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| **Confidentiality deed – two way** | |
| **Ashurst contact** | **Steve Smith**  Partner  T: 02 9258 6182  E: [steve.smith@ashurst.com](mailto:steve.smith@ashurst.com) |

**THIS DEED** is made on [year]

BETWEEN:

1. **[Name of Party]** **Alt[**ABN/ACN/ARBN**]** [number] **Opt[**whose registered office is at [address]**]** (the **[party's label]**); and
2. **[Name of Party]** **Alt[**ABN/ACN/ARBN**]** [number] **Opt[**whose registered office is at [address]**]** (the **[party's label]**).

RECITALS:

1. The parties have or expect to disclose certain confidential information to each other for the purpose of **Edt[**the Proposal**]**.
2. Each party agrees to restrict its use and disclosure of the other party's confidential information on the terms of this document.
3. **Opt[**Each party acknowledges that it is entering into this agreement for valuable consideration, being **Edt[**the supply of confidential information and consideration of the Proposal by the other party**]**.**]**

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation
   1. Definitions

The following definitions apply in this document.

1. Confidential Information of a party (the **Discloser**) means information, other than Excluded Information, that relates to **Edt[**the Discloser or to the business, assets or affairs of the Discloser**]** and is made available by or on behalf of the Discloser to the other party (the **Recipient**), or is otherwise obtained by or on behalf of the Recipient. Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document. Confidential Information includes:
   1. information concerning the existence and terms of this document;
   2. the fact that the parties have been in discussions concerning **Edt[**the Proposal**]**; and
   3. information which is derived or produced wholly or partly from the Discloser's Confidential Information by or on behalf of the Recipient or any person to whom it has given access to the Discloser's Confidential Information, for example, an analysis, note, calculation, report, conclusion or summary; and
   4. a record (including a copy) in any form or medium (whether or not visible) containing, referring to or based on any of the Discloser's Confidential Information which is made by or on behalf of the Recipient or any person to whom it has given access to the Discloser's Confidential Information.
2. **Excluded Information** means information that:
   1. is in or enters the public domain other than through a breach of an obligation of confidence owed to the Discloser;
   2. is or was made available to the Recipient by a person (other than the Discloser) who is not or was not then under an obligation of confidence to the Discloser in relation to that information; or
   3. is or was developed by the Recipient without the Recipient relying on, referring to or incorporating any of the Discloser's Confidential Information.
3. **Permitted Purpose** means **Edt[**assessing whether or not the Recipient wishes to proceed with the Proposal**]**.
4. **Proposal** means [insert].
5. confidentiality obligations

The Recipient must:

* + 1. not access, use or reproduce the Discloser's Confidential Information for any purpose other than the Permitted Purpose, nor assist or permit any other person to do so;
    2. not disclose any of the Discloser's Confidential Information except as permitted under this document;
    3. ensure that the Discloser's Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration; and
    4. comply with the Privacy Act and the National Privacy Principles in respect of any of the Discloser's Confidential Information that is personal information (as defined in the Privacy Act 1988 (Cth).

1. permitted disclosures
   1. Permitted disclosures to authorised personnel and advisers
      1. The Recipient may disclose the Discloser's Confidential Information to any of its officers, employees, agents, contractors, or legal, financial or other professional advisers who need to know that Confidential Information for the Permitted Purpose (**Authorised Representatives**) to the extent necessary for such persons to perform their duties.
      2. Prior to any disclosure of the Discloser's Confidential Information to an Authorised Representative, the Recipient must inform the Authorised Representative of the confidential nature of that Confidential Information and of the Recipient's obligations in relation to it under this document and ensure that the Authorised Representative agrees to comply with those obligations.
      3. If requested by the Discloser, the Recipient must arrange for one or more of the Recipient's Authorised Representatives who have, or are intended to have access to the Discloser's Confidential Information to sign a confidentiality undertaking in terms similar to this deed or otherwise in a form approved by the Discloser.
      4. The Recipient must keep a written record of all disclosures made to Authorised Representatives.
   2. Disclosures required by law
      1. Subject to paragraph (b), the Recipient may disclose Discloser's Confidential Information that the Recipient is required to disclose by law or by order of any court or tribunal of competent jurisdiction, or by any Government Agency, stock exchange or other regulatory body.
      2. If the Recipient is required to make a disclosure under paragraph (a), the Recipient must:
         1. to the extent possible, notify the Discloser immediately it anticipates that it may be required to disclose any of the Discloser's Confidential Information;
         2. consult with and follow any reasonable directions from the Discloser to minimise disclosure; and
         3. if disclosure cannot be avoided, only disclose Discloser's Confidential Information to the extent necessary to comply, and use reasonable efforts to ensure that any of the Discloser's Confidential Information disclosed is kept confidential.
2. Recipient's return or destruction of documents

On written request by the Discloser the Recipient must immediately:

* + 1. deliver to the Discloser all documents and other materials containing, recording or referring to the Discloser's Confidential Information; and
    2. erase or destroy in another way all electronic and other intangible records containing, recording or referring to the Discloser's Confidential Information,

which are in the possession, power or control of the Recipient or of any person to whom the Recipient has given access.

1. acknowledgements, disclaimers and other matters
   * 1. The terms of this document continue to apply to the parties despite the completion or termination of any discussions relating to the **Edt[**Proposal**]**, or despite the Recipient's return or destruction of all records of the Discloser's Confidential Information.
     2. The Recipient acknowledges that the Discloser has made no representation or warranty that its Confidential Information is accurate, complete, up to date or fit for any particular purpose.
     3. Nothing in this document shall be construed as granting or conferring on the Recipient any proprietary rights, licences or other rights in the Discloser's Confidential Information, other than the rights expressly granted under this document.
2. general
   * 1. (**governing law**) This document is governed by the laws of [state/territory/country]. Each party submits to the non exclusive jurisdiction of the courts of [state/territory/country], and any court that may hear appeals from any of those courts, for any proceedings in connection with this document. Each party irrevocably waives:
        1. any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
        2. any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.
     2. (**election and waiver**) The exercise of a right does not prevent any further exercise of that right or of any other right. Neither the exercise of a right nor a delay in the exercise of a right operates as an election or variation of the terms of this document.
     3. (**rights cumulative**) Any right that a party has under this document is in addition to, and does not replace or limit, any other right that the party has under general law.
     4. (**information**) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

**EXECUTED** as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**[**Insert the appropriate execution clause.**]**