

Bailey Dixon
Lawyers and Consultants

SPECTRUM MANAGEMENT INTERNATIONAL PTY LTD

CONFIDENTIALITY AGREEMENT

Bailey Dixon
Lawyers and Consultants
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TABLE OF CONTENTS

- 1. Commencement and Duration**
- 2. Access**
- 3. Obligation of Confidentiality**
- 4. Non-Disclosure and Use**
- 5. Uncertainty as to Confidentiality**
- 6. Precautions**
- 7. Unauthorized Disclosure and Use**
- 8. Return or Destruction of Confidential Information**
- 9. Exceptions**
- 10. Remedy**
- 11. Indemnity**
- 12. Nature and Extent of Agreement**
- 13. Warranties**
- 14. Cumulative Rights**
- 15. Enforceability**
- 16. Waiver**
- 17. Governing law and jurisdiction**
- 18. Variation**
- 19. Notices**
- 20. No representation of Agreement**
- 21. Definitions and Interpretation**

BETWEEN

SPECTRUM MANAGEMENT INTERNATIONAL PTY LTD (ACN 064 019 478) a body corporate whose registered address is c/- Vanzwan and Associates, Unit 3 Level 1, The Promenade, Emu Bank, Belconnen, ACT 2617 trading at FuturePace Solutions ('FuturePace')

AND

(ABN)

of

('SITE INSPECTOR')

RECITALS

- A. FuturePace has invited SITE INSPECTOR to express an interest in providing site inspection and other services relating to the management of electromagnetic radiation and radiocommunications to FuturePace, and both Parties wish to consider entering into an agreement for the provision of such services.
- B. Each Party possesses certain Confidential Information which it may be necessary to disclose to the other Party for the Specified Purpose.
- C. In consideration of the mutual promises made in this Agreement, the Parties have agreed to disclose some of their respective Confidential Information to each other on the terms and conditions of this Agreement.

OPERATIVE CLAUSES

1. Commencement

1.1 This Agreement commences on the date on which it is made.

2. Access

2.1 The Parties acknowledge that each Party may be given access to certain Confidential Information of the other Party, for the Specified Purpose.

3. Obligation of Confidentiality

3.1 In consideration of:

- (a) being given access to Confidential Information of the other Party; and
- (b) the mutual promises contained in this Agreement;

each of the Parties agrees that it must keep confidential, and must ensure that its officers, employees and agents keep confidential, the Confidential Information of the other Party unless and until the other Party agrees that the Confidential Information is in the public domain other than by a breach of this Agreement.

3.2 A Party must:

- (a) give its agreement under subclause 3.1 as soon as practicable and, if requested by the other Party, in writing; and
- (b) not unreasonably withhold that agreement.

4. Non-Disclosure and Use

- 4.1** Each Party must not, and must ensure that its officers, employees, subcontractors and agents do not:
- (a) disclose, or in any other way communicate all or any of the Confidential Information of the other Party to any other person without the prior written consent of the other Party; or
 - (b) use or permit any other person to use all or any of the Confidential Information of the other Party otherwise than for the Specified Purpose; or
 - (c) permit a person who is not authorized under this Agreement to have access to places where Confidential Information of the other Party is displayed, reproduced or stored; or
 - (d) make or assist any person to make any unauthorised use of the Provider's Confidential Information
- 4.2** A Party must:
- (a) give its consent under subclause 4.1 as soon as practicable and, if requested by the other Party, in writing; and
 - (b) may give or refuse its consent in its absolute and unfettered discretion.
- 4.3** Without limiting the generality of subclause 4.1, a Party may refuse to give its consent under that subclause if the person to whom Confidential Information is to be disclosed has not entered into an agreement in relation to confidentiality with that Party in relation to the information in the form of this Agreement.
- 4.4** A Party must not reverse engineer, disassemble or de-compile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the other party under this Agreement.
- 4.5** A Receiving Party may only disclose Confidential Information (to the extent reasonably necessary):
- (a) to its legal advisers in relation to its rights under this Agreement;
 - (b) to its People:
 - (i) solely to assist the Receiving party in undertaking its evaluation in relation to the Permitted Purposes;
 - (ii) on a need to know basis; and
 - (iii) on condition that such persons do not disclose that Confidential Information to any other person;.
 - (c) where required by law, provided that the Receiver has first notified the Provider that the Receiver is required to disclose the Confidential Information and the Receiver has used its reasonable endeavours to assist the Provider, should it wish to do so, to take whatever opportunities are available (if any) to the Provider to protect the confidentiality of the Confidential Information;
 - (d) in connection with legal proceedings between the parties relating to the confidentiality provisions of this Agreement.
- 4.6** For the avoidance of doubt, unless otherwise provided for in this Agreement, the Provider's Confidential Information may not be disclosed in connection with any dispute or legal proceedings not related to this Agreement;

5. Uncertainty as to Confidentiality

- 5.1** If either Party is uncertain as to whether any information is Confidential Information of the other Party, that Party must treat the information as if it were Confidential Information of the other Party and as not being in the public domain unless and until the other Party:

- (a) agrees under clause 3 that the information is in the public domain; or
- (b) consents to the disclosure of the information under clause 4.

