



## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made on  
between the following parties:

1. **Devika Opsco Pty Ltd (ABN 91 603 610 975) of Suite 6, 233 Crown Street, Wollongong, NSW 2500, Australia, and**

2. Name:

Company ID (ABN):

Address:

together the **Parties** and each a **Party**.

### BACKGROUND

- A. The Parties would like to exchange Confidential Information solely in order to facilitate discussions about, and to exchange information regarding, the Purpose.
- B. To ensure the protection of the Confidential Information, and in consideration of the agreement to exchange information, the Parties have entered into this Agreement.

### IT IS AGREED AS FOLLOWS:

#### 1. Confidentiality obligations

1.1 In consideration for the Confidential Information being disclosed to it, the Recipient agrees to:

- (a) not disclose the Confidential Information to any third party;
- (b) treat the Confidential Information as strictly confidential, and to use the same care to prevent the disclosure of the Confidential Information as the Recipient uses with respect to its own confidential and proprietary information (and, in any event, not less than the care a reasonable person would use under similar circumstances);
- (c) only use the Confidential Information for the Purpose and not for any other purpose, including, but not limited to, for personal interest or gain;
- (d) protect the Confidential Information from unauthorised disclosure and immediately notify the Discloser of any loss or unauthorised use or disclosure of Confidential Information; and

(e) only disclose Confidential Information to its Personnel on a strictly need to know basis and only for the Purpose and ensure that such Personnel are subject to confidentiality obligations at least as extensive as those contained in this Agreement. The Recipient will be responsible and liable for the acts and omissions of its Personnel.

1.2 The obligations under clause 1.1 do not apply to information:

- (a) which the Discloser expressly agrees in writing is free of any nondisclosure obligations;
- (b) which at the time of disclosure to the Recipient, was known to the Recipient or any of its Personnel (as evidenced by documentation in the possession of the Recipient or its Personnel) free of any nondisclosure obligations;
- (c) which is independently developed by the Recipient or any of its Personnel (as evidenced by documentation in the possession of the Recipient or its Personnel);
- (d) which is lawfully received by the Recipient or any of its Personnel from a third party, free of any nondisclosure obligations, and where the Recipient or its Personnel reasonably believe the third party has the right to disclose the Confidential Information;
- (e) that is already in the public domain, except as a result of the Recipient's (or its Personnel's) breach of this Agreement or any other duty of confidence owed by the Recipient; and/or
- (f) that must be disclosed by law, regulation or an order of a court to disclose, provided that the Recipient only discloses that portion of the Confidential Information that the Recipient is required to disclose by law, and gives sufficient notice to the Discloser in order to allow the Discloser to object to, or prevent, the Confidential Information being disclosed. The Recipient agrees to provide all reasonable assistance to the Discloser in objecting to, or preventing, the

Confidential Information from being disclosed.

## 2. Ownership

2.1 The Recipient agrees that, as between the Parties, the Discloser owns all Intellectual Property Rights in the Confidential Information, and that nothing in this Agreement constitutes a transfer of any Intellectual Property Rights in the Confidential Information to the recipient.

2.2 The Recipient's use of the Confidential Information does not grant it a license, or act as a right of use, to any of the Intellectual Property Rights in the Confidential Information, except as stated in this Agreement or with the Discloser's express written permission.

## 3. No commitment

The Discloser has no obligation to disclose any Confidential Information to the Recipient. In addition, neither this Agreement, nor the disclosure or receipt of Confidential Information, will constitute or imply any promise or intention by the Discloser to enter into any other agreement or transaction, or continue discussions with, the Recipient.

## 4. Competition

4.1 Each Party acknowledges that the other Party may already possess, or have already developed, products or services similar to or competitive with those of the other Party.

4.2 Nothing in this Agreement will prohibit or restrict either Party's right to:

- (a) develop, use, license, acquire or market products or services like or competitive with those of the other Party, provided it is not in breach of this Agreement; or
- (b) disclose its own Confidential Information to any third party, for any purpose.

