

**Your Company**

(“the Recipient”)

and

**STRATX PTY LTD**

(ACN 124 849 047)

(“the Discloser”)

---

**CONFIDENTIALITY AND NON CIRCUMVENT AGREEMENT**

---

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	3
2.	CONFIDENTIALITY ACKNOWLEDGMENTS	6
3.	DISCLOSURE	7
4.	RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION	7
5.	DISCLOSER'S LIABILITY	9
6.	INDEMNITY	9
7.	INJUNCTIVE RELIEF	9
8.	NON-CIRCUMVENTION	9
9.	NOTICES	10
10.	GENERAL	12

This **Agreement** is made on the day of your acceptance to our invitation to files and information contained in the dropbox

## **BETWEEN**

**Your Company** (“the **Recipient**”)

## **AND**

**STRATX PTY LTD (ACN 124 849 047)** of Suite 11, 18 Kearns Crescent, Ardross, Western Australia (“the **Discloser**”)

## **BACKGROUND**

- A. The Discloser has valuable Confidential Information including information relating to its relationships with Third Parties located within Australia and outside of Australia.
- B. The Discloser has disclosed or may in future disclose some of that Confidential Information for the Disclosure Purpose to the Recipient.
- C. In consideration for the Discloser disclosing the Confidential Information to the Recipient; or allowing the Recipient to use the Confidential Information for the Disclosure Purpose, the Recipient agrees to the restrictions on the use and disclosure of that Confidential Information contained in this Agreement.

## **IT IS AGREED:**

---

# **1. DEFINITIONS AND INTERPRETATION**

## **1.1 Definitions**

In this Agreement:

“**Agreement**” means this Agreement as may be amended or varied by the Parties from time to time in accordance with the terms of this Agreement;

“**Associates**” of a Party means:

- (a) Related Corporations of the party; and
- (b) officers, employees, representatives, agents, contractors and advisors of the Party and its Related Corporations.

**“Business Day”** means a day other than a Saturday, Sunday or bank or public holiday in Western Australia;

**“Confidential Information”** means any information regardless of its form, created at any time, which:

- (a) is Specific Confidential Information; or
- (b) is marked as confidential;
- (c) is by its nature confidential; or
- (d) the Recipient knows or ought to know is confidential;

but excludes information which, without breach of this Agreement or other breach of confidence:

- (i) is or becomes public knowledge (other than through an act or omission of the Recipient or an Associate of the Recipient to whom the Confidential Information has been disclosed);
- (ii) the Recipient already knew or had the information, on a non-confidential basis, before receiving the information from the Discloser;
- (iii) is required by Law to be disclosed;

**“Disclosure Purpose”** means the purpose of enabling the Recipient to consider a Transaction;

**“Employee”** means an employee of the Discloser or a Related Corporation;

**“Exclusivity Period”** means the period commencing from the date of this Agreement plus five years;

**“Law”** means all relevant Commonwealth and State legislation including regulations, bylaws, and other subordinate legislation, authority requirements and guidelines;

**“Party”** means either of the Discloser or the Recipient and **Parties** has the corresponding meaning;

**“Recipient”** means the Recipient and any of its Related Corporations or Associates;

**“Related Corporation”** in relation to a body corporate means any body corporate which is, under section 50 of the *Corporations Act 2001* (Cth), related to the first body;

**“Specific Confidential Information”** means:

- (a) the relationship/s that exist between the Discloser and a Third Party and any information relating to such relationship/s;
- (b) information relating to a Third Party disclosed to the Recipient by the Discloser;
- (c) information relating to the Discloser or any Related Corporation of the Discloser;
- (d) information relating to the Disclosure Purpose or its existence;
- (e) information obtained or created by the Recipient or any Associate in the course of the Disclosure Purpose; and
- (e) this Agreement and its subject matter or existence;

**“Third Party”** means an employee, agent or consultant of the Disclosure or of a Related Corporate of the Third Party or a Related Corporation or Associate of the Third Party;

**“Transaction”** means any transaction or agreement or other arrangement concerning any develop, project or business transaction of any nature.

## 1.2 Construction

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority; and
  - (ii) a right includes a benefit, remedy, discretion and power.

- (g) Headings do not affect the interpretation of this Agreement.

