**MUTUAL NON-DISCLOSURE AGREEMENT**

*New South Wales example*

This Mutual Non-disclosure Agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is made by and between xxxxxx Limited (ABN xxxxxxxx) of (insert address here)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[print name and address of other party]*

WHEREAS, each party has independently developed Confidential Information (as hereinafter defined);

WHEREAS, the parties mutually recognize that the unauthorized disclosure or use of such Confidential Information would cause irreparable injury to their respective interests;

WHEREAS, the parties mutually intend to explore a potential business relationship with one another; and

WHEREAS, the parties desire to provide mutual and reciprocal protection for any Confidential Information disclosed during their exploratory discussions;

NOW, THEREFORE, in consideration of these premises and of the mutual promises and covenants contained herein, the parties agree that in the event either party (hereinafter referred to as the “disclosing party”) discloses to the other party (hereinafter referred to as the “receiving party”) any of the disclosing party’s Confidential Information, through any manner or medium, the following terms and provisions will apply:

**1. Definition of “Confidential Information”**. Throughout this Agreement the “Confidential Information” of a disclosing party shall mean and include any and all proprietary information, confidential information or trade secrets that are either owned by the disclosing party or that are held by the disclosing party subject to an obligation of confidentiality owed to a third person, regardless of the form or medium in which such Confidential Information may exist or may be transmitted or disclosed. Notwithstanding the foregoing, information in any form or medium shall not constitute Confidential Information if and to the extent the same

a) is or becomes generally known or available to the public or becomes known or available to one or more other persons who are under no obligation to maintain its confidentiality, unless such knowledge or availability is due to an act or omission on the part of the receiving party, and such act or omission constitutes a breach of this Agreement;

b) was known to the receiving party at the time the disclosing party first disclosed it to the receiving party;

c) would be obvious to a person skilled in the art to which the disclosed information pertains; or

d) is independently developed by the receiving party.

**2. Identification of Confidential Information**. The disclosing party shall identify all Confidential Information promptly after its first disclosure to the receiving party, as set forth below in this paragraph.

a) If the Confidential Information so disclosed is in written form, it shall be identified as such by placing an appropriate stamp or legend (e.g., a stamp containing the words “Confidential Information”) upon the writing or such portions thereof as are claimed to constitute Confidential Information. Any written disclosure of Confidential Information shall state, either in a cover letter or by a stamp or legend in the English language, that such Confidential Information is being submitted under this Agreement.

b) If the Confidential Information so disclosed is disclosed orally, it shall be identified at the time of disclosure as constituting Confidential Information and shall be synopsized within fifteen (15) days after disclosure. Such synopsis shall be stamped or legended as provided above and shall be promptly sent to the receiving party.

**3. Non-disclosure of Confidential Information**. Except as provided in Section 6 below the receiving party shall not disclose to any person any Confidential Information of the disclosing party without the express written consent of the disclosing party.

**4. Restrictions on Use of Confidential Information**. The receiving party shall not use any Confidential Information of the disclosing party for any purpose other than the exploratory discussions contemplated by this Agreement, without the express written consent of the disclosing party.

**5. Return of Confidential Information**. The receiving party shall return all Confidential Information of the disclosing party immediately upon request and shall retain no copies thereof; *provided, however*, that counsel for the receiving party may hold one copy of all Confidential Information so returned, which shall be used solely for the purpose of inventorying the Confidential Information that was returned and documenting its return.

**6. Access by Employees of Receiving Party**. The receiving party shall not allow any of its employees to have access to the disclosing party’s Confidential Information, or to receive copies of the same, unless such employee:

a) has a need to know the Confidential Information;

b) has received and read a copy of this Agreement; and

c) agrees in writing to perform and observe the restrictions on disclosure and use of the disclosing party’s Confidential Information as set forth herein.

1. **Designation of Representatives**. Each hereby designates the following representative(s) as the only person(s) authorized to receive or transmit its Confidential
2. Information to the other party. The designated representatives are as follows:
3. for xxxxxxx Limited: Name:

Telephone No.:

1. for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: Name:

Telephone No.:

**8. Term**. This Agreement is effective immediately and shall continue in effect for so long as either party has knowledge or possession of any Confidential Information of the other party. The rights and obligations of the parties with respect to any Confidential Information delivered hereunder shall survive the termination or expiration of this Agreement for any reason.

**9. Official Orders or Requests**. If a receiving party receives an order or request from any governmental agency, court or other tribunal to disclose Confidential Information of the disclosing party, the receiving party:

a) shall notify the disclosing party immediately in writing of the order or request;

b) shall provide all pertinent information relating to such order or request; and

c) shall cooperate fully, at the disclosing party’s sole cost and expense, with all lawful efforts that the disclosing party may wish to make in order to oppose the order or request.

**10. Miscellaneous**.

a) The remedy at law for any breach of this Agreement would be inadequate. Therefore, in the event of any such breach, the aggrieved party shall be entitled to injunctive relief and other equitable relief to prevent or minimize damage to the aggrieved party. No monetary damages shall be awarded for the breach of this Agreement by either party, unless such breach was knowing and willful.

b) No provision of this Agreement will be construed by implication to preclude either party from working with any other persons in any manner or from working on any other projects whatsoever, so long as the express provisions of this Agreement are observed.

c) Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting, either expressly or by implication, estoppel or otherwise, any license under or title to any invention, patent, concept, copyright, trade secret or other intellectual property that is now or may hereafter be owned by or controlled by the disclosing party.

d) This Agreement is the only subsisting agreement between the parties concerning Confidential Information and supersedes any and all existing written or oral agreements on this subject. No modification of this Agreement shall be binding on either party unless such modification is in writing and is signed by a duly authorized representative of the party sought to be charged therewith.

e) In the event that one or more of the provisions of this Agreement are determined to be void or unenforceable, all other provisions shall remain in full force and effect. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, that provision shall be deemed modified only to the extent reasonably necessary to render it enforceable, and such provision shall be enforced as modified.

f) Each party warrants and represents that it has the right to disclose any Confi­dential Information that it may disclose to the other party under this Agreement.

g) Any notice or communication relating to this Agreement shall be deemed given or made when received by a designated representative (i.e., designated under paragraph 7) of the party to whom the notice or communication is directed. Any notice or communication transmitted by facsimile to the other party shall be presumed received simultaneously with its transmission if the other party’s correct facsimile number is used and a machine-printed record of the transmission is kept.

1. This Agreement shall be governed by and interpreted under the laws of the State of New South Wales, Australia. The parties consent to the exclusive jurisdiction and venue of the courts of the State of New South Wales in all matters arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

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| --- | --- |
| For xxxxxxx LIMITED (ACN xxxxxxxx)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name and Title of Signer) | For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name and Title of Signer) |