## 5. Damages

The Recipient agrees that:

- (a) if the Recipient breaches its obligations under this Agreement, the Discloser may suffer loss and/or damage;
- (b) monetary damages may not be an adequate remedy for the Discloser in relation to such loss and/or damage; and
- (c) the Discloser is entitled to seek an injunction, specific performance or any other remedy available at law or in equity,

in its discretion, to protect its Confidential Information from breach (or threatened or continuing breach) of this Agreement by the Recipient, its Personnel or any other persons directly or indirectly acting for, or on behalf of, the Recipient.

## 6. Term

This Agreement will terminate on the earlier of:

- (a) 2 years from the date of this Agreement; and
- (b) execution of definitive legal documentation between the Parties in relation to the Purpose.

## 7. Return of Confidential Information

7.1 The Recipient must (and must ensure that its Personnel) immediately, upon the expiry or termination of this Agreement, or when requested by the Discloser (at the Discloser's election):

- (a) return to the Discloser all information, data and/or documents containing or relating to the Confidential Information; and/or
- (b) destroy any copies of any information, data and/or documents containing or relating to the Confidential Information not returned to the Discloser,

and provide written confirmation to the Discloser that it has complied with the provisions of clauses 7.1(a) or 7.1(b), as applicable.

7.2 The Recipient may keep one copy of such information, in secure and confidential storage, if required by law for record keeping purposes, and only to the extent and for the period required by law. The Recipient agrees that its obligations in relation to Confidential Information will continue to apply to any Confidential Information in its custody or control under this clause 7.2.

7.3 This clause 7 will survive the termination or expiry of this Agreement.

## 8. General

8.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

8.2 **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

- 8.3 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 8.4 **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 8.5 **Further assurance:** Each Party agrees to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.
- 8.6 **Governing law:** This Agreement is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 8.7 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 8.8 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment, or agency relationship between the Parties.
- 8.9 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as

necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

## 9. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (e) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (g) a reference to time is to local time in New South Wales; and
- (h) a reference to \$ or dollars refers to the currency of Australia from time to time.

## 10. Definitions

In this Agreement, unless the context otherwise requires:

**Confidential Information** includes but is not limited to:

- (a) any commercially sensitive documentation or information of the Discloser;

- (b) ideas, source code, designs, monetization plans, analytical information and purposes with respect to the Purpose, functionality and features, and other information in relation to the development and implementation of the Purpose;
- (c) business models, business plans, information, ideas, concepts, knowledge, know-how, intellectual property, trade secrets, inventions, technology, operating procedures, processes, techniques, software, business methods, financial, accounting, monetization, capital raising, marketing and technical plans and information, customer and supplier lists (including any prospective or proposed customer and supplier lists), analytical information, funding arrangements and other commercially valuable information belonging to the Discloser; and
- (d) notes, records and related information generated by the Recipient (or any of its Personnel) from the Confidential Information or generated by the Recipient (or any of its Personnel) for the Discloser and/or the Purpose, including any copies of the Confidential Information, and copies of the notes, records and related information generated,

whether or not such information is reduced to a tangible form or marked in writing as "confidential" or is provided orally, and whether it is disclosed by the Discloser to the Recipient (or any of its Personnel) or received, acquired, overheard, or learnt by the Recipient (or any of its Personnel) in any way whatsoever.

**Discloser** means the party disclosing Confidential Information to the Recipient as contemplated by this Agreement.

**Intellectual Property** means any copyright, registered or unregistered designs or trademarks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases, or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Liability** means any expense, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future, or contingent.

**Personnel** means, in respect of a Party, any of its employees, consultants, contractors, officers, professional advisers or agents.

**Purpose** means to discuss a potential business opportunity.

**Recipient** means the party receiving Confidential Information from the Discloser as contemplated by this Agreement.

**EXECUTION**

Executed for and on behalf of **Devika Opsco Pty Ltd (ABN 91 603 610 975)** by a duly authorised representative:

Executed for and on behalf of **Company ID (ABN)** by a duly authorised representative:

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Signature

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Signature

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Name

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Name

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Date

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Date