

YOUR LOGO
HERE

MUTUAL CONFIDENTIALITY AGREEMENT

DATED THE _____ DAY OF _____ 20____ .

BETWEEN

Company Pty Ltd ACN 111 222 333 (“Party A”)

AND

Other Company Pty Ltd ACN 333 222 111 (“Party B”).

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made on the _____ day of _____ 20_____ .

BETWEEN: Company Pty Ltd ACN 111 222 333 of 1 Sydney Street Sydney 2000
 (“**Party A**”)

AND: Other Company Pty Ltd ACN 333 222 111 of 1 Brisbane Street Brisbane
 7000 (“**Party B**”).

RECITALS

- A. Party A carries on the business of Installation of air-conditioning unites and has developed and possesses certain confidential information.
- B. Party B carries on the business of Transport of Air-conditioning units and has developed and possesses certain confidential information.
- C. The Parties propose to enter into a joint venture (**the “Venture”**) and in contemplation of the Venture each Party will provide information for use solely in connection with the other Party’s evaluation of the merits of the Venture described in Part A of the Schedule and the giving of such information is in consideration of and in reliance on the following terms (**the “Agreement”**).

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1. In this Agreement these words and phrases have the following meaning:

“**Advisors**” means all persons including solicitors, accountants, and professional consultants whom either Party may legitimately and properly wish to consult and seek advice from concerning the Confidential Information and/or the Purpose and who may need access to the Confidential Information in order to provide that advice.

“**Confidential Information**” means all trade secrets, know-how, proprietary information and other data and information relating in anyway to the business of a Party and which is, prior to entering into this Agreement, only known to that Party, its employees and/or its consultants.

Without limiting the generality of the foregoing Confidential Information also includes:

- (a) all ideas, improvements, inventions, innovations, processes, products, product specifications, methods of manufacture, developments, discoveries, samples, research, technical data, designs, formulas, devices, patterns, concepts, schematic models, diagrams, drawings, flow charts, chemical mixtures, delivery systems, user manuals, training or service manuals, source codes, object codes, activation codes, pin numbers,

plans for new or revised products, compilation of information, work in progress, and any and all revisions, improvements and enhancements relating to any of the foregoing;

- (b) all the names, details of and requirements of the Discloser's customers, licensees, employees, consultants, contractors, suppliers and the details of all other persons who may at any time provide services, products or components thereof to the Discloser or who may at any time acquire services, products or components thereof from the Discloser;
- (c) all sales plans, budgets, price lists, marketing material, plans, surveys, business plans, opportunities, financial information, costings, valuation reports, redevelopment plans, specifications, business proposals, accounting records, business records, asset registers and other information in any way relating to the present or proposed business of the Discloser;
- (d) all documents whether in hard form or electronic form which have been marked by the Discloser as "confidential", or "private", or "secret" or "not to be disclosed" or which in any other way indicate that the document is regarded by the Discloser as confidential; and
- (e) this Agreement and anything done by the parties pursuant to it.

"Discloser" means the Party who discloses information.

"Recipient" means the Party to whom Confidential Information is disclosed.

"Purpose" means the Purpose set out in Part A of the Schedule and any other use or purpose which after the date of this Agreement either Party may in writing permit the other Party to use the Confidential Information for.

"Term" means the period from the date hereof until this Agreement is terminated or expires as provided in Clause 9.

2. INTERPRETATION

2.1. In this Agreement:

- (a) words or phrases importing any gender include all genders including the neuter gender;
- (b) words or phrases importing the singular include the plural and vice versa;
- (c) any reference to a party is a reference to its lawful successors and assigns and also includes where that party is an individual, any company of which that individual is a director or employee and for that purpose any promise given by that party will be deemed to have been given by that party in his or her own capacity and as agent and representative of that company;

- (d) any reference to any Act, statute, rule or regulation whether State or Federal includes any amendment or replacement thereof;
- (e) any reference to a Discloser is a reference to each and every company that is a related corporation of that Party or is a related entity of the Party within the meaning of those terms in the *Corporations Act 2001* (Cth). Where there are related corporations or related entities to the Party, the Party is entering into this Agreement on its own behalf and on behalf of each of those related corporations and related entities as the case may be and each of those related corporations or related entities have the same rights as against the Recipient as the Party has under this Agreement;
- (f) unless otherwise agreed any reference to a Recipient will, insofar as there are obligations imposed on that Party or promises given by that Party in this Agreement, be obligations and promises given by that Party on its own behalf and on behalf of each and every related corporation and/or related entity of the Party and where the Party is an individual the Party enters into this Agreement on his/her own behalf and on behalf of each and every company of which the Party is a director or any member of the Party's family is a director or in which the Party or any member of the Party's family has a shareholding in, and on behalf of each and every trust of which the Party is a trustee or beneficiary;
- (g) any reference to a Discloser where there is more than one Discloser named in this Agreement or with rights under this Agreement pursuant to Clause 4.5 is a reference to those disclosers both jointly and severally;
- (h) any reference to a Recipient where there is more than one Recipient named in this Agreement or with obligations under this Agreement pursuant to Clause 4.6 is a reference to those recipients both jointly and severally.

3. PERMITTED USES, REQUESTS, DISCLOSURE AND CONFIDENTIALITY

- 3.1. Each Party ("the Discloser") hereby permits the other Party ("the Recipient") to use the Confidential Information disclosed to the Recipient by the Discloser for the Purpose during the Term and subject to the conditions and limitations in this Agreement.
- 3.2. Each Party will direct all requests for the other Party's information to the person identified from time to time in Part B of the Schedule.
- 3.3. Neither Party will make any enquiries of the other Party's customers, suppliers, employees, lenders or any other person having dealings with that other Party without the prior written consent of the Discloser.
- 3.4. The disclosure of any Confidential Information by a Party will not compel or be

deemed to compel that Party to answer any questions about the disclosed Confidential Information or to disclose any other Confidential Information.

3.5. The Parties have agreed that in all correspondence, telephone conversations and conferences including with their Advisers, this proposed Venture will be referred to as Project ALPHA.

4. PROMISES NOT TO DISCLOSE

4.1. Each Party promises and undertakes to the other Party as an ongoing separate promise and undertaking that it will not use the other Party's Confidential Information for any purpose other than the Purpose. This is an essential term of this Agreement and binds each Party both during and after the Term.

4.2. Each Party promises and undertakes to the other Party as an ongoing separate promise and undertaking that it will not disclose the other Party's Confidential Information to any other person or permit any other person to have access to or view any of the other Party's Confidential Information without the prior written consent of the other Party. This is an essential term of this Agreement and binds each Party both during and after the Term.

4.3. Nothing in this Agreement prevents a Recipient from disclosing any of the Confidential Information to its Advisers but only for the purpose of obtaining advice from those Advisers. This exception does not permit any disclosure beyond what is reasonably necessary for the purposes of obtaining such advice. The Recipient indemnifies the Discloser and promises to keep the Discloser indemnified against any loss or damage of whatsoever kind or nature and howsoever arising that the Discloser might suffer as a result of any disclosure by the Recipient to its Advisers and the subsequent disclosure by those Advisers or any of them to any third parties. This is an essential term of this Agreement.

4.4. Each Recipient promises and undertakes that it will take all reasonable steps required in order to keep the other Party's Confidential Information secure and inaccessible to third parties and where a Recipient is a director or employee of a company the Recipient and that company must not permit any of its employees or its contractors to have access to the Confidential Information except where such access is reasonably required for the Purpose but not otherwise.

4.5. Each Recipient indemnifies the Discloser and promises to keep that Party indemnified against any loss or damage of whatsoever kind or nature and howsoever arising that the Discloser might suffer as a result of any failure by the Recipient to properly secure the

Confidential Information or any misuse or wrongful disclosure by any employee or contractor of any company of which the Recipient is a director or employee. This is an essential term of this Agreement.

