**LIMITED SCOPE**

**MUTUAL NONDISCLOSURE AGREEMENT**

The parties have executed this Agreement as of the Effective Date.

| **Details** | **Amazon Web Services, Inc.** | ***[Drafting Note: Please enter the name of the Affiliate]*** |
| --- | --- | --- |
| By | ***[Drafting Note: Enter name]*** | ***[Drafting Note: Enter name]*** |
| its | ***[Drafting Note: Enter title]*** | ***[Drafting Note: Enter title]*** |
| Print Name | ***[Drafting Note: print name]*** | ***[Drafting Note: print name]*** |
| Date Signed | ***[Drafting Note: Enter date]*** | ***[Drafting Note: Enter date]*** |
| Mail / courier | Courier: 410 Terry Ave. N., Seattle, WA 98109-5210  Mail: P.O. Box 81226, Seattle, WA 98108-1226 | ***[Drafting Note: Enter postal address]*** |
| Email | contracts-legal@amazon.com | ***[Drafting Note: Enter email]*** |
| Attention | General Counsel | ***[Drafting Note: Enter title]*** |

This Mutual Nondisclosure Agreement (this “Agreement”), effective as of ***[Drafting note:* *Enter the effective date of the NDA]***(the “Effective Date”), is made between Amazon Web Services, Inc., a Delaware corporation (“Amazon”), and ***[Drafting note: Enter the name of the Affiliate’s Legal Entity]***, a Victorian Government entity (“Department”). In connection with Department’s or its Affiliates’ use or potential use of Amazon Web Services described as “Services” in the Enterprise Agreement between Amazon Web Services Australia Pty Ltd and the State of Victoria acting through Department of Premier and Cabinet (the “Enterprise Agreement”) (collectively, the “Specified Purpose”), each party may receive confidential information from the other party. Accordingly, Amazon and Department hereby agree as follows:

**1. Affiliates; Confidential Information.** The term “Affiliate” means, with respect to either party, any entity that directly or indirectly controls, is controlled by or is under common control with that party and, in respect of the Department, shall mean each of the following: (i) a Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic)); (ii) a "Government Owned Entity", meaning a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic); and (iii) a "Council" as defined in the *Local Government Act 1989* (Vic). The term “Confidential Information” means all nonpublic information concerning the Specified Purpose disclosed by either party, its Affiliates, or their agents (as applicable, such entities collectively, the “Disclosing Party”) to the other party, its Affiliates, or their agents (collectively, the “Receiving Party”) that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation (i) nonpublic information relating to the Disclosing Party’s technology, products, services, processes, data, customers, business plans and methods, promotional and marketing activities, finances and other business affairs, (ii) third-party information that the Disclosing Party is legally obligated to keep confidential, (iii) the nature, content and existence of any contractual arrangement, discussions or negotiations between the parties relating to the Specified Purpose, and (iv) the nature, content and existence of this Agreement.

**2. Exclusions.** Confidential Information does not include any information that (i) is or becomes publicly available without breach of this Agreement (provided, however, information that is rumored or reported does not become public based only on such rumors or reports), (ii) was known by the Receiving Party prior to its receipt from the Disclosing Party, (iii) is disclosed to the Receiving Party from any third party, except where the Receiving Party knows, or reasonably should know, that (a) such disclosure constitutes a wrongful or tortious act, or (b) such information was acquired or disclosed in breach of an obligation of confidentiality or (iv) is independently developed by the Receiving Party without use of any Confidential Information.

**3. Use and Disclosure of Confidential Information.** The Receiving Party will use Confidential Information only in connection with the Specified Purpose. Except as provided in this Agreement, the Receiving Party will not disclose Confidential Information to anyone without the Disclosing Party’s prior written consent. The Receiving Party will take reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information.

**4. Receiving Party Personnel; Affiliates.**

**4.1** The Receiving Party will restrict the possession, knowledge and use of Confidential Information to its directors, officers, employees, contractors, agents, legal and accounting advisers, Affiliates, and entities controlled by the Receiving Party (collectively, “Personnel”) who (i) have a need to know Confidential Information in connection with the Specified Purpose, (ii) are informed of the confidential nature of the Confidential Information, and (iii) have obligations with respect to the Confidential Information that are consistent with this Agreement. Each of Amazon and the Department will ensure that its Affiliates comply with this Agreement.

**4.2** Despite any other provision of this Agreement: (a) the Department will not provide the terms of any written agreements between the parties or their Affiliates to any legal and accounting advisers via a government intranet site or any similar or successor means, without Amazon’s prior consent, and (b) the Department will not provide the terms of any written agreements between the parties or their Affiliates on the one hand to any contractors or agents (other than its Personnel, as defined below) on the other hand via a government intranet site, portal or any similar tool, unless either (i) the Department has provided to Amazon a deed poll executed by such contractor or agent in the form of Amazon.com, Inc.’s usual nondisclosure agreement, and an executed declaration confirming that such contractor or agent does not have any conflict of interest and is not a competitor of Amazon or (to the best of the contractor’s or agent’s knowledge) any Affiliate of Amazon, or (ii) Amazon has given prior consent. This restriction on general publication of agreement terms does not prohibit: (i) disclosure of agreement terms to the Department’s Affiliates and their Personnel who are considering entering into the agreement to use Amazon Web Services (in accordance with Section 4.1) through a Department or Affiliate website, platform or other medium; (ii) publication of contract number, title, type, estimated value, term, category, or organization and supplier names and contact details through a Department or Affiliate website, platform or other medium; or (iii) disclosure by means other than a government intranet site or any similar or successor means as permitted by this Agreement.

