

# Mutual Confidentiality Agreement

## DATE AND PARTIES

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This **Mutual Confidentiality Agreement (MCA)** is made on .....(Date) between:

- **Party 1**; and
- **Party 2** set out in **Schedule 1 – Party Details**.

## RECITALS

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- **Party 1** and **Party 2** wish to discuss certain matters for the purpose set out in **Schedule 2 - Purpose**.
- In order to fully discuss things, each party wishes to have access to the other's **Confidential Information**.
- The **Recipient** has agreed to receive the Confidential Information on the terms of this MCA, not to disclose it or use it except as provided in this MCA and to take precautions to protect the Confidential Information.

## IT IS AGREED

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### Definitions

In this MCA, the following definitions apply unless the context requires otherwise.

- **Confidential Information** means any information, of whatever nature and in whatever form including, but not limited to information given orally, visually or **Documented**, that directly or indirectly relates to actual or potential commercial value, the business, customers, intentions, strategies, plans, assets or affairs of the **Discloser** or any **Related Body Corporate** of it; or the **Purpose**, which is designated confidential by the **Discloser**, or a reasonable person in the position of the **Recipient** would consider to be of a confidential nature.
- **Discloser** means the party to which **Confidential Information** belongs, relates or is held by.
- **Documented** means contained, reproduced or stored in any manner including, but not limited to, in any document, note, memorandum, advice, report, drawing, graph, picture, financial information, analysis, calculation, survey, business plan, circuit layout, specification, computer program, stored electronically, mechanically, or chemically, or by any other means.
- **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body,

department, commission, authority, tribunal, agency or entity.

- **Recipient** means the party, to which **Confidential Information** of the **Discloser** is communicated, provided, made available or accessible to.
- **Related Body Corporate** has the meaning given in the Corporations Act 2001.

### Interpretation

In this MCA, headings, bold text and italics are for convenience only and do not affect the interpretation of this MCA and, unless the context requires otherwise:

- The singular includes the plural, and vice versa;
- An expression importing a natural person includes any company, partnership, joint venture, association, trust, corporation or other body corporate or entity and any governmental agency, and vice versa;
- A reference to a clause, or schedule is a reference to a clause of, and a schedule to this MCA and this MCA includes any schedule;
- A reference to any thing (including, but not limited to, any right) includes a part of that thing but this does not mean that performance of part of an obligation is performance of the obligation;
- A reference to a party to any document includes that party's successors and permitted assigns; and
- No provision of this MCA is to be construed adversely to a party solely on the ground that the party was responsible for the preparation of this MCA or that provision.

### Prohibition On Disclosure

Subject to clause **Permitted Disclosure**, in respect of Confidential Information of another party, each party must treat all Confidential Information as confidential and must not:

- Disclose or make available, directly or indirectly, any Confidential Information to any third party;
- Use any Confidential Information in any manner not contemplated by this MCA or for any reason or purpose other than for the Purpose; or
- Make any public announcement or issue any press release regarding this MCA or the transactions contemplated by it,
- And each party must use its best endeavours to ensure that none of its auditor, advisers, officers, employees or agents to whom

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disclosure is made under clause **Permitted Disclosure** (or otherwise) do any of the above.

### Permitted Disclosure

A party may disclose Confidential Information:

- With the prior written consent of the Discloser of the information but only in accordance with the terms of that consent;
- To the extent it is required to do so by law, or by any legally binding order or direction of any Court, other judicial body or governmental agency;
- If the Confidential Information is already in the public domain, except through a breach of this MCA or another obligation of confidentiality; or
- On a need to know basis to a Related Body Corporate of that party, its auditor, professional advisers whose duties require the disclosure, its officers and employees.

### Conditions On Disclosure

Any permitted disclosure of Confidential Information under clause **Permitted Disclosure** (except the second bullet point) or otherwise, must only be made:

- On the condition that the person to whom disclosure is made undertakes to maintain substantially the same obligations of confidentiality and use as in this MCA; and
- Only after providing the Discloser reasonable details of the proposed disclosure to be made and the relevant Confidential Information.

### Precautions

The Recipient must, given the exact nature of each item of Confidential Information and the medium in which it disclosed, take all reasonable precautions to maintain the confidentiality of the Confidential Information and to protect it from unauthorised access or use.

### Return Of Information

At any time upon the request of the Discloser or on termination or completion of the Purpose, the Recipient must deliver to the Discloser any Confidential Information in the Recipient's possession or control which is capable of being delivered and must delete or otherwise destroy all other Confidential Information.

### Prohibition And Enforceability

Any provision of, or the application of any provision of, this MCA that is:

- Prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition; and
- Void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this MCA in that or any other jurisdiction.

### Waivers

A party may not rely on any conduct of another party as a defence to the exercise of a right or power by that other party.

The waiver of any right or power created or arising from the operation or a breach of this MCA or the occurrence of any other event must be in writing and signed by the party granting the waiver. This clause cannot itself be waived except in writing.

### Variation

This MCA can only be amended or supplemented in writing signed by all the parties.

### Enforcement And Other Rights

Each party acknowledges that damages alone would not be adequate compensation for a breach of clause **Prohibition On Disclosure** and that a Discloser is entitled to seek an injunction or similar relief from a Court if the Recipient fails to, or threatens to fail to comply with clause **Prohibition On Disclosure** or the Discloser reasonably believes that the Recipient will not comply with clause **Prohibition On Disclosure**.

The rights and powers under this MCA are cumulative and do not exclude any other right, power, authority, discretion or remedy of a party.

### No Assignment

A party may not assign or transfer all or any part of its rights or benefits under this MCA except with the prior written consent of the other party, and that consent is not to be unreasonably refused.

### Continuing Obligations

The provisions of this MCA that are capable of surviving (including, but not limited to clauses relating to Confidentiality) are continuing obligations and do not merge on completion and continue in force until the longest of:

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- When all the Confidential Information comes into the public domain except through a breach of this MCA or another obligation of confidentiality;
- 5 years from the date of this MCA; or
- Such time as a Court holds is reasonable in the circumstances.

## Governing Law

This MCA is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts exercising jurisdiction there.

## Counterparts

This MCA may be executed in any number of counterparts and exchanged (including by facsimile) and all counterparts taken together constitute the one instrument.

## Authority

Each person signing this MCA on behalf of a party warrants that they have the full authority to sign it on behalf of that party and that they have had no notice of revocation of that authority.

## SCHEDULE 1 – Party Details

### Party 1

<b>Name</b> (Business/Individual)	
<b>ABN/CAN</b>	
<b>Address</b>	
<b>Authority to sign</b> (Print name)	
<b>Phone number</b>	
<b>Email address</b>	

### Party 2

<b>Name</b> (Business/Individual)	
<b>ABN/CAN</b>	
<b>Address</b>	
<b>Authority to sign</b> (Print name)	
<b>Phone number</b>	
<b>Email address</b>	

## SCHEDULE 2 - Purpose

The purpose of this MCA is to allow parties 1

and 2 to work together on

## EXECUTION

Signatures by each party below confirm that they have read and accepted the terms detailed in this document.

**Party 1** - Signed by authority \_\_\_\_\_

Print name \_\_\_\_\_

In the presence of witness \_\_\_\_\_

Print name of witness \_\_\_\_\_

**Party 2** - Signed by authority \_\_\_\_\_

Print name \_\_\_\_\_

In the presence of witness \_\_\_\_\_

Print name of witness \_\_\_\_\_