

# CYBRIX CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT



## 1. IT IS AGREED:

- 1.1 "Confidential Information" means all information passing from the discloser or any person or company associated with it (including but not limited to, its professional advisers, shareholders and others involved in a potential initial public offering process) relating to the Purpose, including the Discloser's engineering designs, concepts and source documents and also including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans, and projections, profit and loss statements, management reports, arrangements and agreements with third parties, customer information and customer information proprietary to customers, formulae, customer lists, concepts not reduced to material form, plans and models.
- 1.2 "Discloser" means a party that discloses its Confidential Information to the other party.
- 1.3 "Purpose" means assessing the capability of the CYBRIX system.
- 1.4 The Receiver agrees not to use the CYBRIX system for any commercial purpose or gain
- 1.5 "Receiver" means a party that receives or obtains Confidential Information of the other party.
- 1.6 THE Receiver undertakes to not disclose the Confidential Information or suffer or permit it to be disclosed to any person or related corporation whatsoever except with the written consent of the Discloser and then only on the basis that the confidentiality of the Confidential Information is similarly respected in the same manner as provided in this Deed.
- 1.7 The Receiver undertakes to return any and all Confidential Information received from any source to the Discloser and to destroy any copies of information whether in hardcopy or electronic format or otherwise immediately upon request from the Discloser.
- 1.8 The Receiver undertakes not to disclose the Confidential Information (except where it is so required by statute, rule, regulation, judicial process or in connection with any litigation to which it is a party), except where the Confidential Information or some part thereof:
  - (a) at the time of its first disclosure to the Receiver is in the public domain;
  - (b) which after disclosure to the Receiver comes in to the public domain otherwise than by disclosure in breach of an obligation to maintain confidentiality;
  - (c) which the Receiver can prove was within its knowledge at the time of first disclosure to it by the Discloser and was not acquired directly or indirectly from the Discloser; or
  - (d) which the Receiver received from a third party, provided that it was not received directly or indirectly from the Discloser in breach of an obligation to maintain confidentiality.

## 2. EXECUTION

- 2.1 This Deed becomes binding on the receiver upon request of a CYBRIX demonstration software system,

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2.2 This Deed may be executed in counterparts, all of which shall be deemed to constitute one instrument. A party is entitled to treat, and it shall be deemed, that a Deed sent by facsimile, email or another electronic means by another party executed by that other party is an original executed document.

## **3. SEVERABILITY**

3.1 Any provision in this Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and this otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Deed or without affecting the validity or enforceability of that provisions in any other jurisdiction.

## **4. GOVERNING LAW**

4.1 This Deed shall be governed by and construed in accordance with the law for the time being in force in Queensland and the parties agree to submit to the non-exclusive jurisdiction of the Court thereof.

4.2 Any proceedings in respect of any cause of action arising under this Deed shall be instituted, heard and determined in a Court of competent jurisdiction in Brisbane.

## **5. INDEMNITY**

The Recipient indemnifies the Company in respect of any loss or damage suffered by the Company arising out of any breach by the Recipient under this Agreement, except to the extent that any loss or damage is suffered as a result of any wilful, reckless or negligent act by the Company.