6. Precautions

6.1 Each Party must take all reasonable precautions to maintain the confidentiality, and to prevent the disclosure or use, of the Confidential Information of the other Party.

6.2 Without limiting the generality of subclause 6.1, each Party must protect the Confidential Information of the other Party to the same degree as the Party protects its own Confidential Information of a like nature, and SITE INSPECTOR must protect and keep FuturePace's Confidential Information absolutely secret.

7. Unauthorized Disclosure and Use

7.1 Each Party must:

- (a) immediately notify the other Party of any unauthorized disclosure or use of the Confidential Information of the other Party of which that Party becomes aware; and
- (b) take all steps which the other Party may reasonably require in relation to such unauthorized disclosure or use.

8. Return or Destruction of Confidential Information

8.1 At the conclusion of the Specified Purpose or upon the written request of the other Party, each Party must immediately, and at its own expense, destroy completely or deliver to the other Party, all records and materials (and copies of those records and materials) containing or embodying the Confidential Information of the other Party in the possession or under the control of:

- (a) that Party, its officers, employees and agents; and
- (b) any person to whom that Party has disclosed all or any of the Confidential Information of the other Party (whether or not with the consent of the other Party).

9. Exceptions

9.1 Neither Party is required by this Agreement to keep confidential any information if and to the extent that:

- (a) the information is, or becomes part of the public domain otherwise than by breach of this Agreement by that Party;
- (b) the information is lawfully obtained by that Party from another person without any restriction as to use and disclosure;
- (c) the information was in that Party's possession prior to disclosure to it by the other Party;
- (d) the information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency;
- (e) the other Party has authorized, in writing, the disclosure of the information; or
- (f) the information is disclosed by the other Party to the other Party's professional advisers who have agreed to keep confidential the Confidential Information.

10. Remedy

10.1 Each Party acknowledges and accepts that the other Party would suffer irreparable financial and other loss and damage if the Confidential Information of the other Party were disclosed to any other person or used for any purpose other than the Specified Purpose, for which monetary damages would be an inadequate remedy.

10.2 Each Party acknowledges and accepts that, in addition to any other remedy which may be available in law or equity, the other Party is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

10.3 Each Party must immediately reimburse the other Party for all costs and expenses, (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of that Party under this Agreement.

11. Indemnity

11.1 Indemnity for Costs

Each Party indemnifies the other Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the other Party as a result of any breach of this Agreement by that Party.

11.2 Scope of Indemnity

The indemnity in subclause 11.1 extends to, and includes all costs, damages and expenses incurred by the other Party in defending and/or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

12. Nature and Extent of Agreement

12.1 This Agreement:

- (a) imposes no obligation on either party to purchase, transfer or otherwise dispose of any technology, services or products;
- (b) does not create any agency or partnership relationship between the Parties
- (c) subject to clause 11, does not require either Party to bear the expenses of the other Party; and
- (d) records the entire agreement between the Parties in relation to its subject matter.

13. Warranties

13.1 Each Party warrants that it has, or will have, the right to disclose information to the other Party at the time at which the disclosure is made.

13.2 Subject to subclause 13.1, the Parties make no warranty in relation to the Confidential Information provided to each other under this Agreement

13.3 Without limiting the generality of subclause 13.3, neither Party makes any warranty as to the nature of the Confidential Information that they may disclose under this Agreement, nor as to the right of either Party to make any such disclosure.

14. Cumulative Rights

14.1 The rights arising out of this Agreement do not exclude any other rights of either Party.

15. Enforceability

15.1 Any clause or part of a clause of this Agreement which is Ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.

15.2 Where any clause or part of a clause is Ineffective, it may be severed without affecting any other part of this Agreement.

16. Waiver

16.1 No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the Party waiving the right.

16.2 A waiver by one Party under subclause 16.1 does not prejudice its rights in respect of any subsequent breach of this Agreement by the other Party.

16.3 A Party does not waive its rights under this Agreement because it grants an extension or forbearance to the other Party.

17. Governing law and jurisdiction

17.1 This Agreement is governed by the laws of the Australian Capital Territory.

17.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

18. Variation

18.1 No term or provision of this Agreement may be amended or varied unless such amendment or variation is reduced to writing and executed by the Parties in the same manner as this instrument.

