

**NON-DISCLOSURE AGREEMENT**

**THIS NON-DISCLOSURE AGREEMENT (the "Agreement")** dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**BETWEEN:**

Willow & Ivie Pty Ltd of 256 Irymple Avenue, Nichols Point, VIC 3501, and  
Willow & Ivie Investments Pty Ltd as trustee for Willow & Ivie Unit Trust of 256 Irymple Avenue,  
Nichols Point, VIC 3501  
(individually and collectively the "Seller")

OF THE FIRST PART

- AND -

\_\_\_\_\_ of

(the "Purchaser")

OF THE SECOND PART

**BACKGROUND:**

- A. The Seller and the Purchaser are contemplating a possible transaction (the "Transaction") with respect to: Business and freehold.
  
- B. In connection with the Transaction (the "Permitted Purpose"), the Purchaser has requested certain confidential information (the "Confidential Information").

**IN CONSIDERATION OF** and as a condition of the Seller providing the Confidential Information to the Purchaser in addition to other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

**Confidential Information**

- 1. All written and oral information and materials disclosed or provided by the Seller to the Purchaser under this Agreement constitute Confidential Information regardless of whether such information was provided before or after the date of this Agreement or how it was provided to the Purchaser.

2. "Confidential Information" means all data and information relating to the transaction and the Seller, including but not limited to, the following:
  - a. **Customer Information** which includes names of customers of the Seller, their representatives, all customer contact information, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by customers of the Seller;
  - b. **Marketing and Development Information** which includes marketing and development plans of the Seller, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Seller which have been or are being discussed;
  - c. **Business Operations** which includes internal personnel and financial information of the Seller, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, external business contacts including those stored on social media accounts or other similar platforms or databases operated by the Seller, and the manner and methods of conducting the Seller's business;
  - d. **Accounting Information** which includes, without limitation, all financial statements, annual reports, balance sheets, company asset information, company liability information, revenue and expense reporting, profit and loss reporting, cash flow reporting, accounts receivable, accounts payable, inventory reporting, purchasing information and payroll information of the Seller; and
  - e. Confidential Information will also include any information that has been disclosed by a third party to the Seller and is protected by a non-disclosure agreement entered into between the third party and the Seller.
3. Confidential Information will not include the following information:
  - a. Information that is generally known in the industry of the Seller;
  - b. Information that is now or subsequently becomes generally available to the public through no wrongful act of the Purchaser;
  - c. Information rightly in the possession of the Purchaser prior to the disclosure to the Purchaser by the Seller, the burden being on the Purchaser to establish this through documentation;

- d. Information that is independently created by the Purchaser without direct or indirect use of the Confidential Information, the burden being on the Purchaser to establish this through documentation; or
  - e. Information that the Purchaser rightfully obtains from a third party who has the right to transfer or disclose it, the burden being on the Purchaser to establish this through documentation.
4. Except as otherwise provided in this Agreement, the Confidential Information will remain the exclusive property of the Seller and will only be used by the Purchaser for the Permitted Purpose. The Purchaser will not use the Confidential Information for any purpose that might be directly or indirectly detrimental to the Seller or any associated affiliates or subsidiaries.
5. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on the Purchaser in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and those obligations will last indefinitely.
6. The Purchaser may disclose any of the Confidential Information:
- a. to such employees, agents, representatives and advisors of the Purchaser that have a need to know for the Permitted Purpose provided that:
    - i. the Purchaser has informed such personnel of the confidential nature of the Confidential Information;
    - ii. such personnel agree to be legally bound to the same burdens of non-disclosure and non-use as the Purchaser;
    - iii. the Purchaser agrees to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel; and
    - iv. the Purchaser agrees to be responsible for and indemnify the Seller for any breach of this Agreement by their personnel.
  - b. to a third party where the Seller has consented in writing to such disclosure; and
  - c. to the extent required by law.
7. The Purchaser agrees to retain all Confidential Information at their usual place of business and to store all Confidential Information separate from other information and documents held in

the same location. Further, the Confidential Information may not be used, reproduced, transformed, or stored on a computer or device that is accessible to persons to whom disclosure may not be made, as set out in this Agreement.

### **Ownership and Title**

8. Nothing contained in this Agreement will grant to or create in the Purchaser, either expressly or impliedly, any right, title, interest or license in or to the intellectual property of the Seller.

### **Remedies**

9. The Purchaser agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any disclosure of the Confidential Information to a third party in breach of this Agreement cannot be reasonably or adequately compensated for in money damages and would cause irreparable injury to the Seller. Accordingly, the Purchaser agrees that the Seller is entitled to, in addition to all other rights and remedies available to them at law or in equity, an injunction restraining the Purchaser and any agents of the Purchaser, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

### **Return of Confidential Information**

10. The Purchaser will keep track of all Confidential Information provided to them and the location of such information. The Seller may at any time request the return of all Confidential Information from the Purchaser. Upon the request of the Seller, or in the event that the Purchaser ceases to require use of the Confidential Information, or upon the expiration or termination of this Agreement, the Purchaser will:
  - a. return all Confidential Information to the Seller and will not retain any copies of this information;
  - b. destroy or have destroyed all memoranda, notes, reports and other works based on or derived from the Purchaser's review of the Confidential Information; and
  - c. provide a certificate to the Seller that such materials have been destroyed or returned, as the case may be.

### **Notices**

11. In the event that the Purchaser is required in a civil, criminal or regulatory proceeding to disclose any part of the Confidential Information, the Purchaser will give to the Seller prompt written notice of such request so the Seller may seek an appropriate remedy or alternatively to

waive the Purchaser's compliance with the provisions of this Agreement in regards to the request.

12. If the Purchaser loses or makes unauthorised disclosure of any of the Confidential Information, the Purchaser will immediately notify the Seller and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.
13. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.
14. The addresses for any notice to be delivered to any of the parties to this Agreement are as follows:
  - a. Willow & Ivie Pty Ltd  
256 Irymple Avenue, Nichols Point, VIC 3501
  - b. Willow & Ivie Investments Pty Ltd as trustee for Willow & Ivie Unit Trust  
256 Irymple Avenue, Nichols Point, VIC 3501
  - c. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Representations**

15. In providing the Confidential Information, the Seller makes no representations, either express or implied as to its adequacy, sufficiency, completeness, correctness or its lack of defect of any kind, including any patent or trade mark infringement that may result from the use of such information. The Seller will not be liable for any damage or loss that may occur from such provision or use of the Confidential Information.

**Termination**

16. Either party may terminate this Agreement by providing written notice to the other party. Except as otherwise provided in this Agreement, all rights and obligations under this Agreement will terminate at that time.

**Assignment**

17. Except where a party has changed its corporate name or merged with another corporation, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.

### **Amendments**

18. This Agreement may only be amended or modified by a written instrument executed by both the Seller and the Purchaser.

### **Governing Law**

19. This Agreement will be construed in accordance with and governed by the laws of the State of Victoria.

### **General Provisions**

20. Time is of the essence in this Agreement.
21. This Agreement may be executed in counterparts.
22. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
23. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.
24. The Purchaser is liable for all costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Seller in enforcing this Agreement as a result of any default of this Agreement by the Purchaser.
25. The Seller and the Purchaser acknowledge that this Agreement is reasonable, valid and enforceable. However, if a court of competent jurisdiction finds any of the provisions of this Agreement to be too broad to be enforceable, it is the intention of the Seller and the Purchaser that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, bearing in mind that it is the intention of the Purchaser to give the Seller the broadest possible protection against disclosure of the Confidential Information.

- 26. No failure or delay by the Seller in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.
  
- 27. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Seller and the Purchaser.
  
- 28. This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise.

**IN WITNESS WHEREOF** Willow & Ivie Pty Ltd, Willow & Ivie Investments Pty Ltd as trustee for Willow & Ivie Unit Trust and \_\_\_\_\_ have duly affixed their signatures under hand on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Willow & Ivie Pty Ltd

Per: \_\_\_\_\_

Willow & Ivie Investments Pty Ltd as trustee for Willow & Ivie Unit Trust

Per: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_(Purchaser)