



Mutual Confidentiality Agreement

Innovative Solutions Oceania Pty Ltd, ACN 112 311 029
(ISOceania Pty Ltd)

- and -

[COMPANY LONG NAME & ACN]
([COMPANY SHORT NAME])

MUTUAL CONFIDENTIALITY AGREEMENT

Date:

1. **Innovative Solutions Oceania Pty Ltd**, ACN 112 311 029, with offices at level 29 Chifley Tower, 2 Chifley Square, Sydney NSW, Australia (**ISOceania Pty Ltd**) and
2. **[COMPANY LONG NAME & ACN]**, with offices at **([COMPANY SHORT NAME])**

Recitals:

Whereas,

- A. ISOceania Pty Ltd and [COMPANY SHORT NAME] each has in its possession information including plans, analyses, systems, development manuals, data, ideas, concepts, formats, trade secrets, practices, procedures, product pricing, know-how and other information of a confidential nature relating, directly or indirectly, to its business and affairs.
- B. ISOceania Pty Ltd and [COMPANY SHORT NAME] intend to enter into discussions and negotiations regarding the development of a collaborative relationship. In order for such discussions and negotiations to take place, ISOceania Pty Ltd requires access to certain Confidential Information belonging to [COMPANY SHORT NAME] and [COMPANY SHORT NAME] requires access to certain Confidential Information belonging to ISOceania Pty Ltd (the "Permitted Purpose").
- C. Each Party has agreed to enter into this Agreement so that it is assured that the other party will not divulge or disclose without authorisation to any person any matter or thing in respect to or arising out of the Permitted Purpose or the Confidential Information acquired or obtained as described above.

Operative provisions:

Headings are for convenience only and do not affect the interpretation of this Agreement.

1 Definitions

- 1.1 **Agreement** means this Mutual Confidentiality Agreement;
- 1.2 **Confidential Information** means:
 - (a) all Information which is disclosed by either ISOceania Pty Ltd or [COMPANY SHORT NAME] (as the case may be, the "Disclosing Party") to the other party (as the case may be, the "Recipient") in relation to the Permitted Purpose, including (but not limited to) any proprietary intellectual property, proprietary computer software, proprietary product development, computational methodologies and decisional analysis, facilities costs, operations and maintenance costs, Information on operational strategies, Information supporting negotiating strategies, and other financial, technical or commercial Information relating to the Disclosing Party but not including any Information provided before the date of this Agreement;
 - (b) all Information which the Disclosing Party or any of its Representatives disclose to the Recipient relating to the business of the Disclosing Party whether by way of oral explanation, or by making available files, company records, contracts, books of accounts, or other Information connected with the business or affairs of the Disclosing Party;

- (c) the existence of the Permitted Purpose and the fact that the Recipient Party will receive or has received Confidential Information or that the Disclosing Party has disclosed or will disclose Confidential Information; and
- (d) any copies of any of the Information described above or any material derived from that Information,

but does not include any Information which clearly:

- (e) at the time of disclosure to the Recipient is generally available to, and known by, the public (other than as a result of a disclosure directly or indirectly by the Recipient or its representatives); or
- (f) was available to, and legally and properly obtained by, the Recipient on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided that such source was not bound by a confidentiality agreement with the Disclosing Party; or
- (g) has been independently acquired or developed by the Recipient without violating any of its obligations under this Agreement or by law and without the use of any Confidential Information.

- 1.3 **Disclosing Party** means a party to this Agreement by or on behalf of whom Confidential Information is supplied or made available to the other party to this Agreement or its representatives;
- 1.4 **Information** means any information embodied in documentation, memoranda, correspondence, material, advice, opinions and any copies or duplicates thereof or any part thereof in any form (whether in writing, in electronic form, or supplied or made available orally or by observation);
- 1.5 **Permitted Purpose** means the purpose as defined in paragraph B of the Recitals;
- 1.6 **Recipient** means:
 - (a) where ISOceania Pty Ltd is the Disclosing Party – [COMPANY SHORT NAME]; and
 - (b) where [COMPANY SHORT NAME] is the Disclosing Party – ISOceania Pty Ltd.
- 1.7 **Related Body Corporate** has the meaning given to that term in the Corporations Act 2001 (Cwlth);
- 1.8 **Representative** means, in relation to either of the parties, a director, officer, employee, agent, consultant or professional adviser of or representing the party or any of its Related Bodies Corporate.

2 Obligation to keep confidential

The Recipient irrevocably agrees as follows:

Confidential Information to Remain Confidential

- 2.1 The Recipient shall at all times treat all Confidential Information as confidential and undertakes that it will not, except as provided for in clause 3, disclose any Confidential Information to any person whatsoever nor use any Confidential Information for any purpose other than the Permitted Purpose, without the prior written consent of the Disclosing Party.

Confidential Information remains property of Disclosing Party

- 2.2 The Confidential Information supplied by the Disclosing Party to the Recipient shall be and shall remain at all times the property of the Disclosing Party.

No Copies to be made

- 2.3 The Recipient shall not, except as necessary for the Permitted Purpose, copy or store any Confidential Information without the prior written consent of the Disclosing Party.

