

DATED

DD MMMM YYYY

(1) LUMEN AUSTRALIA PTY LTD

- and -

(2) [Insert COUNTERPARTY'S NAME IN FULL]

**MUTUAL CONFIDENTIALITY
DEED**

Document Number: LUMXXXXXX

THIS DEED is made on

DD MMMM YYYY

PARTIES:

- (1) **LUMEN AUSTRALIA PTY LTD (ACN 007 285 501)** for itself and its affiliates and related entities, having its principal place of business at 10-12 Becon Court, Hallam, Victoria 3803 (hereinafter referred to as "**Lumen**")
- (2) **[Insert COUNTERPARTY'S NAME IN FULL] [ACN]**, for itself and its affiliates and related entities, having its principal place of business at **[REGISTERED OFFICE]** (hereinafter referred to as "**CompanyName**") and together with "**Lumen**", the "**Parties**").

BACKGROUND:

- A The parties intend to exchange Confidential Information in the course of pursuing the Authorised Purpose.
- B By executing this deed, each party agrees to receive and deal with the other's Confidential Information on the terms and conditions set out in this deed.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this deed the following definitions apply:

"**Authorised Purpose**" means i.e. **"[INSERT DESCRIPTION OF PURPOSE REPLACING THE FOLLOWING EXAMPLE i.e. Development of PCBA's and or Associated Services to suit Lumen Requirements]."**;

"**Breach Event**" has the meaning in clause 4.1;

"**Confidential Information**" means all information (however recorded or preserved):

- (a) disclosed or made available, directly or indirectly, to the Recipient or any of its Representatives (whether before or after execution of this deed) by or on behalf of the Discloser or any of its Representatives; or
- (b) otherwise obtained by the Recipient or any of its Representatives, (whether before or after execution of this deed),

which relates directly or indirectly to the business, products, marketing, licensing or sales activities, policies, practices, outlooks, forecasts, finances, revenue, pricing, costs or profits, released or unreleased products, services, operations, past, existing or future business, administration or strategic plans of the Discloser or any of its Related Bodies Corporate or of another person to whom the Discloser has legal obligations of confidentiality, whether that information is in oral, visual, machine readable or written form, and includes:

- (c) technical information, including product manufacturing information, product names, designs, technical and other specifications, BOMs, CAD data, models,

drawings, photographs, formulations, samples, notes, memoranda, analyses, reports, studies, working papers, findings, forecasts and compilations;

- (d) software, hardware, development, research, performance characteristics, code, formulas, algorithms, data, techniques, processes, inventions, industry, customer or consumer information and third party confidential information;
- (e) product testing and development information, including PPAP information, DVP&R, market intelligence data, test data and resulting documentation, other data, research, testing methodologies, data analysis tools and procedures;
- (f) any information provided in confidence relating to:
 - (i) the business affairs, past or existing customers, clients or suppliers (including their names), plans, intentions or market opportunities of a Discloser or of a Discloser's Related Body Corporate or of another person to whom the Discloser has legal obligations of confidentiality; and
 - (ii) the operations, processes, product information, know-how, innovations, inventions, ideas, technology, trade secrets, software or software code of the Discloser or of a Discloser's Related Body Corporate or of another person to whom the Discloser has legal obligations of confidentiality;
- (g) material derived or produced by or for the benefit of the Recipient or any of its Representatives partly or wholly from any Confidential Information;
- (h) the existence of and the terms and conditions of this deed;
- (i) the existence, status and terms of, any discussions, negotiations or agreements between the parties or their respective Representatives in relation to the Authorised Purpose;
- (j) notwithstanding anything in clause 2.2, any compilation of otherwise public information in a form not publicly known; and
- (k) any information or analysis derived from the Confidential Information.

"Discloser" means the party whose Confidential Information is provided to or obtained by the other party (who is the 'Recipient' in that context);

"Law" means any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body;

"Recipient" means the party who is provided with or obtains the Confidential Information of the other party (who is the 'Discloser' in that context);

"Related Body Corporate" has the meaning given to that term in the *Corporations Act 2001* (Cth);

"Representative" means any employee, of a party and or affiliates and or related entities of a party;

"**Affiliate**" means any entity with respect to which either party owns or controls, directly or indirectly, greater than fifty percent (>50%) of the outstanding voting securities (but shall remain an Affiliate only as long as it meets such ownership requirements.); and

"**Third Party**" means including but not limited to any supplier, vendor, customer, manufacturer, agent, contractor, consultant, professional adviser or their affiliates or related entities of a party.

2. THE OBLIGATIONS OF THE RECIPIENT

Protection

2.1 The Recipient must, subject to the terms of this deed:

2.1.1 for a period of sixty (60) Months from the earlier of the first disclosure of Confidential Information or the date of this deed; or

2.1.2 until such earlier time as the Discloser publishes the Confidential Information in question or is granted a patent covering the Confidential Information;

2.1.3 keep the Confidential Information secret and secure and preserve its confidential nature;

2.1.4 not use the Confidential Information for any purpose other than the Authorised Purpose;

2.1.5 not disclose or permit the disclosure of the Confidential Information to any person other than as permitted under clause 2.2;

2.1.6 not reverse engineer, decompile or disassemble the Confidential Information;

2.1.7 not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;

2.1.8 apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use; and

2.1.9 not manufacture any product or use any process based on, using or including the Confidential Information or otherwise commercialise anything based on, using or including the Confidential Information, unless expressly permitted in writing by the Discloser.

Permitted disclosures

2.2 This deed does not prohibit the disclosure of Confidential Information by the Recipient to the extent that:

2.2.1 the Discloser has consented in writing to such disclosure, excluding any such disclosure to any "Third Party" which must be separately confirmed in writing by the Discloser prior to any such disclosure;

- 2.2.2 the disclosure is to a Representative of the Recipient who needs to know the Confidential Information for the Express Purpose and the Recipient has complied with clause 3 and 4 in relation to the disclosure;
- 2.2.3 the Confidential Information is in the public domain other than as a result of a breach of this deed;
- 2.2.4 the Confidential Information was at the time of the disclosure already in the lawful possession of the Recipient;
- 2.2.5 the Confidential Information was received from a person (other than the Discloser or any Representative of the Discloser) legally entitled to possess the Confidential Information and disclose it free from any obligation of confidentiality; or
- 2.2.6 the disclosure is required by Law and the Recipient has complied with clause 2.3 in relation to the disclosure.

Limitation on disclosure required by Law

- 2.3 If the Recipient or any Representative of the Recipient considers that disclosure of Confidential Information is required by Law, the Recipient must:
 - 2.3.1 to the extent practicable, immediately notify the Discloser of the requirement and consult with the Discloser as to the form of the disclosure;
 - 2.3.2 only disclose the Confidential Information to the minimum extent required by Law; and
 - 2.3.3 assist and cooperate with the Discloser if the Discloser seeks to limit or resist the requirement for the Confidential Information to be disclosed.

Benefit of agreement

- 2.4 The Recipient's obligations under this deed are for the benefit of, and are enforceable by, the Discloser in its own right and as trustee for its Related Bodies Corporate (if any) from time to time even though the Discloser's Related Bodies Corporate are not parties to this deed.

3. DISCLOSURE TO REPRESENTATIVES

- 3.1 The Recipient must ensure that:
 - 3.1.1 before any of its Representatives are provided with or have access to Confidential Information, the Representatives are made aware of the confidential nature of the Confidential Information and the terms of this deed; and
 - 3.1.2 its Representatives strictly observe all of the Recipient's obligations under this deed as if those obligations were imposed on that Representative.
 - 3.1.3 without limiting any other obligations under this deed, its Representatives do not disclose such information to any "Third Party without prior written approval from the Disclosing Party.
- 3.2 The Recipient accepts liability for any breach or failure to comply with the terms of this deed by, or arising out of the actions of, its Representatives.

4. UNAUTHORISED ACCESS, USE OR DISCLOSURE

4.1 The Recipient must:

- 4.1.1 immediately notify the Discloser if it becomes aware of any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of any Confidential Information ("**Breach Event**"); and
- 4.1.2 cooperate with the Discloser to prevent, stop or mitigate loss in respect of a Breach Event and give the Discloser all assistance required in connection with proceedings that the Discloser may institute against any person for breach of confidence or otherwise.

5. ACKNOWLEDGEMENT

5.1 The Recipient acknowledges and agrees that:

- 5.1.1 nothing in this deed requires a party to disclose any Confidential Information;
- 5.1.2 the Confidential Information remains the property of the Discloser and its Related Bodies Corporate at all times and that this deed does not convey to the Recipient or any of its Representatives any proprietary or other interest in the Confidential Information;
- 5.1.3 the Confidential Information is valuable to the Discloser and its Related Bodies Corporate and disclosure of any Confidential Information in breach of this deed could cause considerable commercial and financial detriment to the Discloser and its Related Bodies Corporate and damages are not adequate remedy for a breach of this deed;
- 5.1.4 the Discloser or its Related Bodies Corporate may seek injunctive relief, specific performance or similar remedy as a remedy for any conduct that is or would be a breach of this deed, in addition to any other remedies available to the Discloser or its Related Bodies Corporate at law or in equity under or independently of this deed.

6. DISCLAIMER

- 6.1 The Discloser and its Related Bodies Corporate make no representations or warranties as to the accuracy or completeness of any Confidential Information and, to the maximum extent permitted by law, the Recipient acknowledges that the Discloser and its Related Bodies Corporate will not be liable in any way for any loss of any kind arising from any error, inaccuracy, incompleteness or other similar defect in the Confidential Information.
- 6.2 The disclosure or receipt of Confidential Information by a party shall not form any offer by, or representation or warranty on the part of, that party to enter into any further agreement in relation to the Express Purpose or otherwise.

7. RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION

- 7.1 If requested by the Discloser the Recipient must return all Confidential Information by:
 - 7.1.1 returning all hard copies of the Confidential Information within 5 business days of receipt of such request;

7.1.2 destroying all electronic copies of the Confidential Information under the supervision of a representative of the Discloser; and

7.1.3 providing an Affidavit by a representative of the Recipient listing the items returned, if any, pursuant to clause 7.1.1 and destroyed pursuant to clause 7.1.2, confirming that, to the best of their knowledge and belief, there are no copies (either hard copy or electronic) of any Confidential Information remaining in the possession custody and control of the Recipient or any of its employees, Representatives or agents and that the Recipient has informed its employees, Representatives and agents of the obligations under this clause and ensured their compliance with it;

7.2 It shall not be a breach of clause 7.1 for the Recipient to provide a copy of any documentation returned to the Discloser to its legal representatives, provided that such disclosure is made pursuant to obligations of confidentiality that are consistent with the terms of this Deed.

8. INDEMNITY

8.1 The Recipient indemnifies the Discloser and its Related Bodies Corporate against any claim, loss, damage or expense (including legal costs on a full indemnity basis) that the Discloser or its Related Bodies Corporate incur or suffer directly or indirectly (other than to the extent caused by or contributed to by the Discloser or any of its Representatives) as a result of a breach of this deed by the Recipient or its Representatives or an unauthorised disclosure by a person who received the Confidential Information from the Recipient or any of its Representatives.

9. NO ASSIGNMENT

9.1 No person may assign any of its rights under this deed without the prior written consent of the other parties.

10. SURVIVAL OF OBLIGATIONS

10.1 This deed will terminate at sixty (60) Months from the date of this agreement.

10.2 The Recipient's confidentiality obligations and indemnities under this deed are independent and survive termination or expiry of this deed.

11. MISCELLANEOUS

Entire agreement

11.1 This deed contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this deed was executed.

Execution of separate documents

11.2 This deed is properly executed if each party executes either this document or an identical document. In the latter case, this deed takes effect when the separately executed documents are exchanged between the parties.

Governing law and jurisdiction

11.3 This deed is governed by the law of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria.

Variation

11.4 No variation of this deed will be of any force or effect unless it is in writing and signed by each party to this deed.

Waiver

11.5 A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it

EXECUTION

Executed as a deed.

Date:

Executed by **LUMEN AUSTRALIA PTY LTD (ACN 007 285 501)** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:

.....
Signature of Jonathan Evans, Managing Director

.....
Name (print)

Executed by **[Insert COUNTERPARTY'S NAME IN FULL] [ACN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:

.....
Signature

.....
Name of director (print)

SCHEDULE 1: NOTICE DETAILS – UPDATE AS REQUIRED

Lumen	
Name:	LUMEN AUSTRALIA PTY LTD (ACN 007 285 501)
Address:	10-12 Becon Court, Hallam, Victoria 3803
Email address:	Justin@Lumen.com.au]
Attention:	Justin Wathen
Copy to:	Derek Pike
Email address:	Derek@lumen.com.au

Supplier	
Name:	[Insert COUNTERPARTY'S NAME IN FULL] [ACN]
Address:	[REGISTERED OFFICE]
Email address:	[ATTENTION EMAIL]
Attention:	[ATTENTION]
Copy to:	[COPY NAME]
Email address:	[COPY EMAIL]