

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (**Agreement**) dated \_\_\_\_\_ is between Engine Room Solutions Pty Ltd ACN 632 921 003 (**ERS**) and

\_\_\_\_\_ (**Other Party**).

Each party is the owner of or is entitled to all rights and interest in certain Confidential Information which a disclosing party may disclose to the other party under this Agreement. The parties wish to ensure that the Confidential Information disclosed by one party to the other is held in confidence by the other party subject to the terms of this Agreement.

### IT IS AGREED AS FOLLOWS:

**Discloser** means a party disclosing Confidential Information pursuant to this Agreement and **Recipient** means a party receiving Confidential Information pursuant to this Agreement.

**Confidential Information** means the confidential information belonging to either of the parties relating in any way to that party's company, business and affairs in any form including oral, written, graphic, video, demonstrative or machine readable form or incorporated in another form and includes that party's technologies and systems, all scientific, technical, inventive, research, developmental, engineering, computer, intellectual property information, data and knowhow; all drawings, designs, computer software and hardware; all business systems, financial, research, customer, marketing, pricing, costing and sales related information, data and knowhow; and all concepts, ideas and techniques contained in the foregoing but does not include information which was independently developed by the other party being the Recipient prior to the time of disclosure which development is evidenced by appropriate documentation; was already in the possession of the recipient in written or recorded form prior to the time of its disclosure to the recipient; prior to or subsequent to disclosure to the Recipient, becomes part of the body of public knowledge except by any action or inaction of or default by the Recipient; or was lawfully acquired by the Recipient from a third party which third party was lawfully entitled to possession of and to disclose such information; provided however that the burden will be on the Recipient to prove the applicability of any of the above exceptions by documentary evidence if the Discloser questions the applicability of such exception(s).

**Specified Purpose** means the disclosure of information by ERS to the Other Party in relation to its electronic journal publication and/or any research or funding proposals provided by ERS to the Other Party.

#### 1. Obligation of confidentiality

In consideration of being given access to the Discloser's Confidential Information and the mutual promises contained in this Agreement, the Recipient agrees that it

will keep and will ensure that its employees, contractors and agents keep confidential the Discloser's Confidential Information provided that the Recipient will only permit any of its employees, contractors or agents to have any of the Discloser's Confidential Information where that is necessary for the carrying out by the Recipient of its part of the Specified Purpose.

#### 2. Non-Disclosure and use

Subject to the terms of this Agreement, the Recipient must not and will ensure that its employees, contractors or agents do not disclose any of the Confidential Information of the Discloser to any other person without the consent of the Discloser; or use all or any of the Confidential Information of the Discloser otherwise than for the Specified Purpose.

The Recipient must immediately notify the Discloser of any unauthorised disclosure, misuse or misappropriation of the Discloser's Confidential Information of which the Recipient may be or may become aware and the Recipient will take all steps which the Discloser may require in relation to such unauthorised disclosure, misuse or misappropriation.

#### 3. Recipient's control of Confidential Information

The Recipient's obligation of non-disclosure under this Agreement includes keeping the Confidential Information out of any computer, database or other electronic means of data or information storage except for a computer, database or other electronic means of data or electronic storage controlled by the Recipient where the Recipient is satisfied that the Confidential Information will not be disclosed except in accordance with the terms of this Agreement.

#### 4. Recipient to advise of misuse

The Recipient must immediately notify the Discloser of any unauthorised disclosure, misuse or misappropriation of the Discloser's Confidential Information of which the Recipient may be or may become aware and the Recipient will take all steps that the Discloser may require in relation to such unauthorised disclosure, misuse or misappropriation.

#### 5. Uncertainty

If the Recipient is uncertain as to whether any information is the Discloser's Confidential Information, the Recipient will treat the information as if it were the Discloser's Confidential Information.

#### 6. Precautions

The Recipient will take all necessary precautions to maintain the confidentiality of and to prevent the disclosure or use of the Discloser's Confidential Information except as expressly authorised by this Agreement.

#### 7. No representation

Neither this Agreement nor the provision of any of the Discloser's Confidential Information to the Recipient constitutes any representation, warranty as to accuracy, completeness, suitability or fitness for any purpose, guarantee or inducement by the Discloser to the Recipient in any way. In all respects, the Recipient relies on its own

skill, inquiries and assessments with respect to the Specified Purpose and any business arrangements between the parties including any investment resulting from the Specified Purpose.

#### **8. No obligation to disclose**

Nothing in this Agreement obliges the Discloser to disclose its Confidential Information to the Recipient. Any disclosure by the Discloser of its Confidential Information will be in its sole discretion. The Discloser expressly does not warrant or represent that the Confidential Information it discloses is complete or accurate or that it does not infringe any third party intellectual property rights and the Recipient acknowledges that the Discloser gives no such warranty or representation. The Recipient must make its own checks, analysis and verification of any Confidential Information received from the Discloser.

#### **9. Return of Confidential Information**

All Confidential Information (including all copies and translations thereof and whether provided by the Discloser or originated, developed, acquired or copied by the Recipient) remains the property of the Discloser and must be returned to the Discloser by the Recipient (or, at the request of the Discloser, must be destroyed by the Recipient) immediately upon the parties' completion or termination of the discussions or immediately upon request by the Discloser.

#### **10. Intellectual Property Rights**

Each party acknowledges that a party is, at the date of this Agreement and at all later times the owner of all intellectual property rights owned by it prior to this Agreement or which are created or brought into existence by it or its workers, contractors or agents in the course of or in connection with the carrying out of the Specified Purpose. Nothing in this Agreement confers on a party any ownership rights in Confidential Information belonging to the other party.

#### **11. Remedy**

The Recipient acknowledges and accepts that the Discloser would suffer financial and other loss and damage if the Discloser's Confidential Information were disclosed to any other person or used for any purpose other than the Specified Purpose and that monetary damages would be an insufficient remedy, and that, in addition to any other remedy which may be available at law or in equity, the Discloser is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

The Recipient will immediately reimburse the Discloser for all costs incurred in enforcing the obligations of the Recipient under this Agreement.

The Recipient indemnifies the Discloser against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Discloser as a result of any breach of this Agreement by the Recipient. This extends to and includes all costs, damages and expenses incurred by the Discloser in defending and, or settling any such actions, suits, proceedings, claims or demands.

#### **12. General**

This Agreement is governed by the laws of the State of South Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of South Australia.

A variation of this Agreement will be in writing and signed by the parties.

The Recipient's obligations under this Agreement are continuing obligations which survive the termination of this Agreement.

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

The parties will pay their own costs in respect of the negotiation, preparation and execution of this Agreement. A party that breaches this Agreement will pay all claims incurred by the other party in consequence of that breach but without limit to any other rights or remedies which the party not in breach may have as a result of that breach.

**EXECUTED** by **ENGINE ROOM SOLUTIONS PTY LTD**  
**ACN 632 921 003** in accordance with Section 127(1) of  
the Corporations Act 2001:

Director

Print Full Name:

\*Director/\*Secretary

Print Full Name:

(\*delete the inapplicable title)

**EXECUTED** by a duly authorised representative for the  
**OTHER PARTY:**

Signature of Authorised Representative

Print Full Name:

In the presence of:

Signature of Witness

Print Full Name: