

# Non-Disclosure Agreement

## Parties

This Non-Disclosure Agreement (“**Agreement**”) is made between:

**Energy Renaissance Pty Ltd.**, (ABN 90 606 927 575), a company incorporated in Australia, and having its principal place of business at Level 2, 24 Hickson Road, Millers Point, Sydney NSW 2000 (**Energy Renaissance**).

**AND COMPANY NAME** (if in Australia, ABN **XX XXX XXX XXX**) a company incorporated in **XXX** and having its principal place of business at **ADDRESS**

## Recitals

- A. The Parties wish to engage in discussions and share information in relation to the Permitted Purpose.
- B. During the course of discussions it may become desirable or necessary for the Parties to disclose to each other certain information relating to the Permitted Purpose that is Confidential Information.
- C. The Parties agree to disclose Confidential Information to each other as may be necessary or desirable for the furtherance of the Permitted Purpose and only in accordance with this Agreement.

## Operative Part

In consideration of the foregoing and the mutual promises contained herein, it is agreed as follows:

### 1. Interpretation

- 1.1. In this Agreement, unless the contrary intention appears, capitalised words have the meaning given to them in this clause:

“**Confidential Information**” means any information which is provided by the Disclosing Party (whether directly or indirectly) to the Receiving Party, for or in connection with the Permitted Purposes, which by its nature is confidential, or is designated by the Disclosing Party as confidential, or the Receiving Party ought to know is confidential, and includes, but is not limited to:



- (a) business methods or plans, information relating to customers or suppliers, finances, ideas, strategies, concepts, methodologies, inventions, intellectual property rights, processes, formulae, products, software, programs, source code and other information, regardless of whether that information is marked as confidential/proprietary or not;
- (b) any information generated from Confidential Information, including but not limited to information generated during any examination, testing and/or analysis of Confidential Information;
- (c) the fact that the Parties have or are holding discussions concerning the Permitted Purposes.

Confidential Information may be disclosed either in writing, visually, orally and/or by way of samples, prototypes and/or models.

**“Controlled Information”** has the meaning as given to it at clause 5.1.

**“Disclosing Party”** means the Party that discloses or makes available directly or indirectly the relevant Confidential Information.

**“Effective Date”** means the date on which the Parties execute this Agreement, or if executed on different days, the date on which the last Party executes this Agreement.

**“Party”** means a party to this Agreement; “Parties” has the corresponding meaning.

**“Permitted Purpose”** means the purpose identified in Item 2 of the Schedule.

**“Receiving Party”** means a Party that receives or obtains the Confidential Information directly or indirectly.

**“Related Body Corporate”** has the same meaning as given in section 50 of the *Corporations Act 2001* (Cth).

**“Representative”** means an officer, director, employee and advisor.

**“Schedule”** means the schedule included at Annex A to this Agreement.

**“Term”** means the period identified in Item 1 of the Schedule.

**“Working Day”** means, in relation to the doing of an action in a place, any day other than a Saturday, Sunday or public holiday in that place.

## 2. TERM OF AGREEMENT

- 2.1. This Agreement commences from the Effective Date and expires at the completion of the Term, unless earlier terminated in accordance with clause 8.1 below.

## 3. UNDERTAKINGS ON USE AND DISCLOSURE

- 3.1. The Receiving Party agrees to:
  - a. only use the Confidential Information provided by the Disclosing Party to carry out the Permitted Purpose;
  - b. take all reasonable steps to ensure that such Confidential Information is kept confidential in accordance with this Agreement;



- c. distribute, disclose or disseminate the Confidential Information only to those Representatives of the Receiving Party who have a "need to know" and who are necessarily involved in the receipt or evaluation of the Confidential Information for the Permitted Purpose;
  - d. distribute, disclose or disseminate the Confidential Information only to those to Representatives of the Receiving Party's Related Bodies Corporate, who have a "need to know" solely for the Permitted Purpose, and only on the condition that the Receiving Party has first obtained the prior written consent of the Disclosing Party;
  - e. not disclose, and to take all reasonable steps to prevent any disclosure of, the Confidential Information to any third party;
  - f. not directly or indirectly analyse or reverse engineer any tangible samples or materials comprising the Confidential Information without express written permission of the Disclosing Party; and
  - g. not copy or use the Confidential Information otherwise than for the Permitted Purpose without the prior written consent of the Disclosing Party.
- 3.2. The Receiving Party shall use the same controls as it employs to avoid disclosure, publication and dissemination of its own Confidential Information of a similar nature, provided that not less than a reasonable standard of care is used.
- 3.3. The Receiving Party shall not remove any confidential stamps or markings appearing on Confidential Information. Where the Receiving Party makes any copies of any Confidential Information it has received which contain confidential stamps or markings, it shall ensure that such confidential stamps or markings are also reproduced on those copies.
- 3.4. If the Receiving Party becomes aware of any suspected or actual unauthorised use, copying or disclosure of Confidential Information disclosed to it by the Disclosing Party, the Receiving Party must immediately:
- a. provide a notice to the Disclosing Party in accordance with clause 14 and provide details of all the circumstances surrounding the suspected or actual unauthorised use, copying or disclosure of that Confidential Information; and
  - b. take all reasonable steps to prevent or stop the suspected or actual unauthorised use, copying or disclosure.
- 3.5. Any breach of this Agreement by an employee, officer, or Related Bodies Corporate of the Receiving Party will be treated as a breach of this Agreement by the Receiving Party.

#### **4. EXCEPTIONS TO UNDERTAKINGS ON USE AND DISCLOSURE**

- 4.1. Nothing in this Agreement requires the Receiving Party to comply with the undertakings and obligations set out in clause 3 if:
- a. the Receiving Party can prove the Confidential Information was lawfully in its possession before such Confidential Information was disclosed to it by the Disclosing Party;
  - b. the Confidential Information is generally available to the public through no fault of the Receiving Party and without any breach of this Agreement by the Receiving Party or of any other undertaking of confidentiality addressed to the



Receiving Party to whom the information relates, noting that Confidential Information of a technical nature will not be deemed to be in the public domain merely by virtue of the principles of the technology concerned being in the public domain;

- c. the Confidential Information is approved for disclosure or use through written authorisation received from the Disclosing Party;
- d. the Confidential Information is or has been lawfully disclosed to the Receiving Party by a third party without an obligation of confidentiality being imposed upon the Receiving Party and without breach of this Agreement;
- e. the Confidential Information is or has been independently developed by the Receiving Party without using or referring to any part of the Confidential Information, and this can be demonstrated by project records or similar; or
- f. disclosure is required by law and/or the rules of any recognised stock exchange or other regulatory authority, on condition that the Receiving Party:
  - i. gives the Disclosing Party the earliest possible notice of such a requirement to disclose; and
  - ii. takes full advantage of any available exemptions from the requirement to disclose; and
  - iii. notwithstanding the provisions of clause 4.1 (f) (ii), if the Receiving Party is obliged to disclose, it only discloses such Confidential Information as is strictly required in order to comply with its legal obligations,

PROVIDED THAT if any part of the Confidential Information falls within any one of the above exceptions, the remainder shall continue to be subject to the obligations of this Agreement.

## 5. COMPLIANCE WITH EXPORT CONTROL AND SECURITY REQUIREMENTS

- 5.1. The Parties acknowledge that any Confidential Information that the Parties may wish to disclose under this Agreement may be subject to domestic or international laws, regulations or other government requirements in relation to export control and/or security ("**Controlled Information**").
- 5.2. In respect of any Controlled Information to be disclosed or made available to the Receiving Party, the Disclosing Party shall:
  - a. ensure that such Controlled Information is identified as such to the Receiving Party at the time of disclosure being made available to the Receiving Party;
  - b. notify the Receiving Party of all relevant approvals, restrictions and requirements applicable to such Confidential Information and provide copies of all necessary authorisation documents; and
  - c. ensure the requirements of all export and security laws, regulations and other government requirements are met prior to disclosing or making available such Controlled Information to the Receiving Party.
- 5.3. In respect of any Controlled Information disclosed or made available to it under this Agreement, the Receiving Party shall:



- a. observe any restrictions on use and disclosure associated with the Controlled Information, providing the fact of such information being Controlled Information is made known to the Receiving Party (and the Disclosing Party provides reasonable assistance to the Receiving Party to aid the Receiving Party in meeting its responsibilities); and
- b. upon request by the Disclosing Party, arrange for the execution of any authorisation documents necessary to enable the Receiving Party to access such Controlled Information.

