

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement ("**Agreement**") is entered into as of _____ 2015, by and between EMClarity Pty Ltd (ACN 139 128 180 ("**EMClarity**")), and _____ of _____ (ACN _____) the "**Company**".

1. **Purpose.** The Company wishes to explore and possibly implement a business relationship between the parties (the "**Relationship**"), and EMClarity may disclose Confidential Information (as defined below) to the other party during the Relationship. This Agreement is intended to allow the parties to conduct the Relationship (which may include the sale of good by EMClarity to the Company) while protecting against unauthorized disclosure of Confidential Information.

2. **Definition of Confidential Information.** "**Confidential Information**" means all nonpublic oral, written, electronic, graphic or machine-readable information of the disclosing party that relates to the Relationship or that, although not related to the Relationship, is nevertheless disclosed as a result of the parties' discussions in that regard and that should reasonably be understood by the receiving party to be proprietary and confidential to the disclosing party, an affiliate of the disclosing party, or a third party. Confidential Information includes, but is not limited to, information relating to network routes, the location of any network or network facility, product plans, products, development plans, service descriptions, specifications and performance characteristics (including latency specifications), equipment manuals, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, regulatory information, maps, budgets, costs, pricing, business plans, agreements with third parties, services, customers, and marketing and financial information of the disclosing party.

3. **Protection of Confidential Information.**

(a) The Company will not disclose or permit disclosure of any Confidential Information of the other party except as required for the implementation of this Agreement, and to its directors, officers, employees, consultants, agents, customers and prospective customers, purchasers and prospective purchasers, auditors, attorneys, financial advisors, lenders and prospective lenders, investors and prospective investors who need to have access to the Confidential Information in connection with the Relationship, and have agreed in writing to be bound by the

confidentiality provisions set forth in this Agreement. The Company agrees to take all reasonable measures to avoid the disclosure of the other party's Confidential Information, which measures will be at least equal to the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, but in no event less than reasonable care. The Company agrees to notify the other in writing of any actual or suspected misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.

(b) **Exceptions.** The foregoing notwithstanding, Confidential Information shall not include information that: (1) is or becomes generally known to the public by publication or other means other than a breach of a duty under this Agreement or other confidentiality agreement; (2) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence prior to the time of disclosure; (3) is disclosed pursuant to the prior written approval of the disclosing party; (4) is obtained through independent communications with a party that has no duty of confidentiality to the disclosing party; (5) is developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or (6) is disclosed pursuant to an order or requirement of a court, administrative agency, other governmental body, or arbitration proceeding relating to this Agreement; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek an appropriate protective order or otherwise prevent or restrict such disclosure.

4. **Return of Materials.** Receiving party shall, at disclosing party's request, promptly return all originals, copies, reproductions, summaries and derivatives of Confidential Information and all other tangible materials and devices provided to the receiving party as Confidential Information or, at disclosing party's option, certify destruction of the same.

5. **No Rights Granted; Independent Contractors.** All Confidential Information is and shall remain the property of disclosing party. By disclosing Confidential Information to receiving party, disclosing party does not grant any express or implied right to receiving party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein. Nothing in

this Agreement shall (a) require either party to disclose Confidential Information or consummate the Relationship; or (b) change the relationship between the parties from that of independent contractors.

6. Term. The obligations under this Agreement shall apply to all Confidential Information disclosed EMClarity to the other during the period ending five (5) years from the date of this Agreement. The obligation to protect the confidentiality of Confidential Information shall survive the termination of discussions regarding the Relationship, and shall continue until such time as the Confidential Information becomes generally known to the public.

7. Successors and Assigns. Neither party may assign this Agreement without the prior written consent of the other. Nothing in this Agreement, express or implied, is intended to confer on any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. If the parties cannot reach a mutually agreeable and enforceable substitute for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

9. Governing Law; Jurisdiction. This Agreement and the rights and obligations of the parties under this Agreement shall be governed and interpreted under the laws of the Queensland, without giving effect to principles of conflicts of law.

10. Remedies. The Parties expressly agree that (a) this Agreement's obligations are necessary and reasonable to protect a disclosing party and its business; and (b) due to the unique nature of the Confidential Information, monetary damages would be inadequate to compensate a disclosing party for a receiving party's breach of these obligations. Therefore, the parties agree and acknowledge that any violation or threatened violation would cause irreparable injury to a disclosing party and that, in addition to any other remedies that may be available in law, equity or otherwise, a disclosing party will be entitled to obtain injunctive or other equitable relief against a threatened breach of this Agreement or the continuation of any such breach by

the receiving party, without the necessity of proving actual damages.

11. General. (a) This Agreement may be amended only by mutual written consent of both parties. (b) Failure to enforce any provision of this Agreement will not constitute a waiver. (c) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. (d) This Agreement is the work product of both parties, constitutes the entire and final agreement and understanding between the parties with respect to the nondisclosure of Confidential Information, and supersedes all prior agreements between them relating to nondisclosure of Confidential Information. Any other written or oral agreements existing between the parties regarding the nondisclosure of Confidential Information are expressly canceled. (e) Neither Party will, without first obtaining the other party's prior written consent, (1) use the other party's trademark or trade name or refer to the subject matter of this Agreement or the other party in any promotional activity or otherwise; (2) disclose to others the subject matter of this Agreement; or (3) issue any publication or press release relating directly or indirectly to this Agreement in which the other party's name is used or may be inferred.

The parties have executed this Mutual Nondisclosure Agreement as of the date first above written.

EMClarity Pty Ltd

By: _____
Name: _____
Title: _____
Date: _____
Address: 101 Hyde Road Yeronga, Brisbane
Queensland 4104

The Company: _____

By: _____
Name: _____
Title: _____
Date: _____
Address: _____