

Mutual Confidentiality and Non-disclosure Agreement

RECITALS

- A. Whereas, Zettagrid Pty Ltd (Zettagrid) and Company have conducted preliminary discussions concerning business cooperation and potential mutual business activity; and
- B. Whereas the Parties agree to conduct further discussions with may involve the disclosure of Confidential Information relating to the ideas, inventions or products, promotion, and pricing of each others business activities; and
- C. Whereas each Party agrees to receive Confidential Information from the other Party to review or examine it pursuant to the terms of this Agreement; and
- D. Be it known, that the Parties agree to enter into this Confidentiality and Non-disclosure Agreement to ensure the protection of each other's Confidential Information on the following conditions:

1. DEFINITIONS

"Company" means.....Company Registration Number:

Of the address

Of country

"Confidential Information" means data which a disclosing Party, or its related companies, now or in the future possesses relating to technical, business, financial, and other data generally considered by that Party to be proprietary or confidential and which:

- a) is marked as "Confidential" or "Proprietary," or with a similar legend, at the time of disclosure; or
- b) is clearly identified to the receiving Party as confidential or proprietary at the time of disclosure; or
- c) is material that would typically be treated by a prudent business person as confidential.

Confidential Information may include information belonging to a third party such as customers or suppliers, or potential customers or suppliers, of the disclosing Party. Confidential Information of Zettagrid includes Zettagrid Tools. The contents of this Agreement constitute Confidential Information of each Party.

"Parties" means Zettagrid or Company and **"Party"** means either of the Parties;

"Zettagrid Tools" means any and all of Zettagrid's proprietary materials, information and know-how, used by Zettagrid in the conduct of its business, including technical information, plans, designs, templates, processes, methodologies, procedures, reusable software (such as source code, object code, routines and libraries that are commonly used in connection with, and are generic to the development of, a typical computer program) and generic software features (such as text, graphics, menus, icons and other, commonly-used elements that are generic to computer programs), together with any improvements and modifications to them.

2. CONFIDENTIALITY

- 2.1 A Party ("**Receiver**") receiving Confidential Information under this Agreement may only use Confidential Information of the other Party ("**Discloser**") to the extent necessary to enable the Receiver to exercise its rights or perform its obligations under this Agreement.
- 2.2 Receiver may only disclose Confidential Information to subcontractors and personnel and legal and accounting advisers having a need to know, and who are under non-disclosure obligations no less restrictive than in this Agreement. Receiver will advise such subcontractors, personnel and advisers who receive Confidential Information of its confidential nature, and ensure that such persons do not make any unauthorised use or disclosure of it. Receiver shall not disclose Confidential Information to any other third party without the prior written consent of Discloser.
- 2.3 Receiver shall protect the disclosed Confidential Information from unauthorised disclosure by using the same degree of care, but no less than a reasonable degree of care, as Receiver uses to protect its own proprietary or confidential information of a like nature.
- 2.4 Upon the written request of Discloser, Receiver will return or destroy (at Discloser's election) all Confidential Information received (including all copies) and provide Discloser with documentation attesting to that fact.
- 2.5 Receiver shall notify Discloser of any unauthorised use or disclosure of the Confidential Information. In the event of a breach, or threatened breach, by the Receiver, monetary damages may not be sufficient relief, so the Discloser is entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies which it may have.
- 2.6 Except as otherwise agreed in writing with respect to any particular Confidential Information, the obligations of a party receiving Confidential Information will continue (i) indefinitely in relation to intellectual and industrial property rights, trade secrets and know how in respect of software; and (ii) for five years from the date of signing of this Agreement in relation to all other Confidential Information.
- 2.7 The obligations under this Agreement will not apply to any information which is (a) available to the public other than by breach of this Agreement by Receiver; (b) lawfully received by Receiver from a third party without proprietary or confidentiality limitations; (c) independently developed by Receiver; or (d) known to Receiver prior to first receipt of same from Discloser.
- 2.8 This Agreement will not apply to prevent Receiver from disclosing Confidential Information to the extent required by law or regulatory requirement, provided Receiver notifies Discloser promptly on receiving notice of such requirement, and asserts the confidentiality of the relevant Confidential Information to the body requiring disclosure.
- 2.9 Neither the execution of this Agreement nor the furnishing of any Confidential Information by the Disclosing Party shall be construed as granting expressly, by implication, estoppel or otherwise, as an obligation to enter into a subsequent contract or to result in any claim whatsoever by one Party against the other Party reimbursement of costs for any effort expended hereunder.
- 2.10 Each Discloser warrants that it has the right to make the disclosures under this Agreement. Neither party makes any express warranties and disclaims all implied warranties with respect to information delivered hereunder, including implied warranties of merchantability, fitness for a particular purpose, or freedom from patent or copyright infringement, whether arising by law, custom, or conduct.
- 2.11 This Agreement will terminate automatically upon the completion or termination of dealings between the Parties; however all obligations of confidentiality with respect to the Confidential Information

disclosed during the term of this Agreement shall continue until the third anniversary of the date of this Agreement, even if the Receiver has returned, destroyed or deleted the Confidential Information in accordance with clause 2.4.

2.12 The terms of this Agreement shall be governed and constructed in accordance with the laws in force from time to time in the state of Western Australia, Australia.

AGREED TO BY

Nicholas Power
General Manager
Zettagrid Pty Ltd
Direct: +61 (8) 9488 9536
Mobile: + 61 (0) 419185236

Authorised Signature
Name:
Position:
Company:
Date: