



THE UNIVERSITY OF
MELBOURNE

ONE WAY CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is executed on the day of

BETWEEN

THE UNIVERSITY OF MELBOURNE [ABN 84 002 705 224] of Parkville, Victoria 3010, a body politic and corporate established in 1853 and constituted under the *University of Melbourne Act 2009 (Vic)*

(University)

AND

THE RECEIVING PARTY SPECIFIED IN ITEM 1 OF THE SCHEDULE

(Receiving Party)

RECITALS

- A.** The University has agreed to make information, including Confidential Information, available to the Receiving Party for the Purpose.
- B.** The information, including Confidential Information, will be made available on the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

In this Agreement, except where the context otherwise requires:

'Agreement' means this agreement together with any schedules or annexures and any amendments made in accordance with this agreement.

'Confidential Information' means and includes all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other unregistered or unpatented intellectual property, financial and business information and all other commercially valuable information of the University which the University regards as confidential to it or which is evident by its nature or the manner of its disclosure to be confidential and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure. Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:

- (a) available to the public at the date of its disclosure to the Receiving Party otherwise than through the default of the Receiving Party;
- (b) at the date of its disclosure to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the University;

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- (c) after the date of its disclosure to the Receiving Party, available to the public from sources other than the Receiving Party;
- (d) after the date of its disclosure to the Receiving Party, properly available to the Receiving Party from a third party having no obligation of confidentiality to the University;
- (e) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure; or
- (f) required to be disclosed by law.

'Parties' means the parties to this Agreement and their respective successors and permitted assigns, and **'Party'** means any one of them.

'Purpose' means the purpose for which the Confidential Information is disclosed as described in Item 2 of the Schedule.

'Receiving Party' means the Party named at Item 1 of the Schedule who is receiving Confidential Information under this Agreement, and includes its respective successors and permitted assigns.

2. DISCLOSURE OF INFORMATION

The University may disclose to the Receiving Party so much of its information, including Confidential Information, as the University, in its sole discretion, considers is necessary for the Purpose.

3. CONFIDENTIALITY OBLIGATIONS

The Receiving Party must:

- (a) keep all Confidential Information of the University confidential;
- (b) limit access to those of its employees or agents reasonably requiring the Confidential Information on a strictly need to know basis for the Purpose;
- (c) not use Confidential Information in any way which would be harmful to the best interests of the University;
- (d) immediately notify the University of any disclosure required by law;
- (e) not use any Confidential Information in any way other than for the Purpose or as otherwise contemplated by this Agreement without the prior written permission of the University; and
- (f) ensure that all employees or agents to whom Confidential Information is disclosed are legally bound to keep the Confidential Information confidential and not to use the Confidential Information except for the Purpose.

4. RETURN OF INFORMATION

At any time upon the written request of the University, the Receiving Party must return to the University any documents originating from the University which embody Confidential Information and must not keep any copies, notes, records or other related information in any form.

5. GENERAL

- 5.1 **Proprietary Rights.** The Receiving Party obtains no proprietary rights of any kind to any Confidential Information as a result of a disclosure to it under this Agreement.
- 5.2 **Method of Disclosure.** The obligations in this Agreement apply irrespective of the method of disclosure whether in writing, in computer software, orally, by demonstration, description, inspection or otherwise.
- 5.3 **Relief.** The Receiving Party acknowledges and agrees that monetary damages would be an insufficient remedy for breach of this Agreement and that, in addition to any other remedy available, the University is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.
- 5.4 **Waiver.** A Party's failure to exercise or delay in exercising a right or power does not operate as a waiver of that right or power and does not preclude the future exercise of that right or power.
- 5.5 **Dispute.** A Party claiming that a dispute has arisen under this Agreement (Dispute) must notify the other Party giving written details of the Dispute. The Parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each Party who are authorised to hear the Dispute before commencing any legal proceedings in relation to the Dispute. Any Dispute which cannot be settled between the Parties within a reasonable time must be referred for determination by a person appointed for that purpose by the Parties and failing agreement, appointed by the Chair of the Resolution Institute or the Chair's designated representative. Any determination made under the above clause is binding on the Parties and the *Commercial Arbitration Act 2011 (Vic)* applies to the determination except to the extent otherwise agreed by the Parties. Nothing in this clause 5.5 will prevent a Party from seeking interlocutory relief.
- 5.6 **Governing Law.** This Agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts.
- 5.7 **Entire Agreement.** This Agreement contains the whole of the agreement between the Parties regarding the obligations of confidentiality.
- 5.8 **Amendment.** This Agreement may only be amended in writing.
- 5.9 **Assignment.** A Party will not assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party.
- 5.10 **Severance.** Any illegal or invalid provision of this Agreement will be severable and all other provisions will remain in full force and effect.
- 5.11 **Burden of Proof.** The burden of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the Receiving Party.
- 5.12 **Counterparts.** This Agreement may be executed in counterparts.

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EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of **THE**)
UNIVERSITY OF MELBOURNE)
in the presence of:)

.....
Signature of authorised person

.....
Signature of Witness

.....
Office held

.....
Name of Witness
(block letters)

.....
Name of authorised person
(block letters)

SIGNED for and on behalf of **THE**)
RECEIVING PARTY)
in the presence of:)

.....
Signature of authorised person

.....
Signature of Witness

.....
Office held

.....
Name of Witness
(block letters)

.....
Name of authorised person
(block letters)

[The **last party** to sign this Agreement must complete the date field on the first page]

SCHEDULE

ITEM 1: THE PARTIES

The University

Legal Name:

Address:

ABN:

Email:

The Receiving Party

Legal Name:

Address:

ABN:

Email:

ITEM 2: PURPOSE