

CONFIDENTIALITY DEED POLL dated

MADE BY:

_____ of _____ (“Recipient”)
[insert name of Recipient] [insert address of Recipient]

IN FAVOUR OF:

**The Thoracic Society of Australia and New Zealand ABN 17057925836
of Suite 405, Level 4, 5 Hunter Street, Sydney, NSW 2000 (“Principal”).**

BACKGROUND

- A The Recipient has, may have or may become acquainted with Confidential Information in the Recipient’s capacity as an employee, contractor, subcontractor, consultant, advisor, agent or researcher of or for the Principal or as a result of the Recipient’s involvement in a Project.
- B The Principal requires the Recipient to ensure that the confidentiality of Confidential Information is protected.
- C The Recipient has agreed to execute this deed poll (“Deed”).

THIS DEED POLL WITNESSES AS FOLLOWS:

1 INTERPRETATION

1.1 Capitalised Definitions

Meanings apply to capitalised terms used in this Deed as specified in this provision, unless the context otherwise requires:

“**Confidential Information**” means:

- (a) any information, including but not limited to (A) information relating to any Intellectual Property; and (B) information or knowledge pertaining to the Principal or information or knowledge obtained through minutes of

meetings, agendas, letters, written communications, memoranda, file notes, papers, committee and sub-committee activities and reports and research activities) in any form which has come or may come to the knowledge or possession of the Recipient by any means or which is given to the Recipient directly or indirectly including:

- (i) by virtue of the Recipient being an employee, contractor, subcontractor, consultant, advisor, agent or researcher of or for the Principal; or
- (ii) in the course of the Recipient's tenure in any capacity with the Principal; or
- (iii) as a result of the Recipient being involved with a Project;

but does not include:

- (b) information which, at the time of disclosure, was in the public domain; or
- (c) information which, subsequent to disclosure, enters the public domain except through a breach of this Deed or any other obligation of confidence.

“Documentation” includes all documents, manuals, notes, user guides, functional and technical manuals, drawings, video, performances, specifications, data, reports, scripts, treatments, story boards and designs developed or produced by the Principal (either alone or in collaboration with others) in relation to or in connection with the Project or incorporating the Intellectual Property;

“Intellectual Property” means all intellectual property rights of the Principal whether now existing or created after the date of this Deed including but not limited to copyright and neighbouring rights, registered and unregistered trade and service marks, business and domain names, all rights in relation to inventions (including patents and patent applications), designs, confidential information, trade secrets, know how, research data, recipes, formulae, discoveries, instructions, literature, training materials and any other intangible property rights whether registered or not and whether or not created in collaboration with others, related in any way to the property, products, projects, services or creations.

“Personal Information” means information or an opinion about an identified individual or an individual who is reasonably identifiable (a) whether the information or opinion is true or not; and (b) whether the information or information is recorded in a material form or not.

“Project” means any project, venture or activity undertaken by the Principal in pursuance of its mission including but not limited to research projects, sponsorship projects, projects relating to grants, accreditation activities, award activities, conferences and projects sponsored by the Principal or by third parties.

1.2 Interpretational Rules

Rules of interpretation apply to this Deed as specified in this provision, unless this Deed specifies otherwise:

- (a) **(headings):** headings and subheadings are for convenience only and do not affect interpretation;

- (b) **(plurality):** words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender):** words denoting any gender include all genders;
- (d) **(variants):** a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) **(parties):** any reference to a Recipient or to the Principal in this Deed includes their executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments):** any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) **(provisions):** any reference to a provision, comprising a clause, recital, schedule, annexure, exhibit, appendix or attachment, is a reference to a provision of this Deed;
- (h) **(inclusions):** the words "include", "including", "for example", and similar expressions are used without limitation; and
- (i) **(time):** the expression "at any time" includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period.

1.3 Performance

Any action required to be performed under any provision of this Deed on or before a day which is not a business day must be performed on or before the immediately following business day.

2 COVENANT AND WARRANTY

2.1 Acknowledgment

The Recipient acknowledges and agrees that:

- (a) the Confidential Information is of a secret and confidential nature;
- (b) it is a requirement of the Recipient's or potential relationship with the Principal or the Recipient's role or potential role or the Recipient's involvement or potential involvement in a Project, that strict confidentiality is maintained at all times upon the terms of this Deed; and
- (c) unauthorised disclosure of any Confidential Information may be detrimental to the Principal or damage a Project or the business or operations of the Principal and may cause harm to the Principal.

2.2 Obligation to maintain confidentiality

- (a) The Recipient must forever treat and keep the Confidential Information confidential and in the strictest secrecy and confidence except as permitted in this Deed.
- (b) The Recipient must comply with any instructions, policies and guidelines that may be issued from time to time by the Principal in relation to Confidential Information and to personal information and sensitive information.

