

# BGIS Confidentiality Agreement

Party **The party named at Item 1 of Schedule 1** **(Recipient)**

**BGIS Pty Ltd ACN 064 638 197**

of Level 36, 680 George Street, Sydney NSW 2000 **(Discloser)**

- Recitals**
- A. The Recipient wishes to access and the Discloser agrees to disclose the Confidential Information for the Approved Purpose.
  - B. The Recipient agrees that the Confidential Information is provided to it on the terms of this agreement and that it will not use or disclose the Confidential Information except as provided in this agreement.

The Recipient agrees, in consideration of, among other things, the promises contained in this agreement as follows:

## 1. Definitions

In this agreement:

**Approved Purpose** means the approved purpose in Item 3 of Schedule 1

**Confidential Information** means any information (whether conveyed orally, visually, by demonstration, written, electronic or any other form) provided by or on behalf of the Discloser or any of its Representatives to the Recipient or any of the Recipient's Representatives in connection with the Approved Purpose or this agreement in any way, whether obtained before, on or after execution of this agreement, and includes any of the following:

- (a) the Specified Information;
- (b) the terms of this agreement;
- (c) information regarding the Discloser's past, current or future business, customers, suppliers, technology, inventions, processes, products, services, finances and business strategies;
- (d) information which is designated or indicated as being the proprietary or confidential information of the Discloser;

- (e) information which is by its nature confidential or which the Recipient (or the Recipient's Representative) knows or ought reasonably to know is confidential; and

- (f) trade secrets or information which is capable of protection at law or equity as confidential information,

but does not include information which:

- (g) is in the public domain (other than through breach of this agreement or an obligation of confidence owed to the Discloser);
- (h) is disclosed to the Recipient by a third party (that is not a Representative of the Discloser) who could lawfully do so and who had not itself received such information on a confidential basis from Discloser; or
- (i) the Recipient can prove by contemporaneous documentation was already known to it at the time of disclosure by Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality owed to Discloser).

**Document** includes any document, material, note, recording, memorandum, report, summary, photocopy, scanned copy or any other form by which information may be stored or reproduced (including any electronic form).

**Intellectual Property Rights** means all intellectual property rights and related rights anywhere in the world, registered or unregistered and whether registrable or not, including without limitation:

- (a) patents, copyright (including future copyright), rights in circuit layouts, designs, trade marks, know-how, inventions and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above.

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

**Representative** in respect of a party means:

- (a) a Related Body Corporate of that party; and
- (b) an officer, employee, agent or director of that party or of a Related Body Corporate of that party.

**Specified Information** means the specified information in Item 4 of Schedule 1 (if any).

## 2. Consideration

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In consideration of the Discloser agreeing to disclose and disclosing the Confidential Information or parts of the Confidential Information in accordance with this agreement, the Recipient agrees to give the undertakings, obligations and warranties set out in this agreement and be bound by the terms of this agreement.

## 3. Confidentiality obligations

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- 3.1 The Recipient undertakes at all times to:
- (a) keep the Confidential Information secret and to preserve its confidential nature; and
  - (b) not use the Confidential Information for any purpose other than the Approved Purpose.
- 3.2 Without limiting clause 3.1, the Recipient undertakes:
- (a) not to disclose or permit the disclosure of the Confidential Information in any way except in accordance with clause 4;

- (b) not to copy or create, or cause or permit the copying or creation of, any Document using or containing the Confidential Information except to the extent necessary for the Approved Purpose;
- (c) to keep the Confidential Information secure and protect it from loss and any disclosure, access, use or modification which is inconsistent with this agreement;
- (d) to promptly notify the Discloser if it suspects, or becomes aware of, any actual or potential disclosure, storage, copying, access, use, modification or loss of Confidential Information except in accordance with this agreement;
- (e) not to make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Discloser, or assist any other person to do so;
- (f) to comply with all applicable laws and any lawful directions given by the Discloser in relation to its use, storage, security and handling of the Confidential Information;
- (g) not to store any Confidential Information in, access Confidential Information from, transfer, disclose or take any Confidential Information to, or make Confidential Information accessible from any jurisdiction other than Australia; and
- (h) to keep the Confidential Information logically and physically separate from any other data or information that is stored or held by the Recipient so that it can be easily identified as belonging to the Recipient and easily retrieved or destroyed.

## 4. Disclosure of Confidential Information

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- 4.1 Notwithstanding clause 3, the Recipient may:
- (a) disclose the Confidential Information to those of its Representatives that need to know the Confidential Information for the Approved Purpose, provided such Representatives are first made aware that the information must be kept confidential and procure that they agree to comply with the terms of this agreement in respect of the Confidential Information;
  - (b) disclose the Confidential Information to its lawyers and professional advisers to the extent required by the Recipient to obtain professional advice in relation to this agreement or the Approved Purpose,

provided that each such recipient is under an obligation to keep the Confidential Information confidential and only uses it to the extent required to provide professional advice to the Recipient and for no other purpose;

(c) disclose Confidential Information to the extent required by law or the rules of an applicable stock exchange, provided that:

(1) the Recipient notifies the Discloser of such requirement prior to making any such disclosure (except that where providing prior notice is prohibited by the applicable law or rule, as soon as legally possible);

(2) the Recipient makes every reasonable effort to object to the requirement for disclosure and provide (at its cost) any assistance requested by the Discloser to contest any such mandatory disclosure; and

(3) only the minimum amount of Confidential Information to satisfy such a requirement is disclosed.

4.2 Any act or omission in respect of the Confidential Information by any person that the Recipient discloses the Confidential Information to pursuant clause 4.1(a) or (b) is deemed to be an act or omission of the Recipient under this agreement.

4.3 If required by Discloser, the Recipient must procure its Representatives to execute a confidentiality deed poll directly with Discloser on terms consistent with this agreement.

## 5. Return of Confidential Information

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5.1 The Recipient undertakes to:

(a) deliver to the Discloser at its own cost (or, with prior written consent of the Discloser, destroy or erase) Confidential Information and Documents containing, based on, utilising or related to such Confidential Information in the possession, power or control of the Recipient or any person it has disclosed it to pursuant to clause 4.1(a) or (b) within 5 Business Days of the date the Discloser requests the return of the Confidential Information; and

(b) certify in writing to the Discloser once it has complied with clause 5.1(a).

5.2 Clause 5.1 does not require the return or destruction of any Documents that contain Confidential

Information to the extent they are required to be retained under applicable law or pursuant to any professional obligations, provided that:

(a) the Recipient notifies Discloser of the relevant law or obligation and the specific Confidential Information that is being retained; and

(b) the Recipient complies (and procures any other person that is required to retain the Confidential Information complies) with the obligations in this agreement in respect of the retained Confidential Information.

5.3 The Recipient acknowledges and agrees that returning or deleting the Confidential Information under clause 5.1 does not release the Recipient from its obligations under this agreement.

## 6. General

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6.1 The Recipient:

(a) acknowledges that nothing in this agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of the Discloser; and

(b) undertakes that it will not assert or claim any Intellectual Property Rights in or to any part of the Confidential Information.

6.2 To the extent that any rights (including Intellectual Property Rights) are created by or on behalf of the Recipient in connection with the Confidential Information including in any modifications, derivative works or improvements (collectively, 'improvements'):

(a) the Recipient hereby assigns all such rights (including Intellectual Property Rights) in the improvements to the Discloser immediately on creation and will (and will procure its Representatives to) execute such documents and do all other things necessary to give effect to that assignment; and

(b) the improvements are deemed to be the Confidential Information of the Discloser for the purposes of this agreement.

6.3 The Recipient indemnifies the Discloser and its Representatives (those indemnified), and will hold harmless those indemnified, from and against any claims, actions, damages, losses, costs (including legal costs on a full indemnity basis), expenses and

any other liability that those indemnified pay, suffer or incur in connection with any breach by the Recipient of this agreement. The indemnity in this clause 6.3 is a continuing obligation, independent from the other obligations and survives the termination or expiry of this agreement. It is not necessary for those indemnified to incur expense or make payment before enforcing a right of indemnity under this agreement. The Discloser holds the benefit of the indemnity in this clause on trust for each of those indemnified and is entitled to enforce the indemnity as trustee on behalf of each of those indemnified.

6.4 The Recipient acknowledges that no representations or warranties, express or implied, have been made (now or at any time information is given) by or on behalf of the Discloser:

- (a) as to the accuracy, content, legality, currency and completeness of any information disclosed by the Discloser or any of its Representatives; or
- (b) as to whether any information disclosed by the Discloser or any of its Representatives infringes the Intellectual Property Rights or any other rights of any person; and
- (c) any reliance on or use by the Recipient or a Recipient's Representative of any information disclosed by the Discloser or any of its Representatives is solely at their own risk.

6.5 The Recipient acknowledges that:

- (a) damages will not be an adequate remedy for a breach of this agreement; and
- (b) subject to the court's discretion, the Discloser may seek specific performance, injunctive relief or similar remedy for any conduct or threatened conduct which is or would be a breach of this agreement in addition to any other remedies available at law or in equity under or independently of this agreement.

6.6 The Recipient acknowledges that the Discloser is under no obligation to disclose any particular information to the Recipient.

6.7 If a provision in this agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this agreement.

6.8 The Recipient must not assign or novate any of its rights or obligations under this agreement without the prior written consent of the Discloser.

6.9 This agreement will be governed by and construed in accordance with the laws of the state of New South Wales and the Recipient irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which may hear appeals from those courts them in respect of any proceedings arising out of or in connection with this agreement.

6.10 To be effective, a waiver of a right, power or remedy in connection with this agreement must be in writing and signed by the person granting the waiver.

6.11 The Recipient must promptly do whatever the Discloser reasonably requires of it to give effect to this agreement and to perform its obligations under it.

6.12 A variation of any term of this agreement will be of no force or effect unless it is by way of a further agreement in writing and signed by the Discloser and the Recipient.

6.13 A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it, and the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

6.14 This agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.

6.15 This agreement remains in full force until the Discloser confirms by written notice to the Recipient that all the Confidential Information is generally available in the public domain.

## Executed as an agreement

Dated of agreement: \_\_\_\_\_ 2023

Executed by **[Insert company name]** **[Insert ACN/ABN]** in  
accordance with section 127 of the *Corporations Act 2001*  
(Cth) by:

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Signature of Director or Authorised Company  
Representative

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Full name (print)

## Schedule 1 Reference Schedule

Item	Description	Detail
Item 1	Recipient Name (and ACN/ABN)	[insert]
Item 2	Recipient Address	[insert]
Item 3	Approved Purpose	[insert]
Item 4	Specified Information	[insert]