

MUTUAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is executed on day of 20 .

BETWEEN

THE UNIVERSITY OF MELBOURNE [ABN 84 002 705 224] of Parkville, Victoria 3010, a body politic and corporate established in 1853 and constituted under the *University of Melbourne Act 2009 (Vic)*

(the University)

AND

THE SECOND PARTY SPECIFIED IN ITEM 1 OF THE SCHEDULE

(the Second Party)

RECITALS

- A. The Parties to this Agreement wish to share information, including Confidential Information, for the Purpose.
- B. The Parties agree to share the information, including Confidential Information, on the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, except where the context otherwise requires:

"Agreement" means this agreement together with any schedules or annexures and any amendments made in accordance with this agreement;

"Confidential Information" means:

- (a) all unpatented inventions (including those the subject of a patent application), ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other intellectual property, financial and business information and all other commercially valuable information relating to the Disclosing Party which the Disclosing Party regards as confidential, and includes such information in the Disclosing Party's possession, power or control concerning or belonging to any other person;
- (b) all copies, notes and records and all related information generated by the Receiving Party to the extent incorporating or derived from any information referred to in (a); and
- (c) any physical items, compounds, components or other materials,

disclosed by or on behalf of the Disclosing Party before, on or after the date of this Agreement for the Purpose.

Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:

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- (d) available to the public at the date of its disclosure to the Receiving Party;
- (e) at the date of its disclosure to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;
- (f) after the date of its disclosure to the Receiving Party, available to the public from sources other than the Receiving Party;
- (g) after the date of its disclosure to the Receiving Party, properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
- (h) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure; or
- (i) required to be disclosed by law.

"Disclosing Party" means the Party which is disclosing information, including Confidential Information;

"Parties" means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them.

"Purpose" means the purpose described in Item 2 of the Schedule;

"Receiving Party" means the Party which is receiving information, including Confidential Information;

"Schedule" means the schedule to this Agreement;

"The Second Party" means the Party described in Item 1 of the Schedule.

2. DISCLOSURE INFORMATION

The Receiving Party acknowledges that it may be given access to certain Confidential Information of the Disclosing Party solely for the Purpose and subject to these terms and conditions.

3. CONFIDENTIALITY OBLIGATIONS

3.1 In consideration of the disclosure referred to in clause 2, the Receiving Party agrees to:

- (a) keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;
- (b) limit access to those of its employees or agents reasonably requiring the Confidential Information on a strictly need to know basis for the Purpose;
- (c) immediately notify the Disclosing Party in the event of any disclosure which is strictly required by law;
- (d) not use any Confidential Information in any way other than for the Purpose or as otherwise contemplated by this Agreement without the prior written permission of the Disclosing Party; and
- (e) ensure that all employees, students or agents to whom Confidential Information is disclosed are legally bound to keep the Confidential Information confidential and not to use the Confidential Information except for the Purpose.

4. **RETURN OF INFORMATION**

At the conclusion of the Purpose or upon the written request of the Disclosing Party, the Receiving Party must return to the Disclosing Party any documents or materials originating from the Disclosing Party and disclosed under this Agreement for the Purpose, including any documents or materials containing or embodying Confidential Information, and undertakes not to keep any copies, notes or records of such information in any form except to the extent required by any applicable law.

5. **GENERAL**

- 5.1 **Proprietary Rights.** The Receiving Party obtains no proprietary rights of any kind to any Confidential Information as a result of a disclosure to it under this Agreement.
- 5.2 **Method of Disclosure.** The obligations in this Agreement apply irrespective of the method of disclosure whether in writing, in computer software, orally, by demonstration, description, inspection or otherwise.
- 5.3 **Relief.** The Receiving Party acknowledges and agrees that monetary damages would be an insufficient remedy for breach of this Agreement and that, in addition to any other remedy available, the Disclosing Party is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.
- 5.4 **Waiver.** A Party's failure to exercise or delay in exercising a right or power does not operate as a waiver of that right or power and does not preclude the future exercise of that right or power.
- 5.5 **Dispute.** A Party claiming that a dispute has arisen under this Agreement (Dispute) must notify the other Party giving written details of the Dispute. The Parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each Party who are authorised to hear the Dispute before commencing any legal proceedings in relation to the Dispute. Any Dispute which cannot be settled between the Parties within a reasonable time must be referred for determination by a person appointed for that purpose by the Parties and failing Agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (Victorian Division). Any determination made under the above clause is binding on the Parties and the *Commercial Arbitration Act 1984 (Vic)* applies to the determination except to the extent otherwise agreed by the Parties. Nothing in this clause 5.4 will prevent a Party from seeking interlocutory relief.
- 5.6 **Governing Law.** This Agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts.
- 5.7 **Term.** The terms and conditions of this Agreement continue for a period of 5 (five) years from the date of disclosure of any Confidential Information for the Purpose. .
- 5.8 **Entire agreement.** This Agreement contains the whole of the agreement between the Parties regarding their mutual obligations of confidentiality.
- 5.9 **Amendment.** This Agreement may only be amended in writing.
- 5.10 **Assignment.** A Party will not assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

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- 5.11 **Severance.** Any term or part of a term of this Agreement that is void, illegal or unenforceable may be severed from this Agreement and the remaining term or parts of the term of this Agreement continue in force.
- 5.12 **Burden of Proof.** The burden of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the Receiving Party.
- 5.13 **Counterparts.** This Agreement may be executed in counterparts. All executed counterparts constitute one document.

Execution Page

SIGNED for and on behalf of **THE UNIVERSITY OF MELBOURNE**
in the presence of:

.....
Signature of Witness

.....
Name of Witness
(block letters)

SIGNED for and on behalf of **THE SECOND PARTY**
in the presence of:

.....
Signature of Witness

.....
Name of Witness
(block letters)

)
)
)
.....
Signature of authorised person

.....
Office held

.....
Name of authorised person
(block letters)

JOHN MUNRO
~~AMANDA MUNRO~~ DIRECTOR
.....
Signature of authorised person

.....
Office held

JOHN MUNRO
.....
Name of authorised person
(block letters)

[The last party to sign this Agreement must complete the date field on the first page]

SCHEDULE

ITEM 1:

The Second Party

Legal Name:

Protein Pty Ltd

Address:

78 Cochranes Rd
Moorabbin VIC 3189

Phone:

(03) 9555 1059

Fax No:

ABN:

76 613 545 574

ITEM 2:

Purpose

To discuss and consider a potential commercial, research or other transaction.

University of Melbourne topics to include:
MSA analysis and eating quality
Dry Aging processes and markets
Smart Packaging technologies and IP

For Protein Pty Ltd this will include:

All recipes, ingredients, manufacturing processes, genetic information or systems relating to a product of or its application, development, design, creation or marketing.