19. Notices

19.1 Any notice, request or other communication to be given or served under this Agreement must be in writing and dealt with as follows:

- (a) if given by FuturePace to SITE INSPECTOR - addressed and forwarded to SITE INSPECTOR, marked for the attention of the person identified at Item 2 of the Schedule, and at the address indicated in Item 3 of the Schedule, or as otherwise notified to FuturePace in writing by SITE INSPECTOR;
- (b) if given by SITE INSPECTOR to the FuturePace - addressed and forwarded to the FuturePace, for the attention of Barbara Phi, at the address indicated at Item 1 of the Schedule, or as otherwise notified by the FuturePace in writing.

19.2 Any such notice, request or other communication must be delivered by hand or sent by pre-paid security post or facsimile, to the address of the party to which it is sent.

19.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
- (c) if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible.

20. No Representation of Agreement

20.1 FuturePace and SITE INSPECTOR acknowledge that:

- (a) they have yet to agree on the terms of any arrangement in relation to the provision of Site Inspection Services; and
- (b) neither this Agreement, nor any communication from either Party to the other prior to the date of this Agreement, nor any expression of interest made by SITE INSPECTOR in relation to the provision of Site Inspection Services in response to the invitation referred to in Recital B:
 - (i) contains an offer in relation to the provision of such services; or
 - (ii) constitutes a representation by either Party that it will enter into an arrangement in relation to the provision of Site Inspection Services; and
- (b) FuturePace expressly reserves the right, despite receiving an executed copy of this Agreement, to:
 - (i) refuse to provide SITE INSPECTOR with any further information in relation to Site Inspection Services; and
 - (ii) decline any offer made by SITE INSPECTOR to provide Site Inspection Services to FuturePace; or
 - (ii) not to enter into any arrangement with SITE INSPECTOR in relation to Site Inspection Services.

21. Definitions and Interpretation

21.1 In this Agreement:

Associates means a Party's directors, officers, employees, agents, contractors and representatives;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the Provider as confidential; or
- (c) the Recipient knows or ought to know is confidential;

and includes:

- (d) information comprised in or relating to any Intellectual Property Rights of the Provider;
- (e) any information relating to the financial position of the Provider and in particular includes information relating to the assets or liabilities of the Provider and any other matter that does or may affect the financial position or reputation of the Provider;
- (f) information relating to the internal management and structure of the Provider, and includes information relating to the personnel, policies and strategies of the Provider;
- (g) any information relating to the policies, strategies, practices and procedures of the Provider;
- (h) any information in the Provider's possession relating to the Provider's clients or suppliers, and like information;

but does not include information which:

- (i) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- (j) is in the possession of the receiving party without restriction in relation to disclosure prior to the date of receipt from the disclosing party;
- (k) has been independently developed or acquired by the receiving party; or
- (l) is in respect of ideas, concepts, know-how, techniques or methodologies where disclosure is permitted under the Agreement;

Ineffective means void, illegal or unenforceable;

Intellectual Property Rights includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Party means a party to this Agreement;

Provider means a party that discloses its Confidential Information to the other Party;

Receiving Party means a Party that receives or obtains Confidential Information of the other Party; and

Specified Purpose means the purpose set out in item 4 of the Schedule.

21.2 In this Agreement:

- (a) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a cross reference to a clause number is a reference to all its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) a reference to a clause or subclause is a reference to a clause or subclause of this Agreement; and

- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

EXECUTION CLAUSES

Executed by Spectrum Management)
 International (ABN 27 064 019 478))
 in accordance with its Constitution and)
 Articles of Association and pursuant to) (Director/Secretary)
 section 127 of the Corporations Law.)
)

in the presence of:)
) (Director/Secretary)

.....
 (Print full name and address of witness)

Executed by SITE INSPECTOR)
 in accordance with its Constitution and)
 Articles of Association and pursuant to)
 section 127 of the Corporations Law.) (Director/Secretary)
)
)

in the presence of:)
) (Director/Secretary)

.....
 (Print full name and address of witness)

Agreed to for and on behalf of SITE)
 INSPECTOR by its Attorney named)
 below his or her signature, who signed)
 this agreement pursuant to Power of)
 Attorney registered number)
)

having no notice of its revocation and)
 in the presence of:) (Print name of Attorney)

.....
 (Print full name and address of witness)

[Delete whichever inapplicable]

Schedule

Item 1 — Address for service of notices on FuturePace: subclause 19.1(b):

14 Buller Crescent Palmerston ACT 2913

Item 2 — Name of person to whose attention communications to SITE INSPECTOR must be marked: clause 19.1(a)

Item 3 — Address for service of notices on SITE INSPECTOR: subclause 19.1(a):

Item 4 — Specified Purpose (see Recital B, and clauses 2.1, 8.1, 10.1 and 20.1):

Consideration of the terms and conditions on which SITE INSPECTOR might provide site inspection services relating to the management of electromagnetic radiation and radiocommunications to FuturePace.