



# ASTUTE SYSTEMS

## TRIPARTITE NON-DISCLOSURE AGREEMENT

Astute Systems Three-Party Confidentiality and Non-Disclosure Agreement

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This Tripartite Non-Disclosure Agreement (“Agreement”) is entered into as a deed.

## Parties

1. **Astute Systems Pty Ltd** (ABN: 75 675 159 494), an Australian company with its principal place of business at 2.08 315 Brunswick Street, Fortitude Valley, QLD. 4005 Australia (“Party A”); and
2. The party identified as Party B in the signature block below (“Party B”); and
3. The party identified as Party C in the signature block below (“Party C”).

Party A, Party B and Party C are each referred to individually as a “Party” and collectively as the “Parties”.

## Background

A. The Parties wish to hold discussions and to disclose Confidential Information to each other only for the Permitted Purpose.

B. In consideration of each Party disclosing Confidential Information to the other Parties and agreeing to discuss issues relating to the Permitted Purpose, the Parties have agreed to undertake the mutual obligations set out in this Agreement.

C. The Parties have agreed to disclose and receive Confidential Information on the terms and conditions of this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 DEFINITIONS

In this Agreement, the following words and phrases have the following meanings (unless the context otherwise requires):

**Business Day** means any day other than a Saturday, Sunday or public holiday in the Jurisdiction.

**Confidential Information** means information that:

- is by its nature confidential;
- is designated by the Disclosing Party as confidential; or
- the Receiving Party knows or ought reasonably to have known is confidential in nature;

and includes all information which relates to the Permitted Purpose, whether in a Document or provided orally, but does not include information which:

- is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- is in the possession of the Receiving Party without restriction in relation to disclosure before the date of receipt from the Disclosing Party;
- is by law or the rules of any stock exchange required to be disclosed by the Receiving Party; or
- has been independently developed, gained or acquired by the Receiving Party without any reference to the Confidential Information.

**Consequential Loss** means any loss recoverable at law other than arising in the usual course of things and includes any consequential or economic loss including:

- loss of anticipated or actual profits or revenue;
- loss of production or use;
- financial or holding costs;
- loss or failure to realise any anticipated savings;
- loss of business or business interruption;
- loss or denial of business or commercial opportunity;
- loss of or damage to goodwill, business reputation, future reputation or publicity;
- downtime costs or wasted overheads; and
- special, punitive or exemplary damages.

**Disclosing Party** means any Party that discloses Confidential Information, directly or indirectly, to one or both of the other Parties under or in anticipation of this Agreement.

**Document** includes:

- any paper or other materials on which there is writing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device; and
- information in a form of data, text, or images stored or communicated by means of guided or unguided electromagnetic energy, or both.

**Intellectual Property Rights** includes all copyright and neighbouring rights, all rights in relation to inventions and discoveries (including patent and utility model rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know-how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including applications for grant of any of these rights or other rights of a similar nature arising (or capable of arising) anywhere in the world.

**Permitted Purpose** means:



**Receiving Party** means any Party that receives Confidential Information directly or indirectly from a Disclosing Party.

**Jurisdiction** means Queensland, Australia.

## 1.2 INTERPRETATION

In this Agreement unless specified to the contrary:

- the singular includes the plural and vice versa;
- use of the word “including” and similar expressions are not, nor are they to be interpreted as, words of limitation;
- a reference to a person includes a natural person, a company or other entities recognised by law;
- a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes electronic transmission; and
- a reference to a party includes the party’s executors, administrators, successors and permitted assigns.

The language in all parts of this Agreement shall be in all cases construed in accordance with its fair and common meaning and not strictly for or against any of the Parties.

This Agreement is to be interpreted so that it complies with all applicable laws of the Jurisdiction. If any provision does not comply then it must be read down so as to give it as much effect as possible. If it is not possible to give that provision any effect at all then it is to be severed from this Agreement and this Agreement is to be construed as if the severable portion did not exist. The remainder of this Agreement will continue to have full force and effect.