## **6. WARRANTY RELATED MATTERS**

- 6.1. The Disclosing Party warrants that, to the best of its knowledge and belief, it has the requisite right and authority to disclose Confidential Information to the Receiving Party.
- 6.2. The Disclosing Party makes no representation or warranty as to the adequacy, completeness, accuracy, patentability, copyright, fitness for a particular purpose, sufficiency or freedom from defects of any kind, of any information (including Confidential Information) provided or obtained under or in connection with this Agreement. The Receiving Party must make and rely upon its own evaluation of the Confidential Information.

## **7. RIGHTS**

- 7.1. The intellectual property rights in Confidential Information disclosed by the Disclosing Party to the Receiving Party under this Agreement shall, subject to the right of any other owner, be and remain the property of the Disclosing Party.
- 7.2. The disclosure and provision of Confidential Information under this Agreement does not grant to the Receiving Party (whether expressly or implied) any ownership, right, or any licence to use (other than for the Permitted Purpose) the Confidential Information or make commitments of any kind for or on behalf of the other Party.
- 7.3. All third party rights are excluded and no third party shall have any right to enforce or rely upon the provisions of this Agreement.

## **8. TERMINATION**

- 8.1. This Agreement may be terminated earlier by either Party giving at least 30 days' notice in writing to the other Party of its intention to do so.

## **9. RIGHTS UPON TERMINATION AND EXPIRY**

- 9.1. Upon termination or expiry of this Agreement, the Receiving Party's right to use or disclose Confidential Information of the Disclosing Party shall cease.
- 9.2. Notwithstanding termination or expiry of this Agreement, the undertakings and obligations under clause 3 shall continue until the Confidential Information falls within one of the exceptions set forth in clause 4.

## **10. RETURN OR DESTRUCTION OF MATERIAL**

- 10.1. Subject to clause 10.3 or any laws requiring retention of the Confidential Information, the Receiving Party agrees, that on request by the Disclosing Party (which request may be made at any time during the Term of this Agreement or following its expiry or



termination), the Receiving Party shall promptly deliver up to the Disclosing Party and/or destroy (at the Disclosing Party's discretion) all documents, material and/or other media which may be in its possession or control (or the relevant parts thereof) which comprises or contains any part of the Disclosing Party's Confidential Information and permanently delete such information from its business or computer systems.

10.2. Where it is not reasonably practicable to remove all traces of the Disclosing Party's Confidential Information from its business and computer systems, then the Receiving Party shall take reasonable steps to restrict access to the information, and any residual Confidential Information will continue to be governed by this Agreement, for so long as the information is retained on the business and computer systems, but the Receiving Party shall have no further right to use such Confidential Information.

10.3. The Disclosing Party agrees that the Receiving Party may retain one complete copy of the Disclosing Party's Confidential Information solely for legal audit purposes.

## **11. EQUITABLE RELIEF**

11.1. The Parties acknowledge that:

- a. the value of Confidential Information to the Disclosing Party is such that an award of damages may not be a sufficient remedy for any breach by the Receiving Party of this Agreement; and
- b. without in any way compromising the Disclosing Party's right to seek damages or any other form of relief in the event of a breach of this Agreement, the Disclosing Party may seek and obtain an interlocutory order or injunction to prohibit or restrain the Receiving Party (including Representatives of the Receiving Party or its Related Bodies Corporate) from any breach or threatened breach of this Agreement.