- 4.6. Each Recipient promises to keep a list of all persons including Advisors who are given access by the Recipient to the Confidential Information. That list will also identify the date such access was given and will also identify the Confidential Information so accessed, whether that person has kept a copy thereof and how that copy has been stored and secured.

5. INFORMATION IN THE PUBLIC DOMAIN

- 5.1. Notwithstanding the foregoing, a Recipient has no liability to the Discloser in respect of any Confidential Information which the Recipient can prove was in the public domain at the date of this Agreement or which comes into the public domain without any fault or in any way through any act or omission on the part of the Recipient.
- 5.2. Notwithstanding the foregoing, a Recipient has no liability to the Discloser in respect of any Confidential Information which the Recipient can prove was known to the Recipient at the time of the disclosure provided there is adequate written documentation to confirm such prior knowledge and that it was not directly or indirectly acquired from the Discloser.
- 5.3. Notwithstanding the foregoing, a Recipient has no liability to the Discloser in respect of any Confidential Information which the Recipient can prove was received by the Recipient from any third party, provided such information was not improperly or unlawfully obtained, directly or indirectly, from a party under an obligation of confidentiality to the Discloser.

6. NO INTEREST IN DISCLOSED INFORMATION

- 6.1. Each Recipient acknowledges and agrees that the disclosure of Confidential Information does not and will not confer on the Recipient any interest or right whether at law or in equity in the Confidential Information or any part thereof and in particular:
- (a) the entering into this Agreement is not to be construed as granting to a Recipient Party either expressly or by implication or by estoppel or otherwise any right, licence or interest in any Confidential Information, intellectual property or trade secrets disclosed by a Discloser Party pursuant to this Agreement;
 - (b) the entering into this Agreement is not to be construed as creating or evidencing any obligation on the part of a Discloser to enter into any other contract or arrangement;

- (c) the entering into this Agreement is not to be construed as preventing a Discloser from entering into any other agreements, discussions, negotiations or arrangements with other persons including any agreements or arrangements for the disclosure of its own Confidential Information to those persons.
- 6.2. Each Recipient acknowledges that to the fullest extent recognised by law or equity the Discloser is the owner and sole person entitled to use and benefit from its Confidential Information and the Recipient will not challenge or dispute that ownership or right of sole use and nor will the Recipient assist in any way any other person to challenge or dispute the Discloser's claim to ownership and sole right to use the Confidential Information.
- 7. LIMITATION ON COPYING**
- 7.1. Each Recipient may only make such copies of the other Party's Confidential Information as may be reasonably necessary for the Purpose.
- 7.2. The Recipient must on request from the Discloser provide the Discloser with full details of all copies of the Confidential Information that have been made, whether they have been stored electronically, how and who has access thereto and if in hard copy form where those hard copies are located.
- 7.3. Any reference to copying includes hard copies and any electronic copies.
- 7.4. Upon termination or expiration of this Agreement or otherwise upon written demand from a Discloser, all such copies along with the original must be promptly returned to that Party or destroyed. The Recipient may however retain in the files of its legal counsel, for archival purposes only, one copy of any such Confidential Information returned or destroyed.
- 8. BREACH AND INDEMNITY**
- 8.1. In the event that a Recipient breaches any of its promises in this Agreement the Discloser may take such action including bringing proceedings for damages including exemplary and aggravated damages, injunctions and other orders as the Discloser thinks fit against the Recipient and against any other person using the Confidential Information as a consequence of any breach by the Recipient of the promises in this Agreement.
- 8.2. The Recipient fully indemnifies the Discloser and promises to keep the Discloser fully indemnified against any loss or damage which the Discloser might suffer as a direct or indirect consequence of any breach by the Recipient of any of the promises given by the Recipient to the Discloser in this Agreement. Nothing done or not done by the

Discloser in any way limits or restricts the Discloser from being entitled to be fully indemnified as provided in this Agreement.

