

Confidentiality Agreement

FirstWave Legal Documents



FirstWave Cloud Technology Limited ABN 35 144 733 595 ("Party") You ("Counterparty")
Document last updated 14 September 2022

FirstWave is a business unit within a group of companies which are wholly owned subsidiaries of FirstWave Cloud Technology Limited (ASX:FCT). This policy applies to each company in the group including First Wave Technology, Opmantek Ltd, and Opmantek Software Pty Ltd.

Background

Party and Counterparty have agreed to make available Confidential Information to each other for carrying out the Purpose on the basis that the confidentiality of that information is at all times preserved by the party receiving that Confidential Information and otherwise on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS

1. INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires: "Agreement" means this confidentiality agreement;

"Confidential Information" means:

- (a) all information which is disclosed by either Counterparty or Party (as the case may be, the "Disclosing Party") to the other party (as the case may be, the "Recipient") in relation to the Purpose including but not limited to, proprietary intellectual property, proprietary computer software, computational methodologies and decisional analysis, facilities costs, operations and maintenance costs, information on operational strategies, information supporting negotiating strategies, information supporting litigation or administrative proceedings and other financial, technical or commercial information relating to the Disclosing Party;
- (b) all information which the Disclosing Party or any of its advisers, agents, officers or employees disclose to the Recipient relating to the business of the Disclosing Party whether by way of oral explanation, or by making available files, company records, contracts, books of accounts, or other information connected with the business or affairs of the Disclosing Party;
- (c) the existence of the Purpose and the fact that the Recipient Party will receive or has received Confidential Information or that the Disclosing Party has disclosed or will disclose Confidential Information; and
- (d) any copies or any of the information described above or any material derived from that information, but does not include any information which clearly:
 - (a) at the time of disclosure to the Recipient is generally available to, and known by, the public (other than as a result of a disclosure directly or indirectly by the Recipient or its representatives); or
 - (b) was available to, and legally and properly obtained by the Recipient on a non-confidential basis from a source other than the Disclosing Party or its advisers, agents, officers or employees provided that such source was not bound by a confidentiality agreement with the Disclosing Party; or
 - (c) has been independently acquired or developed by the Recipient without violating any of its obligations under this Agreement or by law and without the use of any Confidential Information.

1.2. In this Agreement, the expression "Disclosing Party" refers to a party which provides information to the other party, and the expression "Recipient" refers to a party which receives information from the other party. Accordingly:

- (a) both parties may be both Recipient and Disclosing Party; and

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(b) the covenants expressed to be performed by the Recipient shall bind both Party and the Counterparty in their capacity as the recipient of information, and the covenants expressed to be performed by the Disclosing Party shall bind both Party and the Counterparty in their capacity as the provider of information.

2. OBLIGATION TO KEEP CONFIDENTIAL

The Recipient irrevocably agrees as follows:

2.1. Confidential Information to Remain Confidential: The Recipient shall at all times treat all Confidential Information as confidential and undertakes that it will not, except as provided for in clause 3.1, disclose any Confidential Information to any person nor use any Confidential Information for any purpose other than the Purpose, without the prior written consent of the Disclosing Party;

2.2. Confidential Information remains property of Disclosing Party: The Confidential Information supplied by the Disclosing Party to the Recipient shall be and shall remain at all times the property of the Disclosing Party;

2.3. No copies to be made: The Recipient shall not, except as necessary for the Purpose, copy or store any Confidential Information without the prior written consent of the Disclosing Party;

2.4. Similar Covenants from Third Party: Should the Recipient require that any Confidential Information be disclosed to any other person otherwise than as provided in clause 3.1, the Recipient must, prior to such disclosure, obtain the Disclosing Party's prior written consent to such disclosure and provide the Disclosing Party with a confidentiality agreement in a form satisfactory in all respects to the Disclosing Party at its discretion, executed by the person to whom the Confidential Information is to be disclosed;

2.5. Return of Confidential Information: The Recipient shall, upon demand by the Disclosing Party, either return to such persons as they may direct or destroy, at the option of the Disclosing Party, all the Confidential Information (including copies thereof) in the possession or control of the Recipient, its officers, employees, agents or advisers. Upon the return or destruction (as the case may be) of all such Confidential Information, the Recipient shall provide the Disclosing Party with a certificate from an authorised officer of the Recipient stating that the Confidential Information returned or destroyed comprises all the Confidential Information in the possession or control of the Recipient.

3. USE OF CONFIDENTIAL INFORMATION

3.1. The parties to this Agreement hereby irrevocably undertake and covenant that as the Recipient at all times they will:

(a) **Not Disclose:** not, except as is necessary for the Purpose, disclose or distribute or permit to be communicated verbally or in writing, directly or indirectly, the Confidential Information (or any copies thereof) to any third party at any time except:

- (i) to its respective officers or employees as provided in clause 3.1 (b) and (c) below; or
- (ii) as provided in and permitted by this Agreement; or
- (iii) as required by law;

(b) **Be Responsible:** be responsible for maintaining the confidentiality of the Confidential Information and ensure that none of its respective officers or employees discloses, use, store, reproduce or copy any of the Confidential Information, other than as is necessary for the Purpose;

(c) **Only Necessary Disclosure:** subject to the terms of this Agreement, confine the disclosure of the Confidential Information to those of its officers or employees as shall be necessary for the Purpose and will ensure that persons observe secrecy and confidentiality in relation to the Confidential Information in terms of this Agreement; and

(d) **Responsibility:** be wholly responsible for the acts and omissions of its officers and employees in respect of any Confidential Information disclosed to them.

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3.2. **Consent:** Any consent of the Disclosing Party requested under clauses 2 or 3 of this Agreement may be withheld by the Disclosing Party as it, in its absolute discretion, thinks fit.

4. INDEMNITY

Both parties to this Agreement agree that as Recipient it will indemnify the Disclosing Party for any actual loss or damage (including all reasonable costs) suffered by the Disclosing Party directly in consequence of any unauthorised disclosure or use of Confidential Information or any breach of the covenants, agreements and undertakings given under this Agreement by the Recipient, or any of its officers and employees.

5. SEVERABILITY

If any portion of this Agreement is found to be void or unenforceable the remaining portions thereof shall be binding on the parties and shall be enforced with the same effect as though the void and unenforceable portions were deleted.

6. OPERATION OF AGREEMENT

The obligations of confidentiality imposed under this Agreement shall be binding on the parties until such time as all of the Confidential Information has fallen into the public domain otherwise than as a result of any breach of this Agreement.

7. NO REPRESENTATION

Each party agrees and acknowledges that neither the other party nor its advisers, agents, officers or employees are making any representation or warranty as to the accuracy or completeness of the Confidential Information, and that neither the Disclosing Party, its advisers, agents, officers or employees will have any liability to any person resulting from the Recipient's use of the Confidential Information- Nor shall those persons have any liability to the Recipient to correct errors, mistakes or omissions from Confidential Information supplied to the Recipient or to provide additional information to the Recipient in respect of any matter or thing. The provision of the Confidential Information to the Recipient will not constitute any representation, warranty or undertaking (either express or implied) that the Confidential Information is correct or that there has been no change in the affairs of the Disclosing Party either before or after the date of the provision of the Confidential Information to the Recipient.

8. FURTHER ASSURANCES

Each party agrees to sign, execute and do all deeds, schedules, acts, documents and things as may be reasonably required by the other party to effectively carry out, and give effect to, the terms of this Agreement.

9. GOVERNING LAW

This Agreement shall in all respects be governed and construed in accordance with the laws of the Commonwealth of Australia

10. ACCEPTANCE OF THIS AGREEMENT

By clicking or ticking the acceptance statement for this agreement on the website, the Recipient has caused this Agreement to be immediately executed.

11. Our contact details

Attention: Privacy Officer

Email: privacy@firstwave.com.au

Phone: +61 02 9409 7000

Mail: Level 14, 132 Arthur St North Sydney, NSW, 2060, Australia