

Charles Sturt University

*[insert name of other party*]

Confidentiality Agreement

Mutual Disclosure

**Schedule – Confidentiality Agreement Details**

This Agreement consists of this Schedule and the Agreed Terms.

|  |  |  |
| --- | --- | --- |
| **Item 1** | **CSU** | **Name:** Charles Sturt University**ABN:**  83 878 708 551**Address:**  The Grange Chancellery Panorama Avenue, Bathurst NSW 2795**Contact Person:** **Position:** **Telephone:**  **Email :**  |
| **Item 2** | **Organisation** | **Name:** **ABN:**  **Address:**  .**Contact Person:** **Position:** **Telephone:**  **Email :**  |
| **Item 3** | **Commencement Date** | Date of execution of this Agreement by both parties.*NB – if Confidential Information was disclosed prior to the date of signing then this Agreement needs to be amended – contact Legal Office* |
| **Item 4** | **Approved Purpose** | *Insert description – be as specific as possible as this limits the way that the parties can use the Confidential Information*. |
| **Item 5** | **Confidential Information of CSU** | *Confidential Information is defined in clause 1.1, but if there is anything in particular which CSU wants to protect then it can be described here. Otherwise insert the words “As defined in clause 1.1”* |
| **Item 6** | **Confidential Information of the Organisation** | *As above - if there is anything in particular which the Organisation wants to protect then it can be described here. Otherwise insert the words “As defined in clause 1.1”* |

**Executed** as an Agreement by the parties:

|  |  |  |
| --- | --- | --- |
| SIGNED for and on behalf of **CHARLES STURT UNIVERSITY** in the presence of | ))) |  |
| Signature |
| Signature of witness |  | Name (print) |
| Name of witness (print) |  | Position (print) |
|  |  | Date signed |
|  |  |  |
| SIGNED for and on behalf of:***[Insert name]*** in the presence of | ))) |  |
| Signature |
| Signature of witness |  | Name (print) |
| Name of witness (print) |  | Position (print) |
|  |  | Date signed |

**Agreed Terms - Confidentiality Agreement**

##  **Definitions and Interpretation**

###  **Definitions**

In this Agreement, unless the context otherwise requires:

**Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise) and including legal costs on a full indemnity basis but excludes consequential loss.

Confidential Information of a Discloser means any information which is disclosed by or for the Discloser, including any information of a party described in Items 5 or 6 and any trade secrets, financial information or commercially or scientifically valuable information, of whatever description and in whatever form which:

1. is by its nature confidential;
2. is capable of protection at law or equity as confidential information;
3. has been designated as confidential by the Discloser; or
4. is derived or produced partly from the Confidential Information,

but does not include information that:

* + 1. is in the public domain; or
		2. is independently known or developed by the Recipient other than as a result of a breach of this Agreement or any other obligation of confidentiality owed by or to any other person.

**Discloser** means a party as the discloser of any Confidential Information under this Agreement.

Intellectual Property means any registered or unregistered intellectual property rights including without limitation any trademarks, business names, copyright, registered or registrable designs, plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes eligible layouts or protectable computer programs, as well as any applications for or any right to seek registration of any intellectual property.

**Personal Information** has the same meaning as defined under the Privacy Act.

**Privacy Act** means the*Privacy and Personal Information Protection Act 1998 (NSW).*

**Recipient** means a party as the recipient of any Confidential Information under this Agreement.

### **Interpretation**

In this Agreement, unless the context otherwise requires:

(a) the terms set out in the middle column of the Schedule have the meanings set out in the right hand column;

(b) singular includes the plural and vice versa;

(c) headings are for convenience only and do not affect the interpretation of this Agreement;

(d) the word “includes” or “including” means “includes without limitation”; and

(e) nothing in this Agreement is to be interpreted against a party on the ground that the party put forward this Agreement or any part of it.

## **Commencement**

### This Agreement commences on the Commencement Date.

## **Disclosure of Confidential Information**

### Nothing in this Agreement obliges a party to disclose any particular information. Each party has absolute discretion as to the Confidential Information which it chooses to disclose.

