



XSTREAM MEDIA

NEXT GENERATION STREAMING

MUTUAL NON DISCLOSURE AGREEMENT

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This deed is made on

BETWEEN **XStream Media Comms of**
Suite 1, 85 Frankston Flinders Rd, Frankston 3199

AND Company Name: _____

Company Address: _____

RECITALS

- A. The parties contemplate entering into, or participating in one or more business transactions, ventures, partnerships, mergers, associations, agreements, or the like in relation to the **XStream Media™** products – a proprietary technology for the transmission and display of Video software solutions. ('Purpose').
- B. Each party has agreed to keep confidential any and all Confidential Information disclosed to it by the other party for or in connection with the Purpose.

AGREEMENT

1. DEFINITIONS

In this document:

'Confidential Information' of the Disclosing Party includes the following, whether or not in material form:

- (a) any information (in any form) howsoever disclosed by the Disclosing Party to the Recipient and which the Disclosing Party designates as confidential, including, but not limited to, technical, market, business or financial information, trade secrets, know-how, methodologies, techniques, principles or processes of manufacture, source and object codes, business and marketing plans, projections, databases, computer programs, algorithms, integrated circuit, circuit layout or semiconductor chip layout or design, arrangements with other entities, client, customer or project information, test results, client or customer lists, formulae, concepts not reduced to material form, the technical principles, features or functionality of any product, the appearance, ergonomics or user interface for any product, product development plans, concepts or timescales, designs, plans, drawings, models, any invention or discovery or any provisional or complete or PCT patent application, any unregistered or registered trademarks, applications for trademark

- registration or similar rights and any registered design, application for design registration or similar rights;
- (b) any documents prepared by the Recipient based on or incorporating any such information; and
 - (c) all copies of the information and other records referred to in any of paragraphs (a) and (b), but excludes information that:
 - (i) is or becomes public knowledge through no fault of the Recipient;
 - (ii) the Recipient acquires from others;
 - (iii) is established by means of written records or otherwise as having already been known to the Recipient prior to the date of disclosure;
 - (iv) is independently owned or developed by the Recipient without reference to information of the Disclosing Party provided under this document and the terms hereof; or
 - (v) is required to be disclosed by law.

'Disclosing Party' means, as the case may be, the party disclosing Confidential Information to the other party.

'Recipient' means, as the case may be, the party receiving Confidential Information from the other party.

'Recipient Authorised Person' means all employees and officers of the Recipient and controlled entities of the Recipient who reasonably require access to Confidential Information to facilitate the Purpose.

2. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

2.1 The Recipient undertakes that it will:

- (a) use Confidential Information solely for the Purpose;
- (b) keep confidential all Confidential Information (subject to the disclosure permitted under clause 2.2); and
- (c) otherwise comply with the terms of this document.

2.2 The Recipient may disclose Confidential Information only to Recipient Authorised Persons who:

- (a) have a reasonable need to know (and only to the extent that each has a need to know);
- (b) are aware that Confidential Information must be kept confidential; and

- (c) have signed a service agreement with the Recipient which imposes confidentiality obligations, a copy of which confidentiality clause is available from the Recipient for inspection on request (it being the case in any event that the Recipient must procure and ensure that each Recipient Authorised Person also observes all obligations imposed on disclosing party under this document).

3. SECURITY AND CONTROL

The Recipient must:

- (a) establish and maintain security measures to safeguard Confidential Information from access or use not authorised by this document at least to the same level used by the Recipient to protect its own confidential information; and
- (b) keep Confidential Information under the Recipient's control.

4. ACKNOWLEDGMENT

The Recipient acknowledges that it is aware that any breach of this document may result in the Disclosing Party suffering damage.

5. QUALITY OF INFORMATION AND LIMITATION OF LIABILITY

The Recipient acknowledges that:

- (a) the Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Confidential Information or any other information disclosed to the Recipient; and
- (b) the Disclosing Party is not obliged to disclose any information (including any Confidential Information) to the Recipient.

6. TERMINATION OF ACCESS

- 6.1 The Disclosing Party may terminate the Recipient's rights to use Confidential Information at any time with immediate effect by giving written notice to the Recipient.
- 6.2 On such termination the Recipient's right to use Confidential Information ceases and the Recipient must immediately, at the Disclosing Party's option and request:
- (a) return to the Disclosing Party;
 - (b) destroy and certify in writing to the Disclosing Party the destruction of; or
 - (c) destroy and permit the Disclosing Party to witness the destruction of, all Confidential Information then in the Recipient's possession or control .
- 6.3 Termination under this clause does not affect any accrued rights or remedies either party may have and the obligations of confidentiality and other terms of this document continue to apply to each party unless otherwise agreed in writing with the other party.

7. WAIVER

Any failure of a party to at any time insist on performance of any of the provisions of this document is not a waiver of that party's right to later insist on performance of that or any other provision of this document.

8. GOVERNING LAW AND JURISDICTION

This document is governed by the laws of the State of Victoria, Commonwealth of Australia and the parties to this document irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of the State of Victoria, Commonwealth of Australia, and Courts entitled to hear appeals from those Courts.

9. SEVERANCE

If for any reason any provision of this document would render the document ineffective, void, voidable, illegal or unenforceable, that provision or the relevant part thereof must, without in any way affecting the validity of the remainder of this document, be severable and this document must be read and construed and take effect for all purposes as if that provision or part were not contained herein.

EXECUTED as a deed.

SIGNED for and on behalf of)
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)
 by its authorised officer in the presence of)

 Signature of officer

 Signature of witness

7 \ f] g 8] a c d c i ` c g

 Name of officer (print)

 Name of witness (print)

Director

 Position held

SIGNED for and on behalf of)
 _____)
 by its authorised officer in the presence of)

 Signature of officer

 Signature of witness

 Name of officer (print)

 Name of witness (print)

 Position held