

CONFIDENTIALITY DEED

Parties

The Parties named in Schedule 1

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CONFIDENTIALITY DEED

THIS CONFIDENTIALITY DEED is dated as at the date specified in Item 1 of Schedule 1.

PARTIES:

The persons specified in 0 of Schedule 1.

INTRODUCTION

- A. Each party wishes to disclose to the other party Confidential Information for the Permitted Purpose.
- B. Each party wishes to ensure that the other party maintains the confidentiality of its Confidential Information.
- C. The parties have agreed to comply with the terms set out in this Deed in connection with the use and disclosure of Confidential Information.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

Address for Service means the address of each party appearing in this Deed or any other address nominated by any party and notified in writing to all other parties as its new address for service;

Authorised Persons means the directors, officers, employees, accountants, analysts, legal representatives and any third party service providers of the Recipient who have a need to know the Confidential Information for the Permitted Purpose;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Melbourne, and concludes at 5pm on that day;

Confidential Information means:

- (1) information of every kind concerning or in any way connected with the Permitted Purpose including the existence of this Deed and the fact that the Disclosing Party and the Recipient have, may, or will enter into discussions relating to the Permitted Purpose;
- (2) all business and financial information relating to the Disclosing Party Group;
- (3) all processes, procedures, marketing strategies, information concerning customers, know how, systems, computer programs, models, databases, designs (including computer-aided designs), drawings, plans, trade secrets any modifications to such things and all other information which, by its nature, places or potentially places the Disclosing Party and/or any member of the Disclosing Party Group at an advantage over its present or future business competitors;
- (4) any information which is marked **confidential**;
- (5) any and all Notes; and
- (6) any information that would at law be considered secret or confidential information of the Disclosing Party and/or any Related Entity of the Disclosing Party,

but does not include information which:

- (7) at the time of first disclosure by the Disclosing Party or any member of the Disclosing Party Group to the Recipient is already in the public domain; or
- (8) after disclosure by the Disclosing Party or any member of the Disclosing Party Group to the Recipient becomes part of the public domain otherwise than by disclosure in breach of the terms of this Deed;

Deed means this deed and includes any Schedule to it;

Disclosing Party means a party to this Deed which discloses or makes available to the Recipient directly or indirectly Confidential Information;

Disclosing Party Group means the Disclosing Party and any Related Entity of the Disclosing Party;

Notes means notes which relate to, summaries and copies of extracts from, and advice or analysis based upon or incorporating any Confidential Information whether in documentary, visual or machine readable or other form;

Permitted Purpose means the permitted purpose specified at Item 3 of Schedule 1;

Recipient means a party to this Deed which receives or obtains directly or indirectly Confidential Information;

Related Entity has the meaning given in Section 9 of the *Corporations Act 2001 (Cth)*; and

Schedule means a schedule to this Deed.

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (1) a reference to a person includes a body corporate;
- (2) a party to this Deed includes the party's executors, administrators, successors and permitted assigns;
- (3) words including the singular shall include the plural and vice versa;
- (4) **including** and similar expressions are not words of limitation;
- (5) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (6) headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation; and
- (7) a provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of this provision in the Deed.

2. DISCLOSURE OF CONFIDENTIAL INFORMATION

The Disclosing Party may disclose certain Confidential Information to the Recipient for the Permitted Purpose but is not obliged to disclose any particular Confidential Information to the Recipient.

3. CONFIDENTIALITY AND USE

- (1) The Recipient must:

- (a) subject to clause 4, maintain the Confidential Information strictly confidential and not disclose the Confidential Information to any third party;
 - (b) ensure that any and all Authorised Persons to whom the Confidential Information is disclosed under clause 4 maintains the Confidential Information strictly confidential and does not disclose the Confidential Information to any third party;
 - (c) only use the Confidential Information for the Permitted Purpose;
 - (d) not make or permit to be made any Notes except as necessary in connection with the Permitted Purpose;
 - (e) not use or disclose the Confidential Information to the competitive disadvantage of the Disclosing Party; and
 - (f) take all such precautions as are prudent to protect and preserve the confidentiality and security of the Confidential Information and such other precautions as the Disclosing Party may reasonably direct.
- (2) It is not a breach of clause 3(1) for the Recipient to disclose Confidential Information which it is obliged to disclose by:
- (a) law;
 - (b) the rules of a recognised stock exchange on which the securities of the Recipient or a Related Entity of the Recipient are quoted; or
 - (c) court order.
- (3) If at any time the Recipient believes that clause 3(2) applies to any part of the Confidential Information, the Recipient must immediately notify the Disclosing Party of its belief, giving the reasons why the Recipient has formed the belief and not disclose the Confidential Information until the Disclosing Party has a reasonable opportunity to consider those reasons and take such action as it considers appropriate in the circumstances.