9. TERMINATION AND EFFECT OF TERMINATION

9.1. This Agreement survives until the Parties formally execute a Venture agreement. If the proposed Venture does not come to fruition and either Party terminates the pre-Venture investigation, then:

- (a) neither Party will have any rights whatsoever to use the other Party's Confidential Information for any purpose including the Purpose;
- (b) each Party must return to the other Party all Confidential Information in its possession or if requested in writing by the other Party destroy all Confidential Information in its possession.

9.2. Notwithstanding anything in this Agreement, either Party may by written notice immediately terminate this Agreement if the other Party breaches any obligation or promise given.

9.3. Notwithstanding termination of this Agreement each Party will continue to be bound by all the promises given in this Agreement not to use or disclose the other Party's Confidential Information and all of the rights of the Discloser to enforce those promises, prevent their breach and to claim compensation will continue to be fully enforceable.

10. ENFORCEMENT OF AGREEMENT

10.1. In the event that a Discloser has to enforce any of its rights against the Recipient by commencing any proceedings in any court, the Recipient acknowledges that the Discloser will be entitled to its costs on an indemnity basis if it is successful in that enforcement.

10.2. Each Party acknowledges that any misuse or wrongful disclosure by the other Party will cause the other Party immediate and irreparable loss, harm and damage in respect of which a monetary award of damages will be inadequate compensation. A Recipient therefore will not dispute the entitlement of a Discloser to obtain injunctive relief for the Recipient's breach or anticipated breach of any of its obligations under this Agreement. Such injunctive relief will not be deemed or be regarded as the exclusive remedy for such breach and will be in addition to all other remedies available to the Discloser at law or in equity.

11. GOVERNING JURISDICTION

11.1. The Agreement is governed by the laws of the State/Territory in which the Parties carry

on their respective businesses and if in more than one State/Territory, then in the State or Territory in which Party A's registered office is situated. Any court proceedings brought to enforce any provision of this Agreement will be brought in courts of that State/Territory and the Parties submit to the jurisdiction of those courts.

12. GENERAL

- 12.1. All modifications to this Agreement must be in writing and be signed by duly authorised representatives of both Parties.
- 12.2. This document contains the entire agreement between the Parties with regard to the subject matter and supersedes any previous understandings, commitments, arrangements, representations or agreements between them whether written, oral, expressed or implied.
- 12.3. This Agreement may not be assigned or transferred by either Party without the written consent of the other.
- 12.4. Each Party has had the opportunity before signing this Agreement to obtain separate and independent legal advice as to the effect of this Agreement upon that Party.
- 12.5. Any waiver of any right or entitlement under this Agreement must be in writing signed by the Party waiving that right or entitlement.
- 12.6. This Agreement may be executed in counterpart form, in which case each counterpart will be deemed an original and all of them when taken together will be deemed to constitute the one Agreement.

SCHEDULE

PART A

To evaluate the business plan and research and development proposal of exploring the application

PART B

PARTY A GATEKEEPER: Andrew Smith
POSITION: Company Secretary
ADDRESS: 1 Perth Street Perth 5000
TELEPHONE: 02 9999 9999
EMAIL ADDRESS: Andrew@email.com.au
FACSIMILE No: 02 8888 8888

PARTY B GATEKEEPER: John Smith
POSITION: Managing Director
ADDRESS: 1 Brisbane Street Brisbane 7000
TELEPHONE: 02 8888 9999
EMAIL ADDRESS: John@email.com
FACSIMILE No: 02 9999 8888

EXECUTED AS AN AGREEMENT

SIGNED BY)
Company Pty Ltd)
ACN 111 222 333 pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:

Signature of Witness
Print Name:

SIGNED BY)
Other Company Pty Ltd)
ACN 333 222 111 pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:

Signature of Witness
Print Name:

Director

Print Name:

Director/Secretary

Print Name:

Director

Print Name:

Director/Secretary

Print Name:

