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## CONFIDENTIALITY AGREEMENT

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DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ .

**BETWEEN**

Company Pty Ltd ACN 111 222 333 (the “Discloser”)

**AND**

Other Company Pty Ltd ACN 333 222 111 (the “Recipient”).

# CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ .

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

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

## RECITALS

- A. The Discloser carries on a Business. In the course of conduct of the Business, the Discloser has developed and possesses Confidential Information.
- B. The Recipient has requested the Discloser give the Recipient access to the Confidential Information for the Purpose.
- C. The Discloser has agreed to give access to the Recipient to the Confidential Information for the Purpose on the following terms and conditions.

## THE PARTIES AGREE AS FOLLOWS:

### 1. DEFINITIONS

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

“**Advisors**” means all persons including solicitors, accountants, and professional consultants who the Recipient 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.

“**Business**” means the business of the Discloser as described in Part A of the Schedule together with any other business which the Discloser may at any time in the future conduct.

“**Confidential Information**” means all trade secrets, know how, proprietary information and other data and information relating in anyway to the Business and which is, prior to entering into of this Agreement, only known to the Discloser 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, activation codes, pin numbers, plans for new

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Page 1 of 10

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, 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.

**"Purpose"** means the Purpose set out in Part B of the Schedule and any other use or purpose which after the date of this Agreement the Discloser may in writing permit the Recipient 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;

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- (e) where the Discloser is a company, any reference to the Discloser is a reference to each and every company that is a related corporation of the Discloser or is a related entity of the Discloser within the meaning of those terms in the *Corporations Act 2001 (Cth)*. Where there are related corporations or related entities to the Discloser, the Discloser 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 Discloser has under this Agreement;
- (f) unless otherwise agreed any reference to the Recipient will insofar as there are obligations imposed on the Recipient or promises given by the Recipient in this Agreement be obligations and promises given by the Recipient on its own behalf and on behalf of each and every related corporation and/or related entity of the Recipient and where the Recipient is an individual the Recipient enters into this Agreement on his/her own behalf and on behalf of each and every company of which the Recipient is a director or any member of the Recipient's family is a director or in which the Recipient or any member of the Recipient's family has a shareholding in, and on behalf of each and every trust of which the Recipient is a trustee or beneficiary;

### **3. CONSIDERATION AND DISCLOSURE**

- 3.1. The Discloser will disclose such Confidential Information as it thinks fit to the Recipient for the Recipient's use or consideration during the Term in respect of the Purpose.
- 3.2. The consideration for the disclosure of the Confidential Information by the Discloser to the Recipient is the Recipient's promise to the Discloser in this Agreement to keep all such Confidential Information strictly confidential and not to use it or any part of it for any purpose other than the Purpose and then only during the Term.
- 3.3. Notwithstanding anything in this Agreement, the Discloser may in its absolute and unfettered discretion refuse to disclose any Confidential Information or any part thereof to the Recipient.
- 3.4. The disclosure of any Confidential Information by the Discloser will not compel or be deemed to compel the Discloser to answer any questions about the disclosed Confidential Information or to disclose any other Confidential Information.

### **4. PROMISE NOT TO DISCLOSE**

- 4.1. The Recipient promises and undertakes to the Discloser as an ongoing separate promise

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and undertaking that the Recipient will not use the Confidential Information for any purpose other than the Purpose. This is an essential term of this Agreement and binds the Recipient both during and after the Term.

- 4.2. The Recipient promises and undertakes to the Discloser as an ongoing separate promise and undertaking that the Recipient will not disclose the Confidential Information to any other person or permit any other person to have access to or view any of the Confidential Information disclosed to the Recipient without the prior written consent of the Discloser. This is an essential term of this Agreement and binds the Recipient both during and after the Term.
- 4.3. Nothing in this Agreement prevents the Recipient from disclosing any of the Confidential Information to its Advisors but only for the purpose of obtaining advice from those Advisors. 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 his/her Advisors and the subsequent disclosure by those Advisors or any of them to any third parties. This is an essential term of this Agreement.
- 4.4. The Recipient promises and undertakes that he or she will take all reasonable steps required in order to keep the Confidential Information secure and inaccessible to third parties and where the 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. 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 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.
- 4.5. The 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

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stored and secured.

## **5. INFORMATION IN THE PUBLIC DOMAIN**

- 5.1. Notwithstanding the foregoing, the 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, the 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, the 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. The 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 the Recipient either expressly or by implication or by estoppel or otherwise any right, licence or interest whether at law or in equity in any Confidential Information, any intellectual property, or trade secrets disclosed by the Discloser pursuant to this Agreement or with respect to any issued patents or any patents that may issue or any other interests of the Discloser which are owned by it;
  - (b) the entering into this Agreement is not to be construed as creating or evidencing any obligation on the part of the Discloser to enter into any other contract or arrangement;
  - (c) the entering into this Agreement is not to be construed as preventing the Discloser from entering into any other agreements, discussions, negotiations or arrangements with other persons including any agreements or arrangements for the disclosure of any Confidential Information to those persons.

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6.2. The 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 the 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. The Recipient may only make such copies of the Discloser'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 the Discloser, all such copies along with the original must be promptly returned to the Discloser or destroyed. The Recipient party 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 the 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. Unless otherwise agreed in writing this Agreement terminates on the date set out in Part C of the Schedule. If no date is stated in Part C of the Schedule, it will terminate 60 days after the date hereof or immediately upon written notice to that effect from the Discloser whichever first occurs.
- 9.2. On termination the Recipient will have no rights whatsoever to use the Confidential Information for any purpose including the Purpose.
- 9.3. On termination the Recipient must return to the Discloser all Confidential Information in its possession or if requested in writing by the Discloser destroy all Confidential Information in its possession.
- 9.4. Notwithstanding anything in this Agreement the Discloser may by written notice immediately terminate this Agreement if the Recipient breaches any obligation or promise given by the Recipient.
- 9.5. Notwithstanding termination of this Agreement the Recipient will continue to be bound by all the promises given by the Recipient in this Agreement not to use or disclose the 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 the 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. The Discloser and the Recipient acknowledge that any misuse or wrongful disclosure by the Recipient will cause the Discloser immediate and irreparable loss, harm and damage in respect of which a monetary award of damages will be inadequate compensation. The Recipient therefore will not dispute the entitlement of the 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 and is to be construed and enforced in accordance with

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the laws of the State/Territory in which the Discloser carries on the Business and if in more than one State/Territory, then in the State or Territory in which its registered office is. 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.

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*Page 8 of 10*

## SCHEDULE

### PART A

Installation of air-conditioning unites

### PART B

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

### PART C

End Date: 3 years

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

**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:

\_\_\_\_\_  
Director  
Print Name:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Director/Secretary  
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:

\_\_\_\_\_  
Director  
Print Name:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Director/Secretary  
Print Name:

Initial: \_\_\_\_\_