**5. Disclosures to Governmental Entities.**

**5.1** The Receiving Party may disclose Confidential Information as required to comply with orders or other legally binding directions of governmental entities that have jurisdiction over it or as otherwise required by law. Governmental entities that have jurisdiction over Department include the office of the Auditor-General appointed under section 94A of the *Constitution Act 1975* (Vic), the Ombudsman appointed under the *Ombudsman Act 1973* (Vic), the Independent Broad-based Anti-Corruption Commission, and the Office of the Victorian Information Commissioner). Laws requiring disclosure by Department may include the *Freedom of Information Act 1982* (Vic).

**5.2** In addition to disclosures permitted under Section 5.1, Department may disclose Amazon’s Confidential Information as required to Ministers, Parliament or Parliamentary bodies, if Department: (i) gives Amazon prior written notice sufficient to seek a protective order or other remedy, except to the extent that Department's compliance would cause it to violate an order of governmental entities that have jurisdiction over it, a requirement of the Minister, Parliament or Parliamentary body, or law; (ii) discloses only the extent of such information as is required for the purpose of that disclosure; and (iii) uses best efforts to obtain confidential treatment for any Confidential Information so disclosed (if the recipients do not already have obligations with respect to the Confidential Information that are consistent with this Agreement). Department will ensure that each person to whom Department discloses Confidential Information under this Section 5.2 is aware of the confidential nature of that information prior to disclosure.

**6. Ownership of Confidential Information.** All Confidential Information will remain the exclusive property of the Disclosing Party. The Disclosing Party’s disclosure of Confidential Information will not constitute an express or implied grant to the Receiving Party of any rights to or under the Disclosing Party’s patents, copyrights, trade secrets, trademarks or other intellectual property rights. Except to the extent permitted by applicable law in the absence of any express license or other grant of rights, neither party will use any trade name, trademark, logo or any other proprietary rights of the other party (or any of its Affiliates) in any manner without prior written authorization of such use by an authorized representative of the other party (in the case of Amazon and its Affiliates, a Vice President).

**7. Notice of Unauthorized Use.** The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Receiving Party. The Receiving Party will cooperate with the Disclosing Party to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.

**8. Return of Confidential Information.** Subject to compliance with orders of governmental entities that have jurisdiction over it or as otherwise required by law, the Receiving Party will return or destroy all tangible materials or portions thereof constituting Confidential Information (including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party’s written request.

**9. Injunctive Relief.** The Receiving Party acknowledges that a breach of its obligations under this Agreement could cause irreparable harm to the Disclosing Party as to which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

**10. Scope; Termination.** This Agreement covers Confidential Information disclosed by the Disclosing Party on and after the Effective Date. This Agreement automatically will terminate upon the earlier of (i) termination of all written agreements between the parties or their Affiliates regarding the Specified Purpose, or (ii) if no agreements are executed, termination of discussions between the parties or their Affiliates regarding the Specified Purpose or delivery of written notice terminating this Agreement, provided, however, that (a) each party’s obligations with respect to the other party’s Confidential Information will survive for three (3) years following termination, and (b) Sections 6, 9, 10, and 11 will survive indefinitely.

**11. Miscellaneous.**

**11.1** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes all prior communications and agreements ***[Drafting note: including the Mutual Non-disclosure Agreement between the Department and Amazon or its Affiliate, dated [\_\_\_\_\_\_\_\_\_\_]]***between the parties with respect thereto. This Agreement may be amended, modified, or waived only with the mutual written consent of the parties hereto. This Agreement will not be assignable by either party without the prior written consent of the other party; except that either Department or Amazon may assign or otherwise transfer this Agreement without the consent of the other (a) in connection with a merger, acquisition or sale of all or substantially all of its assets, or (b) to any Affiliate or as part of a corporate reorganization; provided that the assigning party provides notice to the other upon completion of such assignment. For any assignment permitted by this Section 11, the parties will execute such further documents as may be reasonably necessary to effect such assignment. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns.

**11.2** The Disclosing Party acknowledges that the Receiving Party may now have, or in the future may develop or receive, information that is the same as, or similar to, Confidential Information without having breached this Agreement. Nothing in this Agreement (a) prevents the Receiving Party from using, for any purpose and without compensating the Disclosing Party, information retained in the memory of the Receiving Party’s Personnel who have had access to Confidential Information or (b) obligates the Receiving Party to restrict the scope of employment of the Receiving Party’s Personnel provided, however, that this section does not create a license under any copyright or patent of the Disclosing Party.

**11.3** If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

**11.4** This Agreement will be governed by internal laws of the State of Victoria, without reference to its choice of law rules. Exclusive jurisdiction over and venue of any suit arising out of or relating to this Agreement will be in the courts of Victoria, and each of the parties hereto consents to the personal jurisdiction of, and venue in, those courts.

**11.5** All notices hereunder will be given in writing, will refer to this Agreement and will be personally delivered or sent by overnight courier, electronic mail, or registered or certified mail (return receipt requested) to the address set forth below the parties’ signatures on the first page of this Agreement.

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