**ONE WAY NON DISCLOSURE (CONFIDENTIALITY) AGREEMENT**

|  |  |
| --- | --- |
| Parties | |
| **Between:** | [Company A],having its registered offices at [ ], (“Discloser”); |
| **And:** | *<If Company:* [Company B],having its registered offices at [Insert registered offices]> <*if Individual* [Insert Full Name], residing at [Insert residential address]>, (“Recipient”); |

|  |
| --- |
| Agreement: |
| **The Discloser agrees to disclose to the Recipient certain Confidential Information for the Purpose (as defined below) on the terms and conditions attached to this cover page.** |

|  |
| --- |
| Background: |
| **A. The Discloser is in possession of Confidential Information relating to the Field.**  **B. The Recipient wishes to have access to the Confidential Information for the Purpose.** |

|  |
| --- |
| Information to be Disclosed: |
| **Field:**  [Insert Field Here] |
| **Purpose:**  [Insert Purpose Here] |

|  |
| --- |
| Expiry Date |
| **If no date is stated, then the Term shall be that set out in clause 5.** |
|  |

**TERMS AND CONDITIONS:**

**1 DEFINITIONS**

AGREEMENT means this agreement, inclusive of the cover page, these terms and conditions and any attached schedules.

CONFIDENTIAL INFORMATION means (i) all information and materials relating to the Field or otherwise including but not limited to all drawings, specifications, technical information, research and development details, product analysis, compilations, documents, records, notebooks and similar material in any form whatsoever; or (ii) information which is by its nature confidential or which the Discloser advises the Recipient is confidential and shall include but not be limited to the terms of this Agreement. Information shall be deemed confidential whether or not it is identified as such at the time of disclosure.

The term CONFIDENTIAL INFORMATION does not include:

(a) information which the parties agree in writing to exclude from the terms of this Agreement;

(b) information which at the date of this Agreement is in the public domain or subsequently enters the public domain without fault on the part of the Recipient;

(c) information that is received in good faith by the Recipient from a third party, which party is lawfully in possession of the same and had the right to disclose that information;

(d) information which is, at the date of this Agreement already properly in the possession of the Recipient and can be demonstrated by written record to be previously known to the Recipient; or

(e) information which is required to be disclosed to a governmental agency or otherwise by law.

RELATED INFORMATION means any information derived, extracted, calculate or otherwise obtained in any way by the Recipient from or in relation to the Confidential Information and includes any development, modification or improvement relating to or arising from the Confidential Information.

**2 RECIPIENTS OBLIGATIONS**

2.1 In respect of the Confidential Information the Recipient shall:

(a) keep all Confidential Information in the Recipient’s possession and treat all Confidential Information as confidential regardless of when disclosed;

(b) not use any Confidential Information in any way other than for the Purpose;

(c) refrain from making or having made any duplication (in any form whatsoever) of the Confidential Information except insofar as is necessary for the Purpose;

(d) not disclose Confidential Information to any third party without the prior written consent of the Discloser, as may be applicable, and without first obtaining a Confidentiality Agreement from said third party on terms equivalent to the terms of this Agreement; and

(e) not use any of the Confidential Information in any way which would conflict with or be harmful to the interests of the Discloser

1. Ensure that its officer’s, employees, contractors and agents who may have access to the Confidential Information are aware of and abide by the confidentiality provisions of this Agreement.

2.2 If the Recipient becomes aware of the possession, use or knowledge of the Confidential Information by any unauthorised party, then the Recipient must:

(a) immediately inform the Discloser; and

(b) at the Discloser’s request and expense, provide all assistance in relation to the unauthorised possession, use or knowledge as the Discloser requires, unless such unauthorised possession, use or knowledge is the fault of the Recipient, in which case such assistance shall be at the Recipient’s expense.

2.3 The burden of proof of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the Recipient.

2.4 At the Discloser’s written request, the Recipient will promptly, at the Discloser’s election, return to the Discloser or destroy or erase, or procure the destruction or erasure of, any or all of the Confidential Information.

**3 REMEDIES**

3.1 The Recipient acknowledges that monetary damages alone may be an inadequate remedy for breach of the Recipient’s obligations under this Agreement. In addition to any other remedy, which may be available in law or equity, the Discloser may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

**4 INTELLECTUAL PROPERTY**

4.1 The Recipient will obtain no proprietary rights of any kind in the Confidential Information disclosed to the Recipient under this Agreement.

4.2 The Discloser will retain sole ownership of all Confidential Information and all intellectual property rights therein. The Recipient acknowledges and agrees that:

(a) except as expressly provided in this Agreement, neither the signing of this Agreement nor the furnishing of any Confidential Information under this Agreement will be construed as granting to the Recipient any interest in, licence to or right to use any Confidential Information or any intellectual property rights therein for the Recipient’s own benefit or for the benefit of any other person;

(b) Any Related Information and all intellectual property rights therein will be owned exclusively by the Discloser; and

(c) to the extent that any Related Information and the intellectual property rights therein do not on their creation vest in the Discloser but vest in the Recipient, the Recipient will hold such Related Information and intellectual property rights on trust for the Discloser. The Recipient will at any time, upon the reasonable request of the Discloser and at the Recipient’s expense, ensure all documents necessary to confirm such ownership of the Related Information and intellectual property rights therein or to file a protective application or to defend such protective application, are appropriately executed by the Recipient and/or its relevant agents, employees and contractors.

**5 TERM**

Unless an Expiry Date is defined on the Cover Sheet of this Agreement the Recipient’s obligations under this Agreement will continue in full force and effect until the Confidential Information lawfully enters the public domain.

**6 GENERAL CLAUSES**

6.1 The Discloser provides no representation or warranty (express or implied) with respect to any Confidential Information other than that it has the right to disclose such Confidential Information to the Recipient.

6.2 No assignment: The Recipient may not assign, transfer, novate or subcontract this Agreement or any rights or obligations under this Agreement, without the prior written consent of the Discloser.

6.3. No Partnership: Nothing in this Agreement creates a partnership, agency, or joint venture between the Discloser and the Recipient.

6.4 Waiver: A failure by a party to enforce a provision of this Agreement will not constitute a waiver of any right to future enforcement of that or any other provision.

6.5 Severability: Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of the agreement will remain binding upon the parties;

6.6 Governing Law: This Agreement will be subject to and interpreted in accordance with the laws of New Zealand and will be subject to the exclusive jurisdiction of the Courts of New Zealand.

6.7 Counterparts: This Agreement may be executed in counterparts (which may be facsimile copies) and all of which, when taken together constitute the one document.

|  |  |  |
| --- | --- | --- |
| **AUTHORISED SIGNATORY [Company A]** |  | **AUTHORISED SIGNATORY [Company B]** |
| Signature |  | Signature |
| Full Name (Please Print) |  | Full Name (Please Print) |
| Signing on behalf of (Name of Party) |  | Signing on behalf of (Name of Party) |
| Position |  | Position |
| **WITNESS** |  | **WITNESS** |
| Witness Signature |  | Witness Signature |
| Full Name (Please Print) |  | Full Name (Please Print) |
| Occupation |  | Occupation |
| Address |  | Address |
| Date |  | Date |