



**RACING AND WAGERING WESTERN AUSTRALIA**

**RACING AND WAGERING WESTERN AUSTRALIA**

**and**

**CONFIDENTIALITY AGREEMENT**

## CONFIDENTIALITY AGREEMENT

This **AGREEMENT** is made on the

**BETWEEN Racing and Wagering Western Australia** (ABN 21 347 055 603) a body corporate constituted by the *Racing and Wagering Western Australia Act 2003* of 14 Hasler Road, Osborne Park, Western Australia.

**AND** (“the Recipients”)

### RECITALS

- A. The Recipients have requested RWWA to provide Confidential Information to the Recipients for the Purpose as set out in the Schedule.
- B. The Recipients have agreed to keep confidential all of RWWA Confidential Information.
- C. RWWA has agreed to disclose the Confidential Information to the Recipients on the terms and conditions of this Agreement.

### 1. OPERATIVE PART

#### 1.1 Definitions

The following words shall have the following meanings:

**'Agreement'** means this agreement as it may be amended from time to time.

**'Confidential Information'** means the following, whether or not in material form and includes all copies thereof:

- (a) the Specific Information; and
- (b) all information relating to, RWWA technology, processes and know-how relating thereto, business details, customers or suppliers which is or might reasonably be considered by RWWA to be confidential including but without limiting the generality thereof, all technical data, photographs, documents, drawings and sketches, test equipment or test results.

**'Specific Information'** means the information identified in the Schedule disclosed by or on behalf of RWWA to the Recipients.

**'party'** or **'parties'** means a party or the parties to this Agreement.

**'Schedule'** means the schedule to this Agreement.

## **1.2 Interpretations**

In this Agreement unless the context requires otherwise:

- (a) the headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice-versa; and
- (c) a reference to one gender includes each other gender, and words denoting individuals include corporations and vice-versa.

## **2. DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION**

2.1 In consideration of disclosing the Confidential Information to the Recipients, the Recipients agrees:

- (a) to use the Confidential Information solely to enable the Recipients to carry out the Purpose; and
- (b) to keep confidential all the Confidential Information (subject to disclosure permitted under clause 2.2).

2.2 The Recipients may disclose the Confidential Information only to its officers and employees who:

- (a) have a need to know (and only to the extent that each has a need to know) for the Purpose;
- (b) are aware that the Confidential Information must be kept confidential; and
- (c) have agreed in writing with the Recipients to comply with the terms of this Agreement as if the officer or employee was a party to this Agreement.

2.3 The Recipients must, at their expense:

- (a) ensure, at all times, that each person to whom the Confidential Information has been disclosed under clause 2.2 complies with the agreement contemplated by paragraph 2.2(c) (the 'Confidentiality Agreement');
- (b) notify RWWA immediately if it becomes aware of a suspected or actual breach of the Confidentiality Agreement;
- (c) immediately take all steps to prevent or stop the suspected or actual breach;
- (d) comply with any direction issued by RWWA from time to time regarding enforcement of Confidentiality Agreements (including but not limited to, starting, conducting and settling enforcement proceedings); and
- (e) assign any Confidentiality Agreement to RWWA at its request.

### **3. SECURITY AND CONTROL**

3.1 The Recipients must:

- (a) establish and maintain effective security measures to safeguard the Confidential Information from access or use not authorised under this Agreement;
- (b) keep the Confidential Information under the Recipients' control;
- (c) maintain complete, accurate and up-to-date records of the Recipients' use, copying and disclosure of the Confidential Information and immediately produce these records to RWWA on request; and
- (d) immediately notify RWWA of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

3.2 The Recipients must provide assistance reasonably requested by RWWA in relation to any proceedings it may take against any person for unauthorised use, copying or disclosure of the Confidential Information.

### **4. COPYING**

4.1 The Recipients must not copy any of the Confidential Information without written consent by RWWA.

4.2 All copies of the Confidential Information made by the Recipients must be marked "Confidential".

### **5. ACKNOWLEDGMENT AND INDEMNITY**

5.1 The Recipients acknowledges that it is aware that any breach of this Agreement will result in RWWA suffering damage.

5.2 The Recipients indemnifies RWWA against all losses, damages, expenses and legal costs (on a solicitor and own client basis and whether incurred by or awarded against RWWA) that RWWA may reasonably sustain or incur as a result, whether directly or indirectly, of any breach by the Recipients of this Agreement.

### **6. INTELLECTUAL PROPERTY RIGHTS**

The parties acknowledge that:

- (a) subject to paragraph (b) of this clause, this Agreement does not transfer any interest in any property (including but not limited to, intellectual property rights); and

- (b) ownership of any property rights (including but not limited to intellectual property rights) acquired or developed by the Recipients hereto in the course of carrying out the Purpose shall belong to RWWA.

## **7. EXCLUSIONS**

This Agreement shall not affect the Recipients' rights to use or disclose information which:

- (a) as evidenced by written publication is rightfully known to or in the possession or control of the Recipients prior to disclosure to the Recipients by RWWA and is not subject to an obligation of confidentiality on the Recipients; or
- (b) as evidenced by written publication is public knowledge (otherwise than as a result of a breach of this Agreement);
- (c) is required to be disclosed pursuant to governmental or judicial decree, provided that notice of such requirement is promptly provided to RWWA in order that it may have every opportunity to lawfully intercede in such process to contest or limit such disclosure.

## **8. TERMINATION**

- 8.1 Subject to clauses 8.2, 8.4 and 9.0, this Agreement will terminate immediately when the Purpose has been completed.
- 8.2 RWWA may terminate this Agreement at any time with immediate effect by giving written notice or notice by facsimile transmission to the Recipients if the Recipients breaches this Agreement.
- 8.3 On termination of this Agreement the Recipients' right to use the Confidential Information ceases and the Recipients must immediately, at it's option:
  - (a) return to RWWA at 14 Hasler Road, Osborne Park (Attn.: Purchasing Manager)
  - (b) destroy and certify in writing to the destruction of; or
  - (c) destroy and permit to witness the destruction of, all the Confidential Information in the Recipients' possession or control.
- 8.4 Termination of this Agreement does not affect any accrued rights or remedies either party may have.

## **9. CONTINUING OBLIGATIONS**

The obligations of confidentiality under this Agreement will continue to apply to the parties to this Agreement after assignment or termination of this Agreement.

## **10. WAIVER**

The failure of RWWA at any time to insist on performance of any of the provisions of this Agreement will not be deemed to be a waiver of its right at any later time to insist on performance of those or any provisions of this Agreement.

## **11. SEVERANCE**

The invalidity of any part or provision of this Agreement shall not affect the enforceability of any other part or provision of this Agreement.

## **12. ASSIGNMENT**

Neither party to this Agreement may assign or otherwise transfer any or all of its rights arising out of this Agreement without the written consent of the other party.

## **13. VARIATION**

Any variation to this Agreement shall be in writing and signed by the parties hereto.

## **14. GOVERNING LAW**

This Agreement is governed by the laws of the State of Western Australia.

**EXECUTED** as an Agreement.

**EXECUTED** for and on behalf of  
**BEACON TECHNOLOGY**

_____	_____	_____	_____
Authorised Officer	Name (print please)	Title	Date

_____	_____	_____	_____
Witness	Name (print please)	Title	Date

**SIGNED** for and on behalf of  
**Racing and Wagering Western Australia**

_____	_____	_____	_____
Authorised Officer	Name (print please)	Title	Date

_____	_____	_____	_____
Witness	Name (print please)	Title	Date