## **12. RELATIONSHIP**

12.1. This Agreement does not create any joint venture, partnership, agency or further relationship between the Parties.

12.2. This Agreement is not an exclusive arrangement and does not limit the right of any Party to disclose its own Confidential Information to a third party.

## **13. ASSIGNMENT**

13.1. A Party may not assign, transfer, charge or otherwise dispose of this Agreement or any part of its rights or obligations under this Agreement without obtaining the prior written consent of the other Party.

## **14. NOTICES**

14.1. Any notice by a Party under this Agreement shall be effective if it is in writing and delivered to the other Party's Representative as specified in Item 3 of the Schedule.

14.2. A notice given in accordance with this clause 14.1 is deemed to be delivered:

- a. if hand delivered, when received at the address;



- b. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or
- c. if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient.

## **15. GOVERNING LAW**

15.1. This Agreement is governed by, and is to be construed in accordance with, the laws of New South Wales, Australia and the courts of the New South Wales shall have non-exclusive jurisdiction over any dispute or difference arising out of this Agreement.

## **16. DISPUTES**

16.1. If a dispute or difference arises between the Parties concerning this Agreement:

- a. a Party may deliver to the other Party a notice in writing providing details of the dispute or difference; and
- b. within fourteen (14) days of the date of such notice, the Parties must arrange for authorised Representatives to meet at a mutually convenient location and use best endeavours to settle the dispute or difference.

16.2. Subject to clause 16.3, a Party must not commence any court or arbitration proceedings relating to a dispute or difference unless notice has been given in accordance with clause 16.1a in relation to the dispute or difference, the Party has complied with clause 16.1b and the dispute or difference has not been resolved within a further fourteen (14) days.

16.3. This clause 16 does not limit in any way a Party's right to seek any form of equitable relief including injunctive relief in any court of competent jurisdiction.

## **17. ENTIRE AGREEMENT**

17.1. This Agreement sets out the entire agreement between the Parties as to its subject matter, and supersedes and cancels all prior agreements, representations, understandings and commitments (whether oral or written) in connection with it.

17.2. This Agreement shall not be capable of alteration or amendment except by agreement in writing signed by both Parties.

## **18. WAIVER**

18.1. Any waiver of a Party's rights under this Agreement must be in writing. The waiver by a Party of a right does not operate as a waiver of any other right or a future waiver of that right or any other right.

## **19. COSTS**

19.1. Each Party is responsible for its own costs in negotiating this Agreement and performing the obligations under this Agreement.



## 20. COUNTERPARTS

20.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

### EXECUTED AS AN AGREEMENT:

|   |  |  |
|---|--|--|
| Signed for and on behalf of<br><b>Energy Renaissance Pty Ltd</b><br>By its duly authorised<br>representative in the<br>presence of: | Signature of<br>Authorised<br>Representative       |  |
|   | Print Full Name<br>of Authorised<br>Representative |  |
|   | Title of<br>Authorised<br>Representative           |  |
|   | Date   |  |

|   |                                |  |
|---|--------------------------------|--|
| Signed for and on behalf of<br><b>COMPANY NAME</b><br>By its duly authorised<br>representative in the<br>presence of: | Signature of<br>Director       |  |
|   | Print Full Name<br>of Director |  |

"This document was signed in counterparts and witnessed in person or over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW)"





# Annex A

## Schedule

|               |                   |  |
|---------------|-------------------|--|
| <b>Item 1</b> | Term              | Two (2) years from the Effective Date  |
| <b>Item 2</b> | Permitted Purpose | To enter into discussions and share information for the purpose of a product and services supply relationship.   |
| <b>Item 3</b> | Notice Details    | <p><b>Energy Renaissance: Lauren Yabsley</b><br/>Position: Chief Financial Officer<br/>Address: Level 2, 24 Hickson Road, Millers Point, Sydney NSW 2000<br/>Email: lauren.yabsley@energyrenaissance.com<br/>Telephone: +61 405 832 215</p> <p>COMPANY NAME<br/>Name: XXX<br/>Position: XXX<br/>Address: XXX<br/>Email: XXX<br/>Telephone: XXX</p> |