Similar Covenants from Third Party

- 2.4 Should the Recipient require that any Confidential Information be disclosed to any other person otherwise than as provided in clause 3, the Recipient must, prior to such disclosure, obtain written consent to such disclosure from the Disclosing Party and provide the Disclosing Party with a confidentiality agreement in a form satisfactory in all respects to the Disclosing Party at its reasonable discretion, duly executed by the person to whom the Confidential Information is to be disclosed.

Return of Confidential Information

- 2.5 The Recipient shall, upon demand by the Disclosing Party, either return to such persons as the Disclosing Party may direct or destroy, at the option of the Disclosing Party, all the Confidential Information (including copies thereof) in the possession or control of the Recipient or its Representatives. Upon the return or destruction (as the case may be) of all such Confidential Information, the Recipient shall provide the Disclosing Party with a certificate from an authorised officer of the Recipient stating that the Confidential Information returned or destroyed comprises all the Confidential Information in the possession or control of the Recipient.

3 Use of Confidential Information

- 3.1 Each party to this Agreement hereby irrevocably undertakes and covenants that as the Recipient at all times it will:
- (a) Not disclose except as is necessary for the Permitted Purpose, or distribute or permit to be communicated verbally or in writing, directly or indirectly, the Confidential Information (or any copies thereof) to any third party at any time except:
 - (i) to its Representatives; or
 - (ii) as provided in and permitted by this Agreement; or
 - (iii) as required by law.
 - (b) Be responsible for maintaining the confidentiality of the Confidential Information and ensure that none of its Representatives disclose, store, reproduce or copy any of the Confidential Information, other than as is necessary for the Permitted Purpose;
 - (c) Subject to the terms of this Agreement, confine the disclosure of the Confidential Information to those of its Representatives as shall be necessary for the Permitted Purpose and will ensure that those persons observe secrecy and confidentiality in relation to the Confidential Information in terms of this Agreement; and
 - (d) Be wholly responsible for the acts and omissions of its Representatives in respect of any Confidential Information disclosed to them.
- 3.2 If the Recipient is required, or anticipates or has cause to anticipate, that it may be required by law or court order to disclose Confidential Information, it must immediately notify the Disclosing Party of the actual or anticipated requirement and, to the fullest extent consistent with law, withhold disclosure until the Disclosing Party has had a reasonable opportunity to enjoin the Recipient from making such disclosure.

4 Operation of the Agreement

- 4.1 The obligations of confidentiality imposed under this Agreement shall be binding on the parties until such time as all of the Confidential Information has fallen into the public domain otherwise than as a result of any breach of this Agreement.

5 Indemnity

- 5.1 Each Party to this Agreement agrees that as Recipient it will indemnify the Disclosing Party for any actual loss or damage (including all reasonable costs) suffered by the Disclosing Party directly in consequence of any unauthorised disclosure or use of Confidential Information or any breach of the covenants, agreements and undertakings given under this Agreement by the Recipient, or any of its Representatives.

6 Disclaimer

- 6.1 Each of ISOceania Pty Ltd and [COMPANY SHORT NAME] acknowledges that neither the other Party nor its Representatives are making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information and that neither the Disclosing Party nor its Representatives will have any liability to any person resulting from the Recipient's use of the Confidential Information.
- 6.2 Each of ISOceania Pty Ltd and [COMPANY SHORT NAME] acknowledge that the provision of Confidential Information to the Recipient will not constitute any representation, warranty or undertaking, express or implied, that the Confidential Information is correct or that there has been no change in the affairs of the Disclosing Party either before or after the date of the provision of the Confidential Information to the Recipient. Each of ISOceania Pty Ltd and [COMPANY SHORT NAME] agrees that it must make its own assessment of the Confidential Information and satisfy itself as to the accuracy and completeness of the Confidential Information.

7 Miscellaneous

Amendment

- 7.1 This Agreement may not be amended except in writing signed by a duly authorised Representative of each Party.

Waiver

- 7.2 No right under this Agreement must be taken to be waived except by notice in writing signed by the party entitled to waive such right. A waiver by a party under this clause shall not prejudice its rights in respect of any subsequent breach of this Agreement by the other Party.
- 7.3 Any failure by a party to enforce any part of this Agreement, or any forbearance, delay or indulgence granted by the party, must not be construed as a waiver of the Party's rights under this Agreement.

Applicable Law and Jurisdiction

- 7.4 The law in force in the State of New South Wales governs this Agreement and the transactions contemplated therein. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and Courts of Appeal from them for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

Further Assurances

- 7.5 Each Party will do all such things and sign and execute all such documents as may be reasonably required by the other party to effectively carry out and give effect to, the terms of this Agreement.

Severability

- 7.6 In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

Subsequent Rights

7.7 The failure of any Party to enforce any provision of this Agreement on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

Execution page

SIGNED for and on behalf of
Innovative Solutions Oceania Pty Ltd
by its duly authorised representative in
the presence of:

.....
Signature

Luke Berry

.....
Signature of (block letters)

Director

.....
Position

SIGNED for and on behalf of
[COMPANY SHORT NAME] by its duly
authorised representative in the
presence of:

.....
Signature

.....
Signature of (block letters)

.....
Position



Mutual Confidentiality Agreement

Innovative Solutions Oceania Pty Ltd, ACN 112 311 029
(ISOceania Pty Ltd)

- and -

[COMPANY LONG NAME & ACN]
([COMPANY SHORT NAME])