**Please note: This is an example NDA only**

**Please seek legal advice if you intend to use a Non-Disclosure Agreement for your business.**

**PARTIES**

1. XYZ Corp (Company Number 12345) ('XYZ'), and
2. The party named as the Company in item 2 of the Schedule

**BACKGROUND**

Each Party (the Disclosing Party) agrees to disclose the Confidential Information to the other Party (the Receiving Party) for the Purpose in accordance with the terms and conditions of this NDA.

**OPERATIVE CLAUSES**

1. **Definitions and Interpretation**

***Definitions***

* 1. In this NDA:

**'Affiliate'** means any Related Body Corporate of a Party and any employee, agent, officer, adviser, consultant, joint venture (or joint venture party) or contractor of a Party or a Related Body Corporate.

**'Confidential Information'** means any confidential information specified in item 4 of the Schedule, or where item 4 of the Schedule is blank, information in any form relating to the past, present or future operations or affairs of a Party or its Affiliates which is disclosed (directly or indirectly) by the Disclosing Party to the Receiving Party in connection with the Purpose, either before or after the date of this NDA, which includes:

1. all information or material which is verbally or non-verbally designated or indicated, or which ought to be reasonably considered, as being proprietary or confidential information;
2. all information or material provided by a Party;
3. all know-how, formulae, data, specifications, drawings, trade secrets, commercial, financial, accounting, proprietary and other information or material, including physical devices, which is capable of protection at law or in equity as intellectual property or confidential information;
4. all information or material obtained, created or derived from circumstances involving the Purpose, including all notes, memoranda, summaries, extracts, compilations, analyses, calculations, conclusions, opinions or other information made or derived in whole or in part by a Party, and
5. the existence and substance of this NDA,

but excludes any Excluded Information.

**'Disclosing Party'** means the Party:

1. who discloses the Confidential Information to the other Party (the Receiving Party); or
2. to whom the Confidential Information relates, including information belonging to an affiliate.

**'Excluded Information'** means any information or material which is:

1. publicly available other than as a result of any breach by either Party of this NDA (or the actions of any Permitted Person);
2. obtained from a person who possesses it lawfully and can disclose it on a non-confidential basis; or
3. developed by a Party independently without relying on the Confidential Information.

**'NDA'** means this document as amended from time to time in accordance with its terms and conditions.

**'Parties'** means XYZ and the Company.

**'Party'** means either XYZ or the Company.

**'Permitted Person'** means the people named in item 5 of the Schedule, or where item 5 of the Schedule is blank, any employee, office, agent, client or contractor of a Party (or its Affiliate) who requires the Confidential Information for the Purpose and who agrees to comply with the terms of this NDA or is otherwise bound by confidentiality obligations substantially similar to those set out in this NDA.

**'Purpose'** means the purpose specified in item 3 of the schedule.

**'Receiving Party'** means the Party who receives Confidential Information from, or on behalf of, the Disclosing Party or the Party who creates or derives Confidential Information from material provided by, or on behalf of, the Disclosing Party.

**'Related Body Corporate'** means a related body corporate as defined in the *Corporations Act 2001 (Cth)*.

**'Schedule'** means the schedule at the end of this NDA.

**'Term'** means the period of confidentiality under this NDA in accordance with clause 4.

***Interpretations***

* 1. In this NDA:

1. headings are for convenience only and do not affect the interpretation of this NDA;
2. singular includes plural and plural includes singular;
3. reference to a person or a Party includes a corporation, joint venture, association, government body, firm or other entity;
4. reference to a Party includes that Party's personal representatives, successors and permitted assigns;
5. the use of the word 'include' or its derivative forms does not imply any limitation;
6. a provision must not be construed against a Party only because that Party prepared it;
7. a Party which comprises of two or more persons means each of them jointly and severally;
8. a reference to an agreement, statute, policy, procedure or code is a reference to an agreement, statute, policy, procedure or code as amended from time to time; and
9. terms and expressions given a meaning in the *Corporations Act 2001 (Cth)* have the same meaning when used in this NDA.
10. **Disclosure and Use of Confidential Information**

***Confidentiality undertakings***

* 1. The Disclosing Party may disclose the Confidential Information as-is without any warranties to the Receiving Party for the Purpose in consideration of the Receiving Party agreeing to the terms and conditions of this NDA.
  2. Where disclosure of any Confidential Information is made verbally, for avoidance of doubt the Disclosing Party may follow up with a written notice to the Receiving Party describing the Confidential Information that has been verbally disclosed.
  3. The Receiving Party agrees to:

1. keep the Confidential Information strictly confidential and not disclose it to any person other than a Permitted Person for the Purpose; and
2. only use the Confidential Information for the Purpose and any allowed usage specified in item 6 of the Schedule and not for any other purpose,

unless otherwise agreed by the Disclosing Party in writing.

* 1. The Receiving Party acknowledges and agrees that:

1. the Confidential Information is confidential, as-is without any warranties and may contain commercially sensitive information about the Disclosing Party or its Affiliates (or a client of the Disclosing Party or its Affiliates);
2. unless otherwise instructed, any disclosure of Confidential Information by the Disclosing Party is on a non-exclusive basis;
3. nothing in this NDA authorises or permits it to commence any ancillary services with respect to the Purpose in return for payment (such services may only be performed under a subsequent agreement);
4. no right, licence, interest or property is granted or transferred to it (whether now or in the future) by virtue of this NDA or disclosure of any Confidential Information to it (nor is the above to be implied); and
5. it will not make copies of any Confidential Information, except as necessary or required for the Purpose.
   1. The Receiving Party at all times remains responsible for the acts or omissions of any Permitted Person with respect to complying with, or any breach of, this NDA.

***Security measures***

* 1. The receiving Party agrees to:

1. establish and maintain all necessary and reasonable security measures to maintain the confidential nature of the Confidential Information while it remains in its possession (and in no event less than the same degree of care that it uses to protect its own confidential and proprietary information of similar importance) to safeguard the Confidential Information from unauthorised access or use; and
2. comply with any reasonable and lawful direction of the Disclosing Party with respect to clause 2.6(a).

***Permitted disclosure***

* 1. The obligations of confidentiality set out in this NDA do not prevent the Receiving Party from disclosing any Confidential Information which must be disclosed to a court, tribunal or government authority with competent jurisdiction or in accordance with statute, law, regulations or rules of an applicable securities exchange, subject to complying with clause 2.8.
  2. With respect to any disclosure under clause 2.7, and to the extent permitted by law, the Receiving Party must:

1. notify the Disclosing Party in writing immediately on it becoming aware or anticipating that it must disclose any Confidential Information; and
2. give the Disclosing Party the opportunity to comment on the requirement to disclose and:
   1. take all reasonable steps to prevent or limit the scope of such information, including seeking protective or other orders; or
   2. reasonably assist the Disclosing Party in any actions it may decide to take to prevent or limit the scope of the disclosure of such information; and
3. limit any disclosure of the Confidential Information solely to the documents containing the information which it is compelled to legally disclose; and
4. obtain a written acknowledgement from the person receiving the Confidential Information that they will maintain its confidentiality (to the extent reasonably possible).
   1. If the Receiving Party is aware of, suspects or anticipates a breach of the NDA, then it must:
5. immediately notify the disclosing Party on learning such;
6. immediately take any necessary action to prevent any further breaches and limit the impact of any existing breach;
7. follow the reasonable instructions of the Disclosing Party; and
8. assist the Disclosing Party to take any such further actions as it deems reasonably necessary.
   1. The Receiving Party acknowledges that damages may not be a sufficient remedy for any breach of this NDA and the Disclosing Party may seek, subject to the discretion of a competent court, relief at law or specific performance, injunctive or other relief in the event of a breach or anticipated breach of this NDA.
9. **Requests by the Disclosing Party**
   1. The Disclosing Party may request the Receiving Party at any time during the Term, at the end of the Term or on termination of the NDA in accordance with clause 4.2, to, within an agreed period of time:
10. destroy or erase, and procure that its Permitted Persons destroy or erase, the Confidential Information to the extent that such destruction or erasure is reasonable; or
11. return all property, material or anything else containing any Confidential Information (such as external memory cards, disks or computers etc) which belongs to the Disclosing Party and which is in the possession or control of the Receiving Party or its Permitted Persons.
    1. The Receiving Party may retain a copy of the Confidential Information:
12. for its own records, internal auditing or legal purposes; or
13. embedded in computer backup archives which are not practicably able to be destroyed, erased or returned

on a confidential basis in accordance with this NDA.

1. **Term of Confidentiality**
   1. Notwithstanding any other provision of this NDA, the obligations of confidentiality under this NDA commence on the date on which this NDA is executed or when the Receiving Party receives the Confidential Information (whichever is first) and will continue until the earlier of:
2. the date the terms and conditions of this NDA are replaced by the Parties in a subsequent agreement;
3. such time as may be specified in a mutually agreed document terminating this NDA; or
4. the period specified in item 7 of the Schedule, or where item 7 of the Schedule is blank, a period of five (5) years from the date on which this NDA is executed,

at which time the obligations of confidentiality in respect of the Confidential Information end.

* 1. Either Party may terminate this NDA by giving the other Party 30 days' written notice, however any such termination will not affect each Party's obligation to maintain the confidentiality of the Confidential Information in accordance with the term set out in clause 4.1.

1. **General**
   1. This NDA constitutes the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, memoranda of understanding, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter to the extent permitted by law.
   2. Neither Party will assign, novate or otherwise deal with its rights and obligations arising under or in connection with this NDA (whether or whole or in part) without the prior written consent of the other Party (such consent not to be unreasonably withheld).
   3. A provision of, or a right created under, this NDA may not be: (i) waived except in writing signed by the Party granting the waiver or (ii) varied unless such a variation is in writing signed by the Parties. A waiver of a right at any time shall not be taken as a waiver of the right when it arises at any other time.
   4. Any provision of this NDA which is or becomes illegal, void, voidable or unenforceable, will be ineffective to that extent without affecting or invalidating the remaining provisions of this NDA.
   5. This NDA may be executed in counterparts.
   6. This NDA is governed by, and is to be construed in accordance with, the laws of the Australian State or Territory set out in item 8 of the Schedule and the Commonwealth of Australia ('Governing Law'). Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Governing Law and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts. If item 8 is left blank, then the laws of New South Wales, Australia and the Commonwealth of Australia will apply as the Governing Law.

**EXECUTION**

Executed for XYZ Corp by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

Executed for the Company by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**SCHEDULE**

|  |  |  |
| --- | --- | --- |
| **#** | **Item** | **Description** |
| 1 | XYZ | Full Legal Name: XYZ Corp Pty Ltd  Company Number: 12345  Address: Level 4, 100 Smith Road, Sydney NSW 2000, Australia  Contact Name: Joe Bloggs  Contact Phone Number: 1234 5678  Contact Email: joe.bloggs@xyzcorp.com |
| 2 | Company | Full Legal Name: Services Australia Pty Ltd  Company Number: 98765  Address: 29 Main Street, Somewhere NSW 2650, Australia  Contact Name: Paul Smith  Contact Phone Number:8765 4321  Contact Email: paul.smith@servaust.com.au |
| 3 | Purpose | Evaluate ServAust's ability to service the flux capacitors of key XYZ customers |
| 4 | Confidential Information | XYZ: Flux capacitor technical specifications, key customer list  Company: Flux capacitor tuning fork specifications, key customer list, pricing |
| 5 | Permitted Persons | XYZ:  Company: |
| 6 | Allowed Usage | XYZ: analysis of flux capacitor tuning fork specifications, evaluation of key customer list to determine market share of ServAust, consideration of pricing  Company: evaluation of flux capacitor technical specifications, consideration of location of XYZ key customers as a factor in ability to service |
| 7 | Confidentiality Term |  |
| 8 | Governing Law | NSW Australia |

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