**Confidentiality Agreement (Mutual)**

**{$USR\_Business}**

**AND**

**{$PT2\_Business}**

This Confidentiality Agreement (Mutual) (Agreement) between the parties named at the end of this document, is effective as of the Effective Date identified at the end of the Agreement. In consideration of the mutual obligations and other provisions of this Agreement, the parties agree to the following terms and conditions:

# **Scope of Confidential Information**.

## **Confidential Information** means, subject to the exceptions set out in clause 1.2, any information that is disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**), that: (a) the Disclosing Party has marked as confidential or proprietary; or (b) that a reasonable person would consider confidential given its nature; provided that reports and/or information related to or regarding the Disclosing Party’s business plans, business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not marked or identified as confidential, unless such information is the subject of any of the exceptions described in clause 1.2.

## Confidential Information does not include any information that: (a) the Receiving Party can prove was in its possession prior to disclosure by the Disclosing Party to the Receiving Party, provided that the Receiving Party promptly notifies the Disclosing Party of any prior knowledge in accordance with clause 7 below; (b) appears in issued patents or printed publications, or which otherwise is or becomes publicly known other than through a breach of any obligation of confidence; or (c) after disclosure to the Receiving Party by the Disclosing Party, is obtained by the Receiving Party from a third person who is lawfully in possession of such information, and who is not in violation of any obligation of confidence to the Disclosing Party in making such disclosure to the Receiving Party and does not require the Receiving Party to refrain from disclosing such information to others.

# **Use and Disclosure of Confidential Information**.

## The Receiving Party may only use the Confidential Information for the purpose of evaluating a potential business relationship between the Receiving Party and the Disclosing Party, or for such purposes as may be more specifically described at the end of this Agreement (**Permitted Purpose**). The Receiving Party must keep secret and never disclose, publish, divulge, provide to or make accessible to anyone, any of the Confidential Information of the Disclosing Party other than disclosure of such Confidential Information to the Receiving Party’s employees or advisors who are required to have access to such Confidential Information in connection with the Permitted Purpose; provided that such employees are bound, by written agreement or otherwise, to respect the Confidential Information in the manner prescribed by this Agreement.

## The Receiving Party must not incorporate any of the Confidential Information of the Disclosing Party in any of the Receiving Party’s products, processes or services, or duplicate or exploit any of the Confidential Information in the Receiving Party’s business, or otherwise use any of the Confidential Information for any purpose other than the Permitted Purpose.

## The Receiving Party must take reasonable care and adequate measures to protect the security of the Confidential Information of the Disclosing Party and ensure that any Confidential Information of the Disclosing Party is not disclosed or otherwise made available to other persons or used in breach of this Agreement.

## In the event that the Receiving Party is required by law to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party must first give prior written notice of such legal requirement to the Disclosing Party, in order to enable the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information. The Receiving Party must also provide full cooperation and assistance to the Disclosing Party in seeking to obtain that protection.

# **Rights and Limitations**.

## The provision of Confidential Information under this Agreement will not transfer any right, title or interest in that information to the Receiving Party. The Disclosing Party does not grant any express or implied right to the Receiving Party to, or under, the Disclosing Party’s patents, copyrights, trademarks, trade secret information or other proprietary rights. This Agreement does not give rise to any obligation on either party to supply or purchase services or products to or from the other.

## All tangible embodiments of the Confidential Information of the Disclosing Party, and all copies thereof, whether in hard-copy or machine-readable form and whether supplied by the Disclosing Party or made by or for the Receiving Party (collectively, the **Tangible Embodiments**), will at all times be and remain the property of the Disclosing Party.

# **Remedies**. The Receiving Party acknowledges that a breach by it of any of the terms of this Agreement would cause irreparable harm to the Disclosing Party for which the Disclosing Party could not be adequately compensated by monetary damages. Accordingly, the Receiving Party agrees that, in addition to all other remedies available to the Disclosing Party in an action at law, in the event of any breach or threatened breach by the Receiving Party of the terms of this Agreement, the Disclosing Party will be entitled to temporary and permanent injunctive relief, including, but not limited to, specific performance of the terms of this Agreement.

