

THIS **AGREEMENT** is made on the ..... day of .....

BETWEEN:

**RESTECH PTY LTD** (ABN 67 105 592 087) of Building EA214, School of Electrical Engineering & Computer Science, University Drive, Callaghan, NSW, 2308

AND

**Insert Other Party**

WHEREAS:

- A. This agreement is to intended to create a mutually beneficial business relationship between the Parties during the stages of information exchange and provision of services that are required to establish and set the stage for a real and tangible joint business opportunity.
- B. The Parties desire to disclose, on a confidential basis, certain information, process, clients, business contacts and documents considered confidential and/or proprietary by the Parties concerning their respective businesses. The Parties wish to maintain the confidentiality and/or the proprietary nature of the confidential information disclosed.

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

## 1. DEFINITIONS

The following words have these meanings in this Agreement unless the contrary intention appears:

**Confidential Information** means all know-how, financial information and other commercially valuable information in whatever form including intellectual property, or other materials of whatever description and howsoever documented, recorded or disclosed which:

- (a) is by its nature confidential;
- (b) is designated by the relevant Party as confidential;
- (c) the recipient knows or ought to know is confidential; and
- (d) over which the relevant Party has full control.

and includes any embodiments, expressions, derivatives, modifications, developments and enhancements of the Confidential Information.

**Schedule** means a Schedule to this Agreement.

**Term** means the term of this Agreement as described in clause 4.

## 2. INTERPRETATION

In this Agreement, unless the contrary intention appears:

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- (a) a reference to a document includes but is not limited to any computer programme, circuit, circuit layout, drawing, specification, material, record and any other means by which the intellectual property may be stored or reproduced, and
- (b) a reference to any information includes any part of that information, and
- (c) a reference to a statute or regulation includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it; and
- (d) unless the context requires otherwise, words importing:
  - (i) the singular include the plural and vice versa, and
  - (ii) any gender includes the other genders, and
- (e) a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Agreement; and
- (f) a reference to a clause includes a sub-clause of that clause; and
- (g) headings are for the purpose of convenient reference only and do not affect the interpretation of this Agreement; and
- (h) where a word or phrase is given a particular meaning other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (i) the words "includes" and "including" will not be construed as words of limitation; and
- (j) where a term is defined, other grammatical forms of that term will be similarly construed; and
- (k) a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision.

### **3. CONFIDENTIALITY**

#### **3.1 Confidential Information**

The Parties agree that Confidential Information disclosed orally or in writing or made available by any Party ("Disclosing Party") to another Party ("Recipient"), under or in connection with this Agreement including, but not limited to, information acquired from employees; trade secrets; strategic plans; invention plans and disclosures; customer information; suppliers; software; distribution channels; marketing studies; intellectual property; information relating to process and products, designs, business plans, business opportunities, marketing plans, finances, research, development, know-how or personnel; confidential information originally received from third parties; information relating to any type of technology, and all other material whether written or oral, tangible or intangible, shall be treated as confidential and will not, without the prior written consent of the other Party, disclose or permit the same to be disclosed to any third party. Further, each Party shall ensure that its employees, officers and agents comply with the obligations of confidentiality imposed upon it by this clause.

#### **3.2 Disclosure of Information**

The disclosing party may disclose to the receiving party so much of its information including, Confidential Information, as the disclosing party, in its sole discretion considers is necessary for the purpose of this Agreement.

### **3.3 Information Disclosed Prior to Agreement**

The parties agree that any Confidential Information disclosed prior to the execution of this Agreement was intended to be and shall be subject to the terms and conditions of this Agreement.

### **3.4 Ownership of Confidential Information**

All Confidential Information, and all material items delivered by the Disclosing Party to the Recipient, remains the property of the Disclosing Party and no license or other rights in the Confidential Information are granted to the Recipient by this Agreement or by the act of disclosure. No rights, obligations, representations or terms other than those expressly set forth herein are to be implied from this Agreement. In particular, without limitation, no license is hereby granted directly or indirectly to any Party or their respective employees: (a) under any patent, trademark, trade secrets or copyright; or (b) to use the other Party's name, trade names, trademarks, service marks, logos or designs for any purpose; without the other Party's prior written permission.

### **3.5 Recipient's Obligations**

The parties expressly agree that the Recipient shall not use Confidential Information in the development of any products or services for its own account or for the account of a third party unless expressly agreed to by the Disclosing Party in writing. Further, the Parties agree not to use the Confidential Information for purposes other than that necessary to consider the possibility of entering into a business relationship or transaction between the Parties. The Recipient shall protect the Confidential Information by using the same degree of care, but no less than reasonable care, to prevent the unauthorised use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own Confidential Information. The Recipient shall limit its internal disclosure of the Confidential Information to only those employees and agents who have a need to know the information for the limited purpose of the proposed business relationship between the Parties. The Parties agree that they will each direct their respective employees and agents to maintain the confidentiality of the Confidential Information.

The obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Recipient, nor by the rejection of any agreement between the Disclosing Party and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession or the equivalent of any of the foregoing under local law.

### **3.6 Continuing Obligation**

The obligations in this clause are a continuing obligation, separate and independent from the other obligations of the Parties and survive termination of this Agreement.