---

## **2. CONFIDENTIALITY ACKNOWLEDGMENTS**

### **2.1 Duty of confidentiality**

The Recipient must keep confidential all Confidential Information and subject to **clause 3**, not disclose or allow to be disclosed any Confidential Information to any person except:

- (a) as required by Law or by a stock exchange;
- (b) with the prior written consent of the Discloser; or
- (c) to the Associates of the Recipient to the extent that they need to know for the Disclosure Purpose.

### **2.2 Use of Confidential Information**

The Recipient must ensure that all Confidential Information disclosed to the Recipient or any of its Associates is only used for the Disclosure Purpose.

### **2.3 Security of Confidential Information**

The Recipient must:

- (a) maintain effective security measures to protect all Confidential information from unauthorised access, use, copying or disclosure;
- (b) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any possible or actual unauthorised disclosure or misuse of the Confidential Information and; and
- (c) notify the Discloser immediately in writing if the Recipient becomes aware of any possible or actual breach of this Agreement and take all reasonable steps to prevent or stop that breach, at the Recipient's expense.

### **2.4 Acknowledgements**

The Recipient acknowledges and agrees that:

- (a) the Confidential Information is secret, confidential and valuable to the Discloser;

- (b) as between the Parties all rights and interests (including all intellectual property rights) in Confidential Information belong solely to the Discloser;
- (c) it has no right or interest in the Confidential Information other than the right to use and disclose it on the terms of this Agreement; and
- (d) the Recipient owes an obligation of confidence to the Discloser in relation to the Confidential Information on the terms of this Agreement.

---

### **3. DISCLOSURE**

#### **3.1 Disclosure by Law**

If the Recipient is required by Law or by a stock exchange to disclose any Confidential Information, the Recipient must:

- (a) give reasonable notice to and consult with the Discloser (not so restricted by law);
- (b) disclose no more Confidential Information than is strictly required; and
- (c) use its best endeavours to ensure that the disclosed Confidential Information is treated confidentially.

#### **3.2 Disclosure to Associates**

- (a) Before any Confidential Information is disclosed to an Associate the Recipient must inform the Associate that:
  - (i) the information being disclosed is confidential;
  - (ii) the information must not be disclosed to any other person and must not be used other than for the Disclosure Purpose;
  - (iii) the nature of the Recipient's obligations and liabilities under this Agreement; and
  - (iv) that the Associate will be subject to the same obligations and liabilities which are legally enforceable by the Discloser against the Recipient.
- (c) The Recipient is responsible for any use or disclosure of the Confidential Information and or relationship by its Associates which is contrary to this Agreement, and must use its best endeavours to prevent any such use or disclosure.

---

## **4. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

### **4.1 Return or destruction**

- (a) Subject to clause 4.1(b) whenever the Discloser requests, the Recipient must immediately return to the Discloser or if the Discloser requests, destroy all materials containing any of the Confidential Information in the Recipient's or any of its Associates' possession or control.
- (b) The Recipient does not need to return to the Discloser board minutes of the Recipient that refer to the Confidential Information (but do not contain extracts of the Confidential Information) provided that the relevant extract of minutes has been provided to the Discloser and the Discloser has approved the form of the minutes for retention by the Recipient, such approval not to be unreasonably withheld or granted subject to unreasonable conditions.

### **4.2 Obligations to continue after materials returned**

The obligations of the Recipient and its Associates under this Agreement will:

- (a) continue and will be enforceable by the Discloser and its Related Corporations for a period of five years after the date that all materials containing the Confidential Information (including all material retained by the Recipient under clause 4.1(b)) have been returned to the Discloser or destroyed.

### **4.3 Recipient must certify destruction of materials**

If the Discloser requests the Recipient to destroy any materials containing Confidential Information:

- (a) without limiting **clause 4.1** all electronic or computer data or programs containing the Confidential Information must be erased from the magnetic or other storage media on which it is stored so that it cannot be recovered or reconstructed in any way; and
- (b) a principal of the Recipient must certify in writing to the Discloser that the Confidential Information has been destroyed.

---

## **5. DISCLOSER'S LIABILITY**

### **5.1 Discloser does not warrant Confidential Information is accurate**

The Recipient acknowledges that the Discloser does not represent or warrant that the Confidential Information is accurate or complete or that reasonable care has been or will be taken by it in the compilation, preparation or provision of any Confidential Information.