2.3 Non-disclosure

The Recipient must not disclose to any person other than to the Principal, a person who has signed a confidentiality deed, deed poll, agreement or undertaking in favour of the Principal or a person who is under an obligation to maintain confidentiality of the Confidential Information and must:

- (a) protect the Confidential Information and safeguard the Confidential Information against unauthorised publication or disclosure;
- (b) not use, copy or reproduce the Confidential Information for any reason or purpose except as directed by the Principal or in the discharge of Recipient's role in the Project or the Recipient's obligations or duties to the Principal;
- (c) safeguard the security and storage of Confidential Information and comply with any security measures in connection with Confidential Information that may be required by the Principal.

2.4 Authorised disclosure

The Recipient may only disclose Confidential Information:

- (a) if required to do so under a binding order of a government agency, regulatory authority or any legal proceedings;
- (b) if required under any law or any administrative guideline, directive, request or policy having the force of law;
- (c) to a person within the Principal's organisation who is involved in a Project;
- (d) to a person who needs to know for the purposes of a Project or, who needs to know for the purposes of the Recipient carrying out their duties, obligations, or roles under any engagement of the Recipient by the Principal, where the Recipient has fully informed the person that the Confidential Information is confidential;
- (e) to a representative or advisor or consultant of the Principal who has signed a confidentiality deed, deed poll, agreement or undertaking in favour of the Principal;
- (f) to other persons who are subject to confidentiality obligations in favour of the Principal with respect to the Confidential Information; or
- (g) if a duly authorised representative of the Principal has consented to such disclosure in writing.

2.5 Privacy

If the Recipient deals with, or is provided with, any Personal Information, the Recipient must keep such information in confidence in accordance with the terms of this Deed and must handle such information in accordance with the *Privacy Act 2001* and must:

- (a) ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or misuse;
- (b) not use Personal Information other than for the purpose of performing the Recipient's duties, obligations, roles or activities in relation to the Recipient's engagement by the Principal or involvement with the Principal;
- (c) immediately notify the Principal upon becoming aware of a privacy breach in respect of Personal Information.

3 BREACH

3.1 Breach of confidentiality

If, during the Recipient's engagement, tenure, employment or involvement with the Principal, the Recipient breaches an obligation under this Deed, the Principal may terminate such engagement, tenure, employment or involvement as well as exercising any other rights or remedies that the Principal may have at law or in equity.

4 RETURN OF CONFIDENTIAL INFORMATION

4.1 Return

If the Principal requests it, the Recipient must promptly return to the Principal, all Documentation, and all other records relating to or containing the Confidential Information in its possession, custody, power or control, except where:

- (a) the Recipient is required or allowed by law to retain such Confidential Information; or
- (b) the Recipient is an advisor or consultant of the Principal who is permitted to retain such Confidential Information under their terms of engagement.

If any such Confidential Information in the possession, custody, power or control of the Recipient is in a form that cannot be detached from equipment (including Confidential Information stored by electronic or electromagnetic means), the Recipient must erase the Confidential Information and provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or erased as appropriate.

5 GOVERNING LAW

5.1 Governing Law

This Deed is governed by and construed under the law of the State of New South Wales.

5.2 Jurisdiction

Any legal action or proceeding in relation to this Deed against the Recipient or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

5.3 Submission

The Recipient, by execution of this Deed, irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6 GENERAL PROVISIONS

6.1 Continuing obligations

The obligations of the Recipient under this Deed are continuing and shall;

- (a) survive the termination of this Deed and any termination of any relationship between the Principal and the Recipient; and
- (b) shall continue after the completion of any Project or the termination of the Recipient's involvement in any Project.

6.2 Amendments

This Deed shall not be revoked or otherwise modified without the prior written consent of the Principal.

6.3 Further Assurance

The Recipient must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance or execution of this Deed.

6.4 Continuing Performance

- (a) **(Merger exclusion):** The provisions of this Deed do not merge with any action performed or document executed by any person for the purposes of performance of this Deed.
- (b) **(Representation):** Any representation or warranty in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) **(Survival):** The obligations in clauses 2, 3, 4 and 5 survive the termination of this Deed.

6.5 Waivers

Any failure or delay by the Principal to enforce any provision of exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right and does not preclude any other or further exercise of that right or enforcement of that provision by the Principal.

6.6 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

EXECUTED as a Deed Poll.

RECIPIENT:

SIGNED SEALED AND DELIVERED)
by the Recipient in the)
presence of:

Witness

Recipient

Print name:

Print name: