

## BILATERAL CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made between the Parties referred to below:

LX Design House Pty Ltd ABN 94 146 038 306 ("LX") of Suite 101, National Innovation Centre, 4 Cornwallis Street, Eveleigh NSW 2015; and

Name of other Party: \_\_\_\_\_ ("Company")

ABN: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Background. LX and the Company wish to have discussions and exchange information. In order to ensure that these discussions and the information exchanged in relation to them remains confidential, each of the Parties agrees to the provisions set out on the following pages and acknowledges receipt of a copy of this Agreement.

The Parties wish to exchange and use the Confidential Information solely for the Permitted Purpose and activities to do with the Permitted Purpose.

The "Permitted Purpose" is:

\_\_\_\_\_

### Definitions

**"Affiliate"** means, with respect to a Recipient: (a) any entity which is related to a Recipient within the meaning of section 50 of the Corporations Act or is in any economic entity (as defined in any approved accounting standard) which contains the Recipient; (b) any person who is an associate (as that term is defined in section 11 of the Corporations Act) of any entity referred to in paragraph (a) above; or (c) any partnership, body corporate or trust in which any of the persons referred to in paragraph (b) above, or any relative of any such person, has or together have, a controlling interest; **"Confidential Information"** means, without limitation, (a) all information which is disclosed whether before or after the date of this Agreement to a Party or a Related Person of a Party by or on behalf of a Party, or which is otherwise acquired directly or indirectly by a Party or a Related Person of a Party from the other Party or any director, officer, employee, related body corporate or adviser of a Party; (b) relates to a Party or its past, existing or future business, operations or strategic plans; and (c) is in oral, visual or written form (including without limitation any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, patent application or other material or any other means by which information may be stored or reproduced) and includes without limitation all Intellectual Property, trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to the Permitted Purpose and/or the business of the Discloser and relating to technical, business, financial, and other data generally considered by a Party to be proprietary or confidential. Confidential Information may not be marked as such and shall still be considered Confidential Information so long as it is identified or designated as confidential at the time of disclosure (or like designation), or is disclosed in circumstances of confidence, or would be understood by the Parties exercising reasonable business judgment to be confidential, including information viewed or learned by a Party during a visit to the other Party's facilities; **"Director"** means the director of a Party; **"Discloser"** means the Party disclosing Confidential Information; **"Intellectual Property"** means any patents, rights to inventions, registered designs, copyright and related rights,

database rights, design rights, topography rights, trade marks, service marks, trade names and domain names, trade secrets, rights in non-patented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; "Recipient" means the Party receiving Confidential Information; "Related Person" means - subject to any restriction contained in the Permitted Purpose - a director, officer, or employee of a Recipient, or a legal or accounting adviser of the Recipient.

1. Use and Protection of Confidential Information. The Parties acknowledge that the Confidential Information:
  - (a) is disclosed by Discloser to Recipient at Discloser's sole discretion;
  - (b) is the exclusive property of Discloser;
  - (c) shall not be used in any way by Recipient other than for the Permitted Purpose;
  - (d) shall be kept confidential by Recipient by taking measures at least equal to those which a reasonable person would take to protect commercially sensitive or confidential information;
  - (e) shall not be disclosed directly or indirectly to any third person or third party, and shall be not be used, leased, sold or otherwise disposed of for the benefit of any person or Party other than the Discloser;
  - (f) shall not be reverse assembled, reverse compiled, or otherwise reverse engineered, in whole or in part, particularly when samples (in hard or soft form) are comprised in the Confidential Information;
  - (g) may be disclosed to:
    - (i) Related Persons on a strictly need-to-know basis with respect to the Permitted Purpose, provided that Related Persons are bound by a written confidentiality obligations at least equivalent to those established by this Agreement; and
    - (ii) Affiliates, provided that the Recipient first obtains the explicit written permission of the Discloser;
  - (h) may only be copied and/or reproduced as strictly necessary for the Permitted Purpose and always containing a reference to Discloser's ownership rights and copyright, and the confidential nature thereof.

In addition, Recipient shall not disclose to any third persons or third parties the fact that discussions are taking place concerning the Permitted Purpose or any terms, conditions or other facts with respect to the Permitted Purpose including the status thereof.

Recipient commits to cease use of all Confidential Information and promptly return all Confidential Information received from Discloser (as well as any and all information in whatever form generated on the basis or by making use of or reflecting the Confidential Information) or destroy and/or erase (and certify in writing by a Director or an officer) any and all copies it may have made thereof, within thirty (30) days of either (i) the written request of a Director, or (ii) termination or expiration of this Agreement.

