

# MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made effective of date of late signature below.

## Between:

**Biarri Networks Pty Ltd ("Biarri")**

and

**[Company.Name]**

(each a " Party " and together referred as the " Parties ")

## 1. Background

1. The Parties intend to enter into discussions regarding specific project(s) covered under this Agreement, as defined below.
  1. The parties wish to explore potential commercial partnerships and/or alliances that may exist between the two businesses (the "**Project**").
2. The Parties may disclose to each other certain Confidential Information in these discussions.
3. The Parties agree that the disclosure and use of Confidential Information is to be made on the terms of this Agreement.

## 2. Definition

1. In this Agreement, the following definitions apply:

Term	Definition
Affiliate	At the time of disclosure of any Confidential Information, any legal entity that directly or indirectly controls, is controlled by, or under common control with, any of the Parties.
Agreement	This confidentiality agreement, as amended from time to time under clause 11.

Term	Definition
Confidential Information	<p>Any information disclosed or made available in any form by the Disclosing Party to the Receiving Party under this Agreement (whether orally, in writing, electronically or on magnetic or other media), but only if one or more of the following circumstances apply:</p> <ol style="list-style-type: none"> <li>1. such information is disclosed by the Disclosing Party in writing, it is marked as confidential on disclosure;</li> <li>2. such information is disclosed by the Disclosing Party orally, it is identified as confidential at the time of disclosure and then summarized and designated as confidential in writing to the Receiving Party within 30 days of disclosure;</li> <li>3. such information is disclosed in any other manner, it is designated in writing as confidential at the time of disclosure; or</li> <li>4. the nature of such information otherwise makes it clear that it is confidential, but excludes information that: <ul style="list-style-type: none"> <li>• is or becomes publicly available, except by an act or omission of the Receiving Party;</li> <li>• became known to the Receiving Party without any breach of applicable confidentiality terms prior to Disclosing Party's disclosure of such information to Receiving Party;</li> <li>• is demonstrably developed at any time by the Receiving Party without use of such Confidential Information; or</li> <li>• is lawfully obtained at any time by the Receiving Party from a third party without restrictions in its disclosure or use (and provided that such third party had also lawfully obtained the information and was authorized to make such a disclosure to the Receiving Party)</li> </ul> </li> </ol>
Disclosing Party	The Party that discloses Confidential Information to the Receiving Party under this Agreement and includes any employees, contractors and consultants of the Disclosing Party.
Product	Any goods or services provided by either party.
Purpose	The evaluations and negotiations of a contractual relationship between the Parties for the Project.
Receiving Party	The Party that receives Confidential Information from the Disclosing Party under this Agreement and includes any employees, contractors and consultants of the Receiving Party.

### 3. Non-disclosure of Confidential Information and exclusive use

1. Subject to clause 4 , the Receiving Party must not disclose Confidential Information to any third party.
2. In addition to the undertaking set out in clause 3.1, the Receiving Party shall be liable for:
  1. any loss, theft or other inadvertent disclosure of Confidential Information; and
  2. any unauthorized disclosure of Confidential Information by any person or entities (including but not limited to, present and former employees, consultants and any Affiliates) to whom the Receiving Party may disclose and has disclosed Confidential Information to under this

Agreement, and any use of Confidential Information by the Receiving Party that is not for the purpose of The Project.

3. The Receiving Party must at all times ensure that the following conditions are fulfilled in respect of the Confidential Information:
  1. the Receiving Party must use (and if applicable ensure any Affiliate uses) the same degree of care in safeguarding the Confidential Information as it uses for its own similar confidential information, but not less than a reasonable degree of care; and
  2. the Receiving Party shall notify the Disclosing Party immediately after it becomes aware of any loss, theft or inadvertent or unauthorized disclosure of Confidential Information and take reasonable measures to mitigate the effects of such loss, theft or disclosure and to prevent any further loss, theft or disclosure.

## 4. Use of Confidential Information

1. The Receiving Party must only use the Confidential Information for the Purpose, Products or Projects.
2. The Confidential Information is provided “as is” without warranty of any kind.
3. Nothing in this Agreement assigns or transfers the Disclosing Party’s intellectual property rights in any Confidential Information to the Receiving Party. All Confidential Information shall remain the property of the Disclosing Party. By disclosing information to the Receiving Party, the Disclosing Party does not grant any express or implied right to the Receiving Party to or under the Disclosing Party’s patents, copyrights, trade names, trademarks or trade secret information.
4. The Receiving Party may not reverse engineer, disassemble or decompile any software (including firmware) or any hardware or hardware designs which have been provided to the Receiving Party for the Purpose without the explicit prior written consent of the Disclosing Party. This includes any deliverables provided by the Disclosing party for any Products

## 5. Permitted Disclosure of Confidential Information

1. The Receiving Party may only disclose Confidential Information to its employees, if the disclosure is necessary for the Purpose
2. The Receiving Party may disclose Confidential Information to its Affiliate or consultant, and the Affiliate or the consultant is entitled to use the Confidential Information, but only if all of the following conditions are met:
  1. The Affiliate or consultant uses the Confidential Information to the same extent as the Receiving Party may under this Agreement; and
  2. the Receiving Party undertakes that any Affiliate or consultant that receives Confidential Information will comply with this Agreement or with separate confidentiality obligations as restrictive as this Agreement.
  3. Written consent has been provided by the Disclosing party to the Receiving party for any Affiliate or Consultant use of Confidential Information prior to the disclosure
  4. the disclosure is necessary for the Purpose
3. The Receiving Party may disclose Confidential Information to its subcontractor or agent, but only if all of the following conditions are met:
  1. the Disclosing Party consents in writing before disclosure; and
  2. the Receiving Party undertakes that any subcontractor or agent that receives Confidential Information will comply with this Agreement or confidentiality obligations as restrictive as this Agreement, with no further right for them to give access to Confidential Information to any other

party but only if the Receiving Party has first given prior written notice to the Disclosing Party and made reasonable efforts to protect the Confidential Information on such disclosure.

## 6. Copying and return of furnished instruments

1. The Receiving Party may not copy samples, models, computer programs, drawings, documents or other any instruments furnished by the Disclosing Party and containing Confidential Information, unless it is required to perform the Purpose and only to the extent necessary for the Purpose. The Receiving Party shall prominently mark each copy, reproduction or transmission by the label "Confidential" or any other similar label.
2. All samples, models, computer programs, drawings, documents or other instruments (including but not limited to all originals, copies, reproductions and summaries containing Confidential Information) remain the Disclosing Party's property. The Receiving Party must at its own cost return or destroy any such instruments or its copies at the Disclosing Party's request. The Parties acknowledge, however, that Confidential Information provided in electronic format (e.g. e-mail) may be copied by the Receiving Party as part of its back-up procedures and if such copies cannot be destroyed or returned to the Disclosing Party, each Party agrees that it shall not access or utilize such copies following receipt of a request to return, destroy or extinguish Confidential Information received from the Disclosing Party.

## 7. Non-disclosure of negotiations

1. Subject to clause 4, neither Party may disclose to any third party the fact that the Parties are evaluating and discussing the Project or Products nor the content of such negotiations, unless the other Party consents. This undertaking survives the term of this Agreement or the termination of this Agreement.

## 8. Rights and remedies

1. Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

## 9. Miscellaneous

1. Both Parties agree that they do not intend nor will they, directly or indirectly, export or re-export (i) any Confidential Information or (ii) any Product (or any part thereof), process or service that is the direct product of the Confidential Information in violation of any applicable export restrictions or to any entity or individual, wherever located, who might not comply with any such restrictions.
2. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Disclosing Party or its representatives, but only by an instrument in writing duly signed by the Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
3. If either Party employs attorneys to enforce any rights arising out of or relation to this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and other litigation costs.
4. It is understood that this Agreement constitutes a Confidentiality Agreement only. It shall not be

construed as giving effect to or otherwise implying a teaming, joint venture, partnership, agency or other such arrangement. Nothing in this Agreement shall grant to either Party the right to make commitments of any kind for or on behalf of the other Party without the prior written consent of the other Party.

5. This Agreement represents the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications, whether oral or written, acceptances, understandings and agreements between the Parties with respect to or in connection with any of the matters or things to which this Agreement applies or refers.
6. Nothing in this Agreement may be construed as compelling either Party hereto to disclose any Confidential Information to the other Parties or enter into any further contractual relationships.
7. The Disclosing Party warrants that it has the right to disclose, exchange, transmit, publish or otherwise use the Confidential Information for which it has disclosed to the Receiving Party hereunder.
8. The rights and obligations provided by this Agreement shall take precedence over any conflicting provision of specific legends or statements associated with Confidential Information when received.
9. This agreement imposes no obligation to proceed with any business transaction.

## 10. Term and termination

1. This Agreement comes into force on the Effective Date. But this Agreement applies to any Confidential Information that may have been disclosed before this time in connection with the Purpose.
2. This Agreement terminates five (5) years after the date both Parties signed it or earlier, if it is superseded by stipulations of any future agreement between the Parties for the Project. Notwithstanding the expiry of this Agreement, the Receiving Party shall be bound to keep the Confidential Information confidential in accordance with the terms of this Agreement for five (5) years from the date of disclosure.
3. If a Party ends the negotiations for the Project, then no Party may provide further Confidential Information under this Agreement.

## 11. Amendments

1. This Agreement may only be amended or modified by written agreement between the Parties.

## 12. Governing law and arbitration

1. This Agreement shall be governed by Colorado law and the venue for any action arising out of this Contract shall be the state and federal courts of Arapahoe County, Colorado.

**Signature Page Follows**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement by duly authorized agents as of the date of late signature below.

<b>BIARRI NETWORKS:</b>	<b>[Company.Name]</b>
By:	By:
Print Name: Paul Sulisz	Print Name:
Title: CEO - Biarrri Networks	Title:
Date:	Date: