.2 **Waiver:** No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise or the exercise of any right, power or privilege under this Agreement.
- 7.3 **Entire agreement:** This Agreement constitutes the entire agreement and understanding between the parties and supersedes any previous written or oral agreements or understandings between them, in relation to the Confidential Information.
- 7.4 **Governing law:** This Agreement will be subject to and construed and interpreted in accordance with the laws of Australia and will be subject to the non-exclusive jurisdiction of the Courts of Australia.