



Confidentiality Agreement – One Way

PARTIES	
Discloser	The University of New South Wales ABN 57 195 873 179, a body corporate established pursuant to the <i>University of New South Wales Act 1989</i> (NSW) of Sydney NSW 2052
Recipient	[insert name] ABN [insert] of [address]
DETAILS	
Disclosed Information	[insert specific information that may be disclosed, such as plans, blueprints, specifications, etc.]
Project	[insert description of project]
Commencement Date	Date of last execution of this agreement [or insert other date if applicable]
EXECUTED AS AN AGREEMENT	
Executed for and on behalf of the Discloser: Signature of Authorised Representative Print Name Position Date of Signing	Executed for and on behalf of the Recipient: Signature of Authorised Representative Print Name Position Date of Signing

1. Definitions

1.1 In this agreement:

Confidential Information of a party means

- (a) the Disclosed Information;
- (b) any information that relates to the Project, including information relating to the existence, progress and status of discussions, negotiations or agreements with respect to the Project and including information created, ascertained, discovered or derived directly or indirectly from the Project;
- (c) any intellectual property, including without exception know-how, trade secrets, signs, distinctive marks, biological material, devices, models, formulae, graphs, photographs, drawings, business plans, methodologies, inventions, policies, records, memoranda and notes;
- (d) business, financial, technical and other commercially valuable information including what a party regards to be confidential, proprietary or sensitive; and

- (e) any and all including information created, ascertained, discovered or derived directly or indirectly from the Confidential Information or the Project,

in each case, irrespective of whether the disclosure is by visual, oral, written or electronic means, directly or indirectly made to a party or its related bodies corporate, officers, agents or employees, and irrespective of whether the information was disclosed or created before or after the Commencement Date or whether such information would be designated as "confidential" in equity.

1.2 Unless the context otherwise requires:

- (a) a term defined in the contract details at the beginning of this document has a corresponding meaning in this agreement;
- (b) a word which denotes the singular denotes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to any legislation includes that legislation as amended, re-enacted consolidated or substituted;
- (e) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (f) any use of the verb 'includes', or of words such as 'for example' or 'such as', do not limit anything else that is included in general speech; and
- (g) a reference to a thing or amount is a reference to the whole and each part of it.

1.3 This agreement may not be construed adversely to a party just because that party prepared it.

2. Confidentiality undertaking

- 2.1 The Recipient must keep and maintain the confidentiality of all Confidential Information, and not disclose any of the Confidential Information except as permitted under this agreement.
- 2.2 Upon becoming aware of any actual or suspected breach of this agreement, each party must notify each other party and use its best endeavours to prevent or remedy such a breach.
- 2.3 The Recipient must not, unless expressly permitted under this agreement:
 - (a) modify, make copies of, print out or reproduce in any way the Confidential Information;
 - (b) provide, facilitate or attempt to provide or facilitate access to the Confidential Information to any third party;
 - (c) sell, deal with, dispose of, assign, transfer or grant any rights in relation to the Confidential Information to any other party (or purport to do any of those things), whether or not for the benefit, profit or advantage of the Recipient or any other person;
 - (d) perform, or permit any person to perform, any analysis, synthesis, reformulation, decomposition, deconstruction, disassembly or reverse engineering of any of the Confidential Information;
 - (e) apply for, or assist any other person, directly or indirectly, to apply for any patents, designs or other registered intellectual property based on or utilising any part of the Confidential Information; and

- (f) contest or seek to invalidate any patents, designs or other registered intellectual property or applications for intellectual property that are based on or that utilise any part of the Confidential Information.
- 2.4 The Recipient must ensure that all persons to whom any Confidential Information is disclosed under this agreement do not do or omit to do any act which, if done or omitted to be done by that party, would result in a breach of any provision of this agreement.
- 2.5 The obligations under this agreement survive and continue in force until such time as the Confidential Information becomes public knowledge other than by breach of this agreement.
- 2.6 If it is uncertain as to whether:
- (a) any information is Confidential Information; or
 - (b) any Confidential Information is publicly available,
- that information will be taken to be Confidential Information and not generally available to the public unless the Discloser advises the Recipient in writing to the contrary or a court declares it to be publicly available.

