

# Confidentiality Deed

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## Parties

**Name**                    **767 Corporation Pty Limited**  
**ACN**                      094 652 810  
                                  ("the Grantor")  
**Address**                478 St Kilda Road, Melbourne VIC 3004  
**Email address**        italia@767corp.com

**Name**                    \_\_\_\_\_  
**ABN / ACN**              \_\_\_\_\_  
                                  ("the Recipient")  
**Address**                \_\_\_\_\_  
**Email address**        \_\_\_\_\_

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**IT IS COVENANTED AND AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

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### **1.1 Definitions**

The meaning of terms used in this Deed, unless the contrary intention appears or the context otherwise requires, are set out below:

**Confidential Information** means:

- (a) all confidential business information, documents, records, financial information, reports, product specifications, technical information and forecasts which relate to the Grantor or its Related Entities or their business, products or processes;
- (b) all intellectual property owned by or licensed to the Grantor or its Related Entities; and
- (c) any information contained in any oral communication or any Documents (whether on a computer disk, email, visual presentation or otherwise) provided to or made available to the Recipient or its Representatives in connection with the Express Purpose.

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

**Document** includes any email, note, letter, memorandum, record, report, financial information, analysis, calculation, strategic assessment, market survey, business plan, computer record, drawing, specification, material or any other means by which information may be stored or reproduced.

**Express Purpose** means the evaluation and consideration by the Recipient in entering or forming a co-operative business relationship and/or a business transaction with the Grantor.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001*

**Related Entity** has the meaning given in the *Corporations Act 2001*

**Representative** means any director, officer, employee or partner of a party or of any agent, contractor, financier, legal adviser or professional adviser of a party.

### **1.2 Interpretation**

- (a) the singular includes the plural and vice versa;
- (b) a reference in this Deed to:

- (i) a person includes a reference to a firm, corporation, other corporate body or legal entity including in the capacity of a trustee or other representative capacity;
  - (ii) a natural person includes the heirs, executors, administrators and permitted assigns of that person and a reference to a corporate body includes the successors and permitted assigns of that corporate body;
  - (iii) two or more persons means those persons jointly and severally;
  - (iv) a company includes a reference to its Related Entity and Related Body Corporate; and
  - (v) to a business day means a day other than a Saturday or Sunday on which all banks are open for business generally in Melbourne, Victoria;
- (c) where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - (d) headings are for ease of reference and do not affect the construction of this Deed;
  - (e) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
  - (f) an obligation of a party not to do a thing includes an obligation not to permit that thing to be done.
- (a) a reference to a consent or approval of a party means the prior written consent or approval of that party in its absolute and unfettered discretion; and
  - (b) a right includes a remedy, authority and power.

## **2. ACKNOWLEDGEMENT**

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- 2.1 In consideration for the Grantor providing the Confidential Information to the Recipient, the Recipient accepts and agrees to be bound by the terms and conditions set out in this Deed.
- 2.2 The Recipient acknowledges that this Deed does not convey any interest of a proprietary or any other nature in the Confidential Information to the Recipient or any other person to whom the Recipient disclose the Confidential Information to in accordance with this Deed.

## **3. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION**

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- 3.1 The Recipient may only use the Confidential Information for the Express Purpose.
- 3.2 The Recipient may only prepare or produce Documents incorporating part of the Confidential Information for the Express Purpose.
- 3.3 The Recipient may only disclose the Confidential Information to its Representatives who have a specific need to know for the Express Purpose.
- 3.4 The Recipient may only disclose the Confidential Information to any other party or entity ("third party") after it has provided notice to the Grantor of such intention and on the condition that such third party first provides the Grantor a binding covenant to maintain confidentiality.

## **4. RECIPIENT'S COVENANTS**

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The Recipient must (and must procure that its Representatives to whom Confidential Information has been disclosed under clause 3.4):

- (a) reasonably keep the Confidential Information secure and protect the Confidential Information from unauthorised use, disclosure, access and damage or destruction;
- (b) must promptly notify the Grantor if it suspects, or becomes aware of, any unauthorised access, use, storage, copying or disclosure of any part of the Confidential Information;
- (c) must not make any use of the Confidential Information or any part of it to the competitive disadvantage of the Grantor or any Related Body Corporate of the Grantor; and
- (d) not, without the Grantor's prior written consent, reproduce or permit the reproduction in any form, Document or other record which contains, is based on or utilises the Confidential Information, other than for the Express Purpose.

## **5. OWNERSHIP OF CONFIDENTIAL INFORMATION**

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- 5.1 All Confidential Information disclosed remains the property of the Grantor. The Recipient agrees that it shall not acquire (by implication or otherwise) any proprietary right or interest in, or title to, the Confidential Information.
- 5.2 The Grantor is free and entitled to disclose or make available its Confidential Information on such terms and conditions as the Discloser in its absolute discretion sees fit.

## **6. TERM**

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This Deed continues for a period of one (1) year from the date of this Deed and expires upon expiry of that period.

## **7. EXCLUSIONS**

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- 7.1 This Deed does not apply to any part of the Confidential Information that:
- (a) subject to clause 7.2, the Recipient is required to disclose by any applicable law or legally binding order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers;
  - (b) was provided to the Recipient (without restriction as to its use or disclosure by the Recipient) by a third party whom the Recipient knows is legally entitled to possess the Confidential Information and provide it to the Recipient; or
  - (c) is in the public domain other than as a result of a breach of this Deed.
- 7.2 If the Recipient must make a disclosure as described in clause 7.1(a), it must first notify and consult with the Grantor and then disclose only the minimum Confidential Information required to comply with the applicable law or order.

## **8. GOVERNING LAW AND JURISDICTION**

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- 9.1 This Deed is governed by the laws of Victoria, Australia.
- 9.2 The Recipient irrevocably submits to the exclusive jurisdiction of the courts of Victoria and the Melbourne Registry of the Federal Court.

## **9. WAIVERS**

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- 10.1 Waiver of any right, power, authority, discretion or remedy arising upon default under this Deed or a waiver of this clause must be in writing and signed by the party granting the waiver.
- 10.2 A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising upon default under this Deed, does not result in a waiver of that right, power, authority, discretion or remedy.
- 10.3 A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

## **10. VARIATION**

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A variation of any term of this Deed must be in writing and signed by the parties.

## **11. ASSIGNMENT**

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No party may assign, encumber its interests in this Deed.

## **12. SEVERABILITY**

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Should any provision of this Deed or its application be held invalid or unenforceable by a Court of competent jurisdiction, the remainder of this Deed and its application other than that provision shall not be affected and shall continue valid and enforceable to the fullest extent permitted by law or equity.

### 13. COSTS

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Except as otherwise set out in this Deed, each party must pay its own costs in relation to preparing, negotiating and executing this Deed and any document related to this Deed.

### 14. COUNTERPARTS

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This Deed may be executed in any number of counterparts which shall constitute an original of this Deed, but all the execute counterparts together constitute the same Deed.

## EXECUTED AS A DEED

Date \_\_\_\_\_

SIGNED SEALED AND DELIVERED for and on behalf of  
**767 Corporation Pty Limited (ABN 21 094 652 810)**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**Marc ITALIA**  
\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director

SIGNED SEALED AND DELIVERED for and on behalf of

\_\_\_\_\_

\*in accordance with Section 127 of the Corporations Act 2001

\*by its authorised representative who warrants his authority

\_\_\_\_\_  
\*Director/ \*Sole Director

\_\_\_\_\_  
\* Director/ \*Company Secretary

\_\_\_\_\_  
Name of \*Director / \*Sole Director  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)

\*please delete as appropriate