### **5.2 Discloser not liable**

The Discloser and its Associates are not liable to the Recipient, its Associates or any other person in relation to the use of the Confidential Information by the Recipient, its Associates or any other person.

---

## **6. INDEMNITY**

**6.1** The Recipient indemnifies and will keep indemnified the Discloser and the Discloser's Associates against all Loss arising from any breach of any obligation by the Recipient or any of the Recipient's Associates under this Agreement. **Loss** includes direct and indirect losses, damages, liabilities, costs, expenses, claims, remedies, matters or actions inclusive of all legal fees and disbursements (on a full indemnity basis) however arising, directly or indirectly.

---

## **7. INJUNCTIVE RELIEF**

### **7.1 Recipient's acknowledgments**

The Recipient acknowledges that because of the nature of the Confidential Information and or relationships, damages or an account of profit would not be an adequate remedy for the Discloser if there is any unauthorised use or disclosure of the Confidential Information and or relationships. Therefore the Recipient acknowledges that the Discloser can seek an ex parte interim, interlocutory or final injunction to restrain any unauthorised use or disclosure of the Confidential Information and or relationship.

## **8. NON- CIRCUMVENTION**

### **8.1 Exclusivity obligation**

The Recipient hereby undertakes that it will deal exclusively through the Discloser in respect of any contact or dealings with the Third Party and shall not deal with the Third Party at anytime directly without the prior written approval of the Discloser.

### **8.2 Non-Circumvention**

- (a) Without limiting the application of any other provision of this Agreement the Recipient hereby undertakes that for the Exclusivity Period it will not circumvent the Discloser to avoid the payment of any fees, profits or other benefits that may be agreed between the Parties, either directly or indirectly with reference to the Transactions.
- (b) For the purpose of this clause 9.2 “circumvent” shall include the contacting, dealing with or otherwise becoming involved in any Transaction with the Third Party unless authorised in writing by the Discloser.

### **8.3 Access**

- (a) The Recipient at all times must be accompanied by the Discloser or their representative at any meeting, discussion or visit with the Third Party ,and any of their/its related entities now and in the future.
- (b) The Recipient at all times must give the Discloser reasonable advance notice to organise such meetings, or visits contemplated in clause 9.3(a).

### **8.4 Non-Solicitation**

The Recipient and its Associates will not, for a period of five (5) years, directly or indirectly solicit for employment or employ any person who is employed or retained by the Discloser or the Third Party without the prior written consent of the Discloser.

### **8.5 Ownership and Title**

Nothing contained in this Agreement will grant to or create in the Recipient, either expressly or impliedly, any right, title, interest, license and or agreement in or to the Confidential Information including intellectual property of the Discloser.

---

## **9. NOTICES**

### **9.1 General**

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in English and may be given by a duly authorised person of the sender.

### **9.2 How to give a communication**

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the party's current email number for notices.

### **9.3 Communications by post**

Subject to clause 9.5, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

### **9.4 Communications by email**

Subject to clause 9.5 a communication is given if sent by email, when the sender's receives a confirmation email from the recipient that it has been received in full at that addressee. That Recipients email is conclusive evidence that the addressee received the email in full at the time indicated on that email.

### **9.5 After hours communications**

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt, it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **9.6 Process service**

Any process or other Agreement relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this clause 11 or in accordance with any applicable Law.

---

## **10. GENERAL**

### **10.1 Consideration**

The Recipient agrees to the obligations and restrictions this Agreement imposes on it regarding the Confidential Information, in consideration for the Discloser disclosing the Confidential Information to the Recipient.

### **10.2 Severance**

If a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.

### **10.3 Amendment**

This Agreement may only be varied or replaced by a Agreement executed by the parties.

### **10.4 Waiver and exercise of rights**

A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

### **10.5 Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws applicable in Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceeding being brought in those courts.

#### **10.6 Assignment**

Neither the Recipient nor any of its Associates may assign any right or obligation under this Agreement without the Discloser's prior written consent. Any dealing in breach of this clause is of no effect.

#### **10.7 Entire understanding**

This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.

#### **10.8 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

#### **10.9 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

#### **10.10 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

#### **10.11 Relationship of parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

**Executed** as a Confidentiality and Non-Circumvention Agreement by accepting our invitation to you to access to files and information on the dropbox.