Any headings are for ease of reference only and do not affect the interpretation of this Agreement.

## 2. CONFIDENTIALITY OBLIGATIONS

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### 2.1 CONFIDENTIALITY

Each Party, when acting as the Receiving Party:

- acknowledges the confidential, sensitive, and proprietary nature of the Confidential Information and that it is valuable to the Disclosing Party; and
- agrees to keep confidential, and not directly or indirectly divulge or communicate or otherwise disclose the Confidential Information, in whole or part, to any third party (for the avoidance of doubt, the other Parties to this Agreement are not considered third parties for the purpose of disclosures contemplated under this Agreement for the Permitted Purpose).

## 2.2 USE OF CONFIDENTIAL INFORMATION

Each Party, when acting as the Receiving Party, must not:

- use any of the Confidential Information for any purpose other than the Permitted Purpose;
- exploit the Confidential Information for its own benefit, for the benefit of any other person or for any other purpose, or allow any other person to do so without the prior written consent of the Disclosing Party (which may be withheld in its absolute discretion);
- use any of the Confidential Information in a manner or for a purpose detrimental to the Disclosing Party or its related bodies corporate (if any); or
- use any Confidential Information that has been returned to the Disclosing Party under clause 3 of this Agreement (unless express permission is granted in writing by the Disclosing Party to continue use of that Confidential Information).

## 2.3 PROTECTION OF CONFIDENTIAL INFORMATION

Each Party, when acting as the Receiving Party, must:

- keep effective control of all Confidential Information received under or in connection with this Agreement;
- take all precautions that are reasonably necessary to prevent any theft, loss or unauthorised use or disclosure of that Confidential Information; and
- promptly inform the Disclosing Party of any suspected or actual unauthorised use or disclosure of the Disclosing Party's Confidential Information.

## 2.4 AUTHORISED RECIPIENTS

The Receiving Party may disclose the Confidential Information to its directors, officers, agents, employees, advisers, and financiers on a strictly “need to know” basis provided that:

- the Receiving Party ensures that these persons are under equivalent obligations of confidence to the Receiving Party as provided in this Agreement; and
- the Receiving Party ensures compliance by these persons with the terms and conditions of this Agreement which impose any obligation on the Receiving Party, as if those persons were a party to this Agreement.

A breach of such a term or condition by such a person shall be regarded as a breach of this Agreement by the Receiving Party.

## 2.5 DISCLOSURE BETWEEN PARTIES

Where a Disclosing Party discloses Confidential Information to more than one Receiving Party under this Agreement, each Receiving Party's obligations with respect to that Confidential Information are several and independent. A breach by one Receiving Party does not affect the obligations or liability of the other Receiving Party.

No Party may disclose the Confidential Information of a Disclosing Party to the other Party without the prior written consent of the Disclosing Party, unless such disclosure is within the scope of the Permitted Purpose and has been expressly contemplated by this Agreement.

### 3. RETURN OF CONFIDENTIAL INFORMATION

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Upon the written request of the Disclosing Party, each Receiving Party must promptly return (or procure the return of) to the Disclosing Party the following (or, if any of the following is incapable of being returned, irretrievably destroy or delete and certify in writing that it has been so destroyed or deleted):

- the Confidential Information of the Disclosing Party; and
- all copies, extracts, summaries, notes and records in whatever form (including, without limitation, any electronic records or any unwritten form) of the whole or any part of the Confidential Information of the Disclosing Party.

### 4. INTELLECTUAL PROPERTY RIGHTS

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Each Party, when acting as the Receiving Party, acknowledges that there is no transfer or licence to it or any third party of any Intellectual Property Rights in and to, or arising from, any Confidential Information disclosed under or in connection with this Agreement.

### 5. ACKNOWLEDGEMENTS

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Each Party, when acting as the Receiving Party, acknowledges that:

- a breach of any of the Receiving Party's obligations under this Agreement may result in the Disclosing Party suffering loss and damage including, without limitation, Consequential Loss, and may cause irreparable damage to the Disclosing Party; and
- in the event of a breach, or threatened or anticipated breach, of this Agreement:
  - damages alone may be an inadequate remedy for the Disclosing Party; and
  - the Disclosing Party is entitled to seek an interim, interlocutory or permanent injunction restraining the Receiving Party without showing or proving any actual loss or damages sustained by the Disclosing Party.

