

SAMPLE



CONFIDENTIALITY AGREEMENT

between

Blue Ocean Law Group Pty Ltd
(ACN 618 974 879)

and

Secret Santa

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Date

Parties

Disclosing Party	<p>Blue Ocean Law Group Pty Ltd (ACN 618 974 879) Address: C/- Work Club, L8/99 Elizabeth Street, Opp. NSW Supreme Court, Sydney NSW 2000 Fax: +61 (02) 9475 0075 Email: ahoy@blueocean.law</p> <p>(the <i>Disclosing Party</i>)</p>
Recipient	<p>Secret Santa Address: North Pole HOHO OHO Canada Email: hoho@santa.org</p> <p>(the <i>Recipient</i>)</p>

Recitals

- A The Disclosing Party wishes to disclose Confidential Information to the Recipient and ensure that the Recipient maintains the confidentiality of such Confidential Information.
- B In consideration of the benefits to the parties of disclosing and receiving the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this agreement unless the context requires otherwise:

Authorised Third Party Recipient means any Receiving Entity to which the Recipient discloses Confidential Information in accordance with clause 3.1.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Claims means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort, at law or in equity or under statute) and including any causes of action or rights to bring or make any such claim.

Confidential Information means all confidential information (however recorded or preserved) disclosed or provided (whether in writing, orally or by any other means and whether directly or indirectly) by any Disclosing Entity to any Receiving Entity before, on or after the date of this agreement in connection with the Permitted Purpose, including:

- (a) the existence and terms of this agreement;
- (b) any information that would be regarded as confidential by a reasonable person relating to the business, affairs, customers, clients, suppliers, proposals, market opportunities, technologies, products, business and product development plans, financial information, services, pricing, capabilities, capacities, operations, processes, product information or Intellectual Property Rights of the Disclosing Party or any of its Related Entities;
- (c) any information acquired by the Receiving Entity, by observation or otherwise, during a visit to the premises or facilities of any Disclosing Entity; and
- (d) any information developed by the parties and/or their Related Entities in the course of carrying out this agreement (including the results of any tests or investigations conducted in respect of the Permitted Purpose and any reports, summaries, data, analysis and other documentation or information developed by any of them in respect thereof),

and includes any compilation of otherwise public information in a form not publicly known.

Corporations Act means the *Corporations Act 2001* (Cth).

Control has the meaning given in Section 50AA of the Corporations Act.

Disclosing Entities means the Disclosing Party, any of its Related Entities, and any of its or their Representatives, and **Disclosing Entity** means each of them.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Intellectual Property Rights means all present and future rights in or to any copyright, moral rights, database, computer software, patent, design, utility model, trade mark (including any rights in get up or trade dress and rights to goodwill or to sue for passing off or unfair competition), brand name, service mark, trade name, domain name, business name, eligible layout right, chip topography right, plant breeder's right, know-how, trade secret, confidential information and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registered, registrable, patentable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

Liability includes a present, prospective, future or contingent liability.

Loss means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other Liability of any kind or character (including any direct, indirect,

special or consequential losses, loss of profit and/or loss of reputation) that a party pays, suffers or incurs or is liable for, including all:

- (a) Liabilities on account of Tax;
- (b) interest, penalties and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any Liability; and
- (d) all amounts paid in settlement of any Claim.

Permitted Purpose means the purpose or purposes described in Schedule 1.

Receiving Entities means the Recipient, any of its Related Entities, and any of its or their Representatives, and **Receiving Entity** means each of them.

Related Entity means, in respect of a party, any person under the Control of that party, any person that Controls that party, and any person under the Control of any of them.

Representatives means, in respect of a person, its employees, consultants, agents and advisors and, in respect of a body corporate, includes its officers.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above.

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Interpretation

1.2 The following rules of interpretation apply in this agreement unless the context requires otherwise:

- (a) headings in this agreement are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;

- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
- (f) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (g) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (h) a reference to writing includes any communication sent by post, facsimile or email;
- (i) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (j) all monetary amounts are in Australian currency;
- (k) the word "*month*" means calendar month and the word "*year*" means 12 calendar months;
- (l) the meaning of general words is not limited by specific examples introduced by "*include*", "*includes*", "*including*", "*for example*", "*in particular*", "*such as*" or similar expressions;
- (m) a reference to a "*party*" is a reference to a party to this agreement, and a reference to a "*third party*" is a reference to a person that is not a party to this agreement;
- (n) a reference to any thing is a reference to the whole and each part of it;
- (o) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (p) words in the singular include the plural and vice versa; and
- (q) a reference to one gender includes a reference to the other genders.

2. Confidentiality obligations

2.1 Subject to clause 3, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) not use or exploit the Confidential Information in any way except for the Permitted Purpose;
- (c) not disclose or make available the Confidential Information in whole or in part to any third party;