### The Recipient bears the onus of showing that information is not Confidential Information.

### A combination of information will not be taken to be in the public domain merely because it contains some information which is in the public domain.

## **Permitted Use**

### The Recipient must, in relation to the Confidential Information of the Discloser:

1. use it only for the Approved Purpose;
2. not use or permit any person to use the Confidential Information for any other purpose;
3. not disclose the Confidential Information to any other party or person except as specifically permitted under this Agreement; and
4. not copy the Confidential Information or any part of it other than as strictly necessary for the Approved Purpose.

## **Permitted Disclosure**

### A Recipient may disclose Confidential Information to only those of its employees, directors, officers, agents and legal, financial or other professional advisers who have a need to know the information for the Approved Purpose.

### Prior to disclosure to any person under clause 5.1, the Recipient must ensure that those persons are made aware of the confidential nature of the Confidential Information and procure an assurance that any such Confidential Information will be kept confidential.

### A Recipient may disclose Confidential Information to the extent that it is required to be disclosed by law, provided that the Recipient must:

* + 1. to the extent reasonably practicable, give prior notice to the Discloser of the proposed disclosure with full details of the circumstances and the information to be disclosed; and
		2. postpone any disclosure required by law for as long as the Recipient is able to, without prejudicing the Recipient’s own position; and
		3. subject to clause 5.3(b), allow the Discloser, at its cost and expense, an opportunity to make representation to the relevant court, tribunal or other body seeking or ordering disclosure as to whether the Confidential Information should be disclosed.

## **Security Practices**

### The Recipient must implement security practices against unauthorised copying, use and disclosure of any Confidential Information.

### The Recipient must immediately notify the Discloser if the Recipient becomes aware of a suspected or actual breach of this Agreement (including any unauthorised copying, use or disclosure of any Confidential Information) and immediately take all steps to prevent or stop the suspected or actual breach.

### The Recipient must cooperate with the Discloser in any reasonable action it takes to protect the Confidential Information.

## **Intellectual Property**

### Nothing in this Agreement:

### (a) changes the ownership of any Intellectual Property in any Confidential Information; or

### (b) grants any right or licence to the Recipient in relation to the Confidential Information except a specific right to use the Confidential Information for the Approved Purpose only.

## **Privacy**

### Where any Personal Information is disclosed under this Agreement then the Recipient must comply with the information protection principles set out under the Privacy Act as if it were a public sector agency directly subject to the Privacy Act.

## **Exclusion of Warranties**

### The Recipient acknowledges that, to the extent permitted by law, the Discloser:

* + 1. has not made and makes no representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information or its fitness for purpose;
		2. is not under any obligation to notify the Recipient or provide any further information to the Recipient if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; and
		3. has not made and makes no representation or warranty, express or implied, that the Confidential Information does not infringe the Intellectual Property Rights or any other right of any person.

## **Return or Destruction of Confidential Information**

### Within seven (7) days of written demand, the Recipient must return all copies of the Discloser’s Confidential Information, unless requested to destroy any or all of those copies, provided that the Recipient may in good faith keep one copy of Confidential Information on a confidential basis for the purpose of determining any continuing legal obligations.

## **Injunctive Relief**

### The Recipient acknowledges that a breach of this Agreement may cause the Discloser irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, and without prejudice to any other rights or remedies that may be available, the Discloser may seek specific performance or equitable relief as a remedy for any such breach or threatened breach.

## **General Terms**

### **Entire Agreement:** This Agreement contains the entire agreement between the parties as to its subject matter. It supersedes all prior contracts, obligations, representations, conduct and understandings.

### **Variation:** A variation of any term of this Agreement must be in writing and signed by the parties.

### **Waiver:** A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### **Assignment:** A party must not assign or novate its obligations or interests under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, and further provided that a party may sell all, or substantially all, of its assets or stock, or merge with or into another entity, without any consent.

### **Governing Law:** The laws of New South Wales, Australia govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State and the courts that hear appeals from them.

12.6 **Notices:** Unless otherwise stated in this Agreement, all notices to be given under this Agreement must be in writing, and hand-delivered, posted or emailed to the Contact Person for the relevant party as specified in the Schedule or as otherwise notified in writing.