# **Indemnity.** The Receiving Party agrees to indemnify and hold the Disclosing Party and its subsidiaries, affiliates, officers, directors and employees (collectively, the Indemnified Parties) harmless from any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, incurred by the Indemnified Parties in connection with any claim arising out of or based upon the Receiving Party's unauthorized use or disclosure of the Confidential Information of the Disclosing Party.

# **No Publicity.** The Receiving Party will not issue any press release or other public statement relating to this Agreement, the Confidential Information of the Disclosing Party, or the business relationship between the parties without the prior written approval of the Disclosing Party.

# **Notice of Independent Knowledge or Breach**. The Receiving Party agrees to notify the Disclosing Party promptly in writing if (a) upon disclosure of Confidential Information by the Disclosing Party, the Receiving Party has prior knowledge of the same; or (b) subsequent to disclosure of any Confidential Information by the Disclosing Party, information is disclosed to the Receiving Party in the manner described in clause 1.2; or (c) the Receiving Party becomes aware of any breach of this Agreement with respect to the Confidential Information of the Disclosing Party in the Receiving Party’s possession.

# **Termination**.

## This Agreement will remain in effect until it is terminated by either party providing at least thirty (30) days’ written notice. The terms and conditions of this Agreement will survive any such termination with respect to Confidential Information that is disclosed prior to the effective date of termination.

## **Return of Confidential Information**. Upon the earlier of: (a) the termination of this Agreement in accordance with its terms; (b) the Disclosing Party’s written request; or (c) such time as the Receiving Party no longer requires the Confidential Information for the Permitted Purpose, the Receiving Party must promptly return to the Disclosing Party or destroy all Confidential Information and any Tangible Embodiments that are in the possession of the Receiving Party and provide evidence, if requested, of the return or destruction of all such Confidential Information and Tangible Embodiments.

# **Warranty**. The Disclosing Party warrants that it has the right to make the disclosures under this Agreement. No other warranty is made by either party under this agreement. Any information exchanged under this agreement is provided “as is.”

# **Miscellaneous**. This Agreement does not create any agency or partnership relationship between the parties. This Agreement shall be governed by and construed in accordance with the laws of the {$REF\_State}, Australia governing such agreements. This Agreement supersedes all prior agreements and understandings whether written or oral, express or implied. If any provision of this Agreement is held void, illegal or unenforceable by a court of competent jurisdiction, such finding shall not affect any other provision of this Agreement, which shall remain in full force and effect. No amendment or alteration of the terms of this Agreement shall be effective unless made in writing and executed by both parties. Any failure or delay in exercising any right under this Agreement will not operate as a waiver of that right or any other right, and a single or partial exercise of any right will not preclude any subsequent or further exercise of that right or the exercise of any other right.

# 

**By signing below** the parties accept and acknowledge the terms of this Agreement, by their duly authorised signatories.

**{$USR\_Name|upper} {$PT2\_Name|upper}**

**{if !empty($USR\_ABN)}ABN {$USR\_ABN|phone\_format:”%2 %3 %3 %3”}{/if} {if !empty($PT2\_ABN)}ABN {$PT2\_ABN|phone\_format:”%2 %3 %3 %3”}{/if}**

Signature: Signature:

**Name:** {$USR\_Signatory\_FN} {$USR\_Signatory\_LN} **Name:** {$PT2\_Signatory\_FN} {$PT2\_Signatory\_LN}

**Role:** {$USR\_Signatory\_Role} **Role:** {$PT2\_Signatory\_Role}

**EFFECTIVE DATE:** {$Eff\_date|date\_format:"d F Y"}.

**PERMITTED PURPOSE** (for the purposes of clause 2):

{$Pmt\_Purpose}

{$DISPLAY\_NAME} {$DISPLAY\_EMAIL} {$Login\_ID}