## **4. EXCEPTIONS**

The obligations of confidentiality in this Agreement shall not apply in respect of the Confidential Information where:

- (a) a Party is required to disclose by an applicable law or legally binding order of any court, government, semi-government, authority, tribunal, agency or entity acting within its powers, and the recipient has:
  - (i) given the sufficient notice to the other Party to enable it to seek a protective order or other relief from disclosure; and
  - (ii) provided all assistance & co-operation which the other Party reasonably considers necessary for that purpose;
- (b) the Confidential Information is in the public domain other than as a result of a breach of this Agreement, or any other unauthorised disclosure by the recipient Party or its representatives;

- (c) the disclosure is required in order to enforce the terms of this Agreement;
- (d) the Confidential Information becomes available to the recipient Party from a third party lawfully in possession of such Confidential Information and who has the lawful power to disclose such Confidential Information.
- (e) was acquired by the receiving party before receiving such information from the disclosing party and without restriction as to use or disclosure;
- (f) is information which the receiving party can document was independently developed by the receiving party;
- (g) is disclosed with the prior written consent of the disclosing party.

**5. TERM**

The Parties agree to maintain the confidentiality of the Confidential Information and to prevent its unauthorised dissemination or use for a period of two (2) years from the date of last disclosure by the Disclosing Party or termination of this Agreement, subject to the exceptions enumerated in clause 4 of this Agreement.

**6. TERMINATION**

**6.1 Notice**

Without prejudice to any other rights, either Party may at any time and for any reason terminate this Agreement written notice to the other Party.

**6.2 Return of Materials**

Upon the written request of the Disclosing Party at any time, the Recipient shall return to it (or, at the request of the Disclosing Party, erase or destroy) all materials that contain or embody any Confidential Information of the Disclosing Party, including but not limited to all computer programs, documentation, notes, plans, drawings, and copies thereof. Return or destruction of such material shall not relieve the Recipient of its obligations of confidentiality. Upon the request of the Disclosing Party, the Recipient will certify that it has complied with the provisions of this paragraph.

**7. REMEDY**

The Parties hereby acknowledge that unauthorised disclosure or use of Confidential Information or a breach of this Agreement could cause significant and irreparable harm, which may be difficult to ascertain, and that money damages would be inadequate compensation. Accordingly, the Parties agree that the Disclosing Party shall have the right to seek and obtain injunctive relief from breaches of this Agreement in addition to any other rights and remedies it may have.

**8. NO JOINT AND SEVERAL LIABILITY**

The Parties acknowledge and agree that the obligations and liabilities of the Recipients under this Agreement are several only, and will not be, nor construed to be, either joint or joint and several.

**9. GENERAL**

**9.1 Assignment**

This rights under this Agreement may not be assigned, sub-licenced or otherwise transferred without the prior written consent of the other Party.

## **9.2 Applicable Law**

- (a) This agreement is governed by and must be construed in accordance with the laws of New South Wales.
- (b) Each party:
  - (i.) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from them; and
  - (ii.) waives any right to object to proceedings being brought in those courts for any reason.

## **9.3 Dispute Resolution**

If at any time any question, dispute or difference whatsoever should arise between the Parties in connection with or arising out of this Agreement, then either Party may give to the other notice in writing of the existence of such question, dispute or difference. If the Parties are unable to mutually resolve such question, dispute or difference within 7 days, then the matter may be referred by either Party to the Australian Commercial Disputes Centre (**ACDC**). The award of the ACDC shall be final and binding on the Parties, including any determination on the costs.

## **9.4 Severability**

In the event of any of the terms and conditions of this Agreement being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance.

## **9.5 Waiver**

- (a) Any failure by a Party to compel performance by the other Party of any of the terms or conditions of this Agreement will not constitute a waiver of those terms or conditions, and shall not operate as a waiver of another breach nor affect or impair the right to enforce those rights at a later time or to pursue remedies for any breach of those terms and conditions.
- (b) If a Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- (c) A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- (d) A waiver of any right or provision under this Agreement will only be valid if it is in writing.

## **9.6 Notices**

Unless expressly stated otherwise in this Agreement, all notices must be in writing, signed by an authorised officer of the sender, and if:

- (a) personally served by a Party, it takes effect from the time it is served;
- (b) sent by pre-paid post, it is taken to be received three days after posting;
- (c) If sent by fax, it is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

**9.7 Disclaimer of Agency**

The relationship between the parties is to be that of independent contractors and none of the parties or any of their respective officers, agents or employees will be held or construed by the parties to be partners, joint venturers, fiduciaries, employees or agents of the other. In addition, the Parties acknowledges that it has no authority to bind the other Party.

**9.8 Entire Agreement**

- (a) This Agreement records the entire agreement between the parties in relation to its subject matter, and supersedes all previous communication, understandings or agreements between the Parties.
- (b) No variation of this Agreement is binding unless it is agreed in writing between the Parties.
- (c) To the maximum extent permitted by applicable legislation, any conditions or warranties imposed by law are hereby excluded.
- (d) If applicable, the *Civil Liability Act* (NSW) 2002 as amended is excluded to the maximum extent permissible by law.

**EXECUTED** by the Parties as an agreement on

Executed for and on behalf of  
**RESTECH PTY LTD**  
(ABN 67 105 592 087) by its duly  
authorised officer in the presence of:

Signature: .....

Signature: .....

Name: .....  
PLEASE PRINT

Witness: .....  
PLEASE PRINT

Executed for and on behalf of  
**Insert**  
(ABN insert ) by its duly  
authorised officer in the presence of:

Signature: .....

Signature: .....

Name: .....  
PLEASE PRINT

Witness: .....  
PLEASE PRINT