### 6. DURATION OF OBLIGATIONS

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The obligations imposed by this Agreement continue for a period of two (2) years from the date of execution, or such longer period as may be required to protect the Confidential Information.

### 7. NOTICES

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Any notice to be given to a Party by another Party under this Agreement:

- must be in legible writing, in English and addressed to the intended recipient;

- must be delivered to the recipient in person or by courier hand delivery, by prepaid ordinary post, or by email; and
- must be signed by an authorised officer of the Party giving or making it, or (on its behalf) by any solicitor, director, secretary or authorised agent of that Party.

Where a notice relates to a matter affecting all Parties, the Party giving notice must provide a copy of that notice to each of the other Parties simultaneously.

A notice is regarded as being given by the sender and received by the recipient:

- if by delivery in person, when delivered to the recipient;
- if by post, three (3) Business Days from and including the date of postage; or
- if by email, immediately unless sender receives an automated reply that the email was not delivered by reason of the address being invalid or otherwise.

If a notice is received on a day which is not a Business Day or after 5:00 pm on a Business Day, that notice is regarded as received at 9:00 am on the following Business Day.

## 8. TERMINATION

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If a Party breaches this Agreement, the affected Party or Parties may terminate this Agreement as between themselves and the breaching Party by providing written notice in accordance with clause 7 to the breaching Party.

Termination by one Party does not of itself terminate this Agreement as between the remaining Parties, and the Agreement will continue in full force and effect as between the non-terminating Parties unless otherwise agreed in writing.

Upon termination of the Agreement under this clause:

- the breaching Party must destroy or deliver to each Disclosing Party any Confidential Information that was made available to the breaching Party under or in anticipation of this Agreement; and
- rights accrued by the Parties under Intellectual Property Rights (clause 4), and Acknowledgements (clause 5) of this Agreement survive termination and are enforceable against the breaching Party notwithstanding termination.

## 9. GENERAL CONDITIONS

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### 9.1 DATE OF PROVISION OF CONFIDENTIAL INFORMATION

This Agreement binds each Party in respect of any and all Confidential Information provided by any other Party, whether the Confidential Information was provided prior to or after the date of this Agreement.

## **9.2 NON-MERGER OF PROVISIONS**

A provision of this Agreement which can and is intended to operate after its conclusion will remain in full force and effect.

## **9.3 NO EXCLUSION OF LAW OR EQUITY**

This Agreement will not be construed to exclude the operation of any principle of law or equity intended to protect or preserve the confidentiality of any Confidential Information.

## **9.4 WAIVER**

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

A Party will not be liable for any loss, cost or expense of any other Party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

A right expressed under this Agreement may only be waived by a Party in writing and communicated to the relevant other Party or Parties to the extent that is expressly set out in that waiver.

## **9.5 NO AMENDMENTS WITHOUT AGREEMENT**

This Agreement may not be modified, discharged or abandoned unless by a document signed by all Parties.

## **9.6 AGREEMENT IN ENTIRETY**

The Parties agree that this Agreement contains the entire agreement between the Parties and supersedes any prior agreements in existence (whether in writing or otherwise).

## **9.7 JURISDICTION**

This Agreement is to be governed by and construed in accordance with all applicable laws in force in the Jurisdiction from time to time, and the Parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.

## 10. EXECUTION

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EXECUTED as a Deed on the date set out below.

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### Party A — Astute Systems Pty Ltd

**Authorised Signatory:**

**Signature:**

**Date:**

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### Party B:

**ABN/ACN:**

**Address:**

**Authorised Signatory:**

**Signature:**

**Date:**

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### Party C:

**ABN/ACN:**

**Address:**

**Authorised Signatory:**

**Signature:**

**Date:**

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