2. Term. Except as otherwise agreed in writing between the parties with respect to any particular Confidential Information, the obligations of the Parties under this Agreement will continue (a) indefinitely in relation to Intellectual Property; and (b) for five years beyond the date of signing of this Agreement in relation to all other Confidential Information.
3. Exceptions. The obligation of confidentiality shall not apply to any information that:
  - (a) is or becomes generally available to the public or is in the public domain other than as a result of a breach of this Agreement;
  - (b) was known by Recipient prior to its disclosure by Discloser as proven by its written records; or
  - (c) becomes available to Recipient on a non-confidential basis from a source other than Discloser provided such source is not knowingly bound by a confidentiality agreement with Discloser; or
  - (d) is developed independently by Recipient without access to Discloser's Confidential Information, as evidenced by appropriate written documentation; or

- (e) is or becomes available to Recipient by casual observance or analysis of products in the market; or
- (f) is required to be disclosed pursuant to judicial order, lawful requirement of an administrative or governmental agency or by operation of law, but then only to the extent so ordered; in such case, Recipient shall use its best efforts to advise Discloser at the earliest possible time prior to or immediately after disclosure is over to give Discloser sufficient time to respond to such order or to seek protective order or any other appropriate remedy. On such disclosure, Recipient shall use its best efforts to obtain confidential treatment of the Confidential Information.

If only a portion of any Confidential Information falls within one or more of the foregoing exceptions, the remainder shall however, continue to be subject to the prohibitions and restrictions set out in this Agreement.

4. **Relevance – Ownership – No License.** Discloser warrants that it has the right to disclose the Confidential Information. Although Discloser shall endeavour to include in the Confidential Information data known to it which it believes to be relevant for the Permitted Purpose, Discloser makes no representation, warranty, assurance, guarantee or inducement of any kind and, in particular with respect to (i) the accuracy or completeness of the Confidential Information or (ii) the fitness for any particular purpose or any use or (iii) the non infringement of any intellectual property rights, or other rights of third persons or (iv) the intention to purchase or market products or services or to enter into any other business arrangement. Confidential Information is provided “as is”.

Confidential Information is and shall remain the exclusive property of Discloser. Recipient acquires no intellectual property rights from Discloser under this Agreement and no right or license to any trademark, patent, copyright, mask work protection right either expressly or by implication by this Agreement or any disclosure hereunder, including, but not limited to, any right to make, use or sell any product embodying any information. Discloser retains all rights in the Confidential Information.

5. **Governing Law.** This Agreement shall be construed according to the substantive laws of Australia, without regard to its conflict of law provisions. Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Discloser irreparable harm, the amount of which may be difficult to ascertain and therefore not be fully remedied by monetary damages. So, Recipient therefore agrees that Discloser shall have the right to apply to a court of competent jurisdiction for an order restraining and enjoining any such further disclosure or misappropriation and for such other equitable relief as Discloser shall deem appropriate. Such right of Discloser is in addition to the remedies otherwise available to Discloser at law or equity.
6. **General Provisions.** This Agreement is not assignable by a Party without the express written consent of the other Party and without a written Deed of Assignment between the Party and the assignee. This Agreement states the entire agreement between the Parties as to its subject matter. Any modifications to this Agreement must be made in writing and must be signed by an authorised representative of both Parties. If any portion of this Agreement is determined to be invalid or unenforceable, the remainder will continue to be in effect. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or other provision. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument. This Agreement may be executed or delivered by email (PDF) or fax versions.

Recipient warrants that it shall not, without the prior written consent of all of the appropriate governmental or regulatory bodies, transmit directly or indirectly, any Confidential Information, or any immediate product (including processes and services) produced directly by the use of such Confidential Information, to any location to which the transmission is prohibited by any applicable export or import laws or regulations.

This Agreement neither establishes any commercial arrangement or agreement with the other Party nor obligates either Party to enter into any commercial arrangement or agreement; nor construes that a partnership, joint venture, agency or other such relationship between the Parties exists or is intended to exist.

Recipient acknowledges that it shall not use the Confidential Information in a manner which would be directly competitive to Discloser or which would inhibit Discloser from independently pursuing its intended business. Subject to the foregoing, this Agreement shall neither prevent nor limit Recipient from pursuing independent business goals which may be construed as competitive to Discloser.

EXECUTED on \_\_\_\_\_

Executed by the Company,

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Signature

.....  
Witness Signature

.....  
Full name

.....  
Full name

.....  
Title

Executed by the LX Design House Pty Ltd,

.....  
Signature

.....  
Witness Signature

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Full name

.....  
Full name

.....  
Title