4. AUTHORISED PERSONS

- (1) The Recipient may disclose the Confidential Information to Authorised Persons provided, however, that before doing so, the Recipient must ensure that all such Authorised Persons know of the Recipient's obligations under this Deed and know of the confidential nature of the information disclosed to them and that the Confidential Information must only be used for the Permitted Purpose.
- (2) The Recipient must, if required to do so by the Disclosing Party, procure legally binding undertakings from any Authorised Persons nominated by the Disclosing Party in favour of the Disclosing Party in a form suitable to the Disclosing Party requiring the Authorised Persons to observe similar obligations to those of the Recipient under this Deed including with respect to using the Confidential Information only for the Permitted Purpose.
- (3) At any time and on request from the Disclosing Party, the Recipient must provide the Disclosing Party with a list of all Authorised Persons to whom the Confidential Information has been disclosed by the Recipient.

5. RETURN OF CONFIDENTIAL INFORMATION

- (1) Upon request by the Disclosing Party, the Recipient must immediately return to the Disclosing Party or destroy (as directed by the Disclosing Party) all documents and other media which contain Confidential Information.
- (2) At the same time as the Recipient returns to the Disclosing Party or destroys Confidential Information in accordance with clause 5(1), the Recipient must also ensure that all Authorised Persons return to the Disclosing Party or destroy (as directed by the Disclosing Party) all Confidential Information held by them.

6. CONTINUANCE OF OBLIGATIONS

The obligations of the Recipient under this Deed continue for a period of three years from the date of this Deed and survive the completion or discontinuance of the Permitted Purpose.

7. SEVERABILITY

Any provision of this Deed which is illegal, void or unenforceable is only ineffective to the extent that it is illegal, void or unenforceable, and does not invalidate the remaining provisions.

8. WAIVER

No waiver or indulgence by any party to this Deed is binding on the parties unless it is in writing. No waiver of a breach of a provision of this Deed operates as a waiver of another breach of the same or any other provision of this Deed.

9. INDEMNITY

The Recipient agrees to indemnify the Disclosing Party and the Disclosing Party's Related Entities against all claims, proceedings, costs (including all costs actually payable by the Disclosing Party and/or a Related Entity of the Disclosing Party to its legal representatives, whether or not they are under a costs agreement) and other costs incurred by the Disclosing Party and/or a Related Entity of the Disclosing Party in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), expenses, loss or damage that any of them may sustain or incur as a result of or in connection with, whether directly or indirectly, any breach by the Recipient of this Deed or any act or omission by the Recipient which, if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this Deed.

10. EQUITABLE RELIEF

The Recipient acknowledges that damage for improper disclosure of Confidential Information may be irreparable and therefore, agrees that the Disclosing Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies and without showing or proving any actual damage sustained by the Disclosing Party.

11. JOINT AND SEVERAL LIABILITY

If there is more than one party listed as the Recipient this Deed is binding on the parties jointly and severally.

12. NOTICES

Any notice, demand, consent, approval, request or other communication (**notice**) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:

- (1) hand delivered;
- (2) sent by email;
- (3) sent by facsimile transmission;
- (4) sent by prepaid ordinary mail within Australia; or
- (5) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Addresses for Service of the sender and the recipient are in different countries.

A notice is given if:

- (6) hand delivered, on the date of delivery;
- (7) sent by email, when the email enters the recipient's mail server;
- (8) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
- (9) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (10) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

13. EXECUTION OF COUNTERPARTS

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Deed.

14. GENERAL LAW

This Deed is in addition to and does not substitute or replace the parties' general law rights and obligations in relation to confidential information.

15. GOVERNING LAW AND JURISDICTION

- (1) The laws of State of New South Wales, Australia govern this Deed.
- (2) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts competent to hear appeals from those courts.

Schedule 1

Item 1 Date of this Deed

Item 2 The Parties

Party 1:

Company: OzCar Pty Ltd
ACN: 98 0522 212 99
Address: 229 Hume Hwy
LANSVALE NSW 2166
Phone: 9794 2500
Facsimile: 9794 2599
Email: stephenn@ozcar.com.au

Party 2:

Company:
ACN:
Address:

Phone:
Facsimile:
Email:

Item 3 Permitted Purpose

To consider a potential strategic partnership or vehicle related franchise opportunity.

EXECUTED as a Deed

By Party 1

Executed for and on behalf of **OzCar Pty Ltd**

by its authorised representative:

Signature of Witness

Signature of authorised representative

Name of witness (BLOCK LETTERS)

Name of authorised representative (BLOCK LETTERS)

By Party 2

Executed for and on behalf of _____

by its authorised representative:

Signature of Witness

Signature of authorised representative

Name of witness (BLOCK LETTERS)

Name of authorised representative (BLOCK LETTERS)