3. Permitted Disclosure

- 3.1 The Recipient may:
- (a) use the Confidential Information solely for the purposes of the Project;
 - (b) disclose the Confidential Information to its employees and contractors who need to have access to the Confidential Information for the purposes of the Project, who are aware of the requirements of this agreement, and who have agreed to comply with this agreement;
 - (c) disclose the Confidential Information to professional advisers with the approval and consent of the Discloser.
- 3.2 It is not a breach of this agreement if the Confidential Information:
- (a) can be shown by contemporaneous records to have been known to the Recipient at the Commencement Date or independently developed by the Recipient without reference to the Confidential Information;
 - (b) is provided to the Recipient by a third party after the Commencement Date, lawfully and without violating any obligation of confidence by that third party; or
 - (c) was public knowledge or was in the public domain, other than by breach of this agreement, at the time of its disclosure to a third party.
- 3.3 The Recipient may disclose Confidential Information of the Discloser if legally compelled to do so by a judicial or administrative body provided that:
- (a) the Recipient takes all reasonably available legal measures to avoid such disclosure; and
 - (b) notifies the Discloser as soon as practicable after such disclosure is ordered so that the Discloser may seek an appropriate protective order or other remedy.

4. Return of Confidential Information

The Recipient must, on the earlier of receipt of a written request made by the Discloser or completion of the Project:

- (a) cease all use of the Confidential Information of the Discloser;
- (b) destroy or delete all records and copies of the Confidential Information in its possession;
- (c) return all other Confidential Information of the Discloser in its possession (including all copies of the same) to the Discloser; and
- (d) provide to the Discloser a written certificate confirming compliance with the requirements of this clause 4,

provided that the Recipient may retain one copy of the Confidential Information of the Discloser to the extent required by law or for use solely in the event of a dispute arising out of this agreement.

5. Intellectual Property Ownership

- 5.1 This agreement does not grant the Recipient any licence or other right or interest in the Confidential Information, except as expressly provided in this agreement.
- 5.2 The Recipient acknowledges that Discloser owns any and all intellectual property rights in the Disclosed Information and related materials.

6. Warranties and Indemnities

- 6.1 Each party represents and warrants for the benefit of the other party that:
 - (a) they have taken all reasonable action and obtained all consents necessary to authorise the execution, delivery and performance of this agreement in accordance with its terms;
 - (b) each party has the power to perform its obligations under this agreement; and
 - (c) performance of this agreement will not constitute a breach of any other contract, arrangement or understanding which is binding on that party.
- 6.2 The Discloser gives no warranty in relation to the Confidential Information. Without limitation, the Discloser gives no warranty (express or implied) that the Confidential Information provided to the other party is or will be complete, accurate or suitable for the Project.
- 6.3 The Recipient agrees to indemnify and hold harmless the Discloser against all costs, liability, losses and claims incurred by the Discloser arising from:
 - (a) any breach by the Recipient of this agreement; or
 - (b) any act or omission by any person to whom Confidential Information is disclosed under this agreement which would if done by the Recipient, be a breach of this agreement.

7. Remedies

- 7.1 If the Recipient breaches this agreement, the Discloser is entitled to, in addition to any amounts payable under clause 6, an account of profits in respect of all additional revenue, benefits or other advantage resulting from the Recipient's breach of this agreement.
- 7.2 The Recipient acknowledges the Discloser would be irreparably harmed by a breach of this agreement and that monetary compensation would be insufficient to remedy any actual or threatened breach. Consequently, in the event of an actual or threatened breach of this agreement, the Discloser is entitled to injunctive relief and to compel specific performance of the provisions of this agreement at the Recipient's cost.

8. General

- 8.1 The Discloser, or its authorised representative, has the right, after reasonable advance notice to the Recipient, to audit the other party's use of the Confidential Information.
- 8.2 No waiver of any breach of this agreement will be binding on a party unless it is in writing and executed by that party.
- 8.3 A party must not assign its rights or obligations under this agreement without the prior written consent of the other party.
- 8.4 If any provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provision, which shall be deemed deleted.
- 8.5 This agreement is governed by and must be construed in accordance with the law in force in the state of New South Wales. The parties irrevocably submit to the exclusive jurisdiction of Courts in New South Wales and all courts which have jurisdiction to hear appeals from them.
- 8.6 This agreement may be executed in any number of counterparts, all of which taken together will constitute one fully executed agreement.
- 8.7 Each party agrees to do all acts and things, and execute all agreements and documents as are from time to time required for the purposes of this agreement.