

Employee Confidentiality and Intellectual Property Deed

This Deed is dated 2020

Between:

BOWER PLACE PTY LTD ABN 71 008 140 994 of Level 2, 55 Gawler Place, Adelaide SA 5000 [**Bower**]

and:

THE PERSON specified in Item 1 of the Schedule [**Employee**]

BACKGROUND

- A. Bower carries on business as a clinical training and knowledge organisation.
- B. The Employee is employed by Bower under the Employment Agreement.
- C. During the course of the Employee's employment, the Employee will be given access to confidential information of Bower in order to allow the Employee to perform the Employee's duties. Bower has disclosed or will disclose that information on a confidential basis to the Employee for that purpose.
- D. The Employee has agreed to keep that information confidential, in accordance with the terms of this Deed.
- E. During the course of the Employee's employment, the Employee may develop intellectual property which the Employee has agreed to disclose and assign to Bower in accordance with this Deed.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Background

The background set out above forms part of this Deed and the parties agree that the background is true and accurate.

1.2 Definitions

In this Deed:

Approved Purpose means use of the information by the Employee to carry out the Employee's duties under the Employment Agreement.

Authorised Person means a person nominated from time to time as being authorised to receive Confidential Information, and who has agreed to abide by obligations of confidence that are consistent with the obligations imposed on the Employee.

Commencement Date means the date specified in Item 2 of the Schedule.

Confidential Information includes all information provided by Bower to the Employee of any nature and in any form in connection with the Approved Purpose and includes, without limitation:

- (a) the Specific Information;
- (b) all information, whether disclosed directly or indirectly, related to Bower's business, products and services (including future products and services), financial information, pricing, terms of trade, suppliers and customers, contracts and arrangements, plans, strategies and forecasts, research and development information, and any other information designated as confidential by Bower; and
- (c) all information relating to the Employee's employment, or disclosed to the Employee in the course of the Employee's employment,

but does not include:

- (a) any information that is in the public domain, other than as a result of a breach of this Deed or other obligation of confidence;
- (b) information that is published prior to the date of this Deed;
- (c) information that is known by the Employee prior to its disclosure by Bower;
- (d) information that is made available to the Employee by a third party who is not under an obligation of confidence to Bower and who obtained that information other than as a result of a breach of an obligation of confidence owed to Bower by any person; or
- (e) information that was developed by the Employee independently of the disclosure by Bower.

Employment Agreement means the agreement between Bower as employer and the Employee as employee which bears the date specified in Item 3 of the Schedule.

Intellectual Property includes all discoveries and intellectual property rights (including, without limitation, all copyright, designs, trademarks and patents) of any nature in any inventions, designs, works, computer programs, processes created, developed or generated by the Employee:

- (a) whether alone or with others (including Bower's other employees, contractors or agents) for the use of Bower;
- (b) without limiting the generality of subclause (a), during work hours, on Bower's premises or using Bower's resources (including Confidential Information); and
- (c) without limiting the generality of subclauses (a) and (b), in the course of the Employee's employment,

or which are along the lines of the actual or anticipated business, work or investigations of Bower.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Specific Information means the information, knowledge and documents specified in Item 4 of the Schedule.

Works has the meaning given in the *Copyright Act 1968* (Cth).

1.3 Interpretation

Unless the contrary intention appears:

- (a) Words denoting the singular number only shall include the plural number and vice versa.

- (b) Reference to any gender shall include every other gender and words denoting individual shall include corporations and vice versa.
- (c) Reference to an Act of Parliament, Statute or Regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore.
- (d) Headings are for convenience of reference only and do not affect the interpretation or construction of this Deed.
- (e) A requirement in this Deed for liaison and consultation is a requirement for full and frank exchange and discussion and includes a requirement where necessary and appropriate for full disclosure of relevant information and material.
- (f) Reference to any party to this Deed, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns.

2 Use of confidential information

2.1 Keep information confidential

In consideration of Bower giving the Employee access to the Confidential Information for the Approved Purpose, the Employee at its expense must:

- (a) keep the Confidential Information confidential and not disclose it except with the prior written consent or as otherwise permitted under this Deed;
- (b) only use the Confidential Information for the purpose of the Approved Purpose;
- (c) take all steps reasonably necessary to maintain the confidentiality of the Confidential Information, including to secure it against theft, loss or unauthorised disclosure;
- (d) not make, assist or permit any person to make any unauthorised use, disclosure or reproduction of the Confidential Information; and
- (e) ensure that, before disclosing any Confidential Information to any person, that person is an Authorised Person, and that any disclosure to an Authorised Person is made in accordance with clause 2.3.

2.2 Notify of unauthorised disclosure

The Employee will immediately notify Bower of any unauthorised use or disclosure of the Confidential Information of which the Employee becomes aware and will take all steps which Bower may reasonably require in relation to such unauthorised use or disclosure.

2.3 Disclosure of Confidential Information to Authorised Persons

The Employee may disclose Confidential Information to an Authorised Person who has a need to know in relation to the Approved Purpose, provided that:

- (a) the Employee ensures that the Authorised Person is made aware that the information must be kept confidential and that they must not do anything that would result in a breach of the Employee's obligations under this document; and
- (b) the Employee accepts liability to Bower for failure of the Authorised Person to keep the Confidential Information confidential.

2.4 Provide list of Authorised Persons

The Employee must, at its expense, on request by Bower, promptly provide an accurate list of all Authorised Persons to whom Confidential Information has been disclosed.

3 Exceptions – permitted disclosures

The obligations of confidentiality under this Deed do not extend to information which, whether before or after the date of this Deed:

- (a) is public knowledge (except because of a breach of the obligations of confidentiality under this Deed);
- (b) Bower has given its prior written consent to its disclosure or use; or
- (c) a party is required by law to disclose.

4 Ownership of Confidential Information

- (a) The Employee acknowledges that the Confidential Information constitutes valuable and proprietary information of Bower and all intellectual property rights in that Confidential Information are and will remain the exclusive property of Bower.
- (b) Nothing in this Deed may be construed as granting or conferring on the Employee any proprietary rights, licences or other rights in any Confidential Information. The Employee must not assert any proprietary or intellectual interest or right in the Confidential Information

5 Return of Confidential Information

- (a) The Employee must return or destroy all copies of Bower's Confidential Information in its possession or under its control immediately upon receipt of a written notice from Bower or cessation of the Employee's employment.
- (b) The return or destruction of Confidential Information does not release any party from its obligations under this Deed.

6 Damages insufficient

The Employee acknowledges that damages may not be a sufficient remedy for any breach of this Deed. Bower is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Employee, in addition to any other remedies available at law.

7 Indemnity

The Employee indemnifies Bower in respect of any loss or damage suffered by Bower arising out of any breach by the Employee under this Deed, except to the extent that any loss or damage is suffered as a result of any wilful, reckless or negligent act by Bower.

8 Intellectual property disclosure and assignment

8.1 Disclosure to Employer

The Employee must disclose all Intellectual Property to Bower.

8.2 Ownership and assignment

- (a) All Intellectual Property will vest in Bower upon creation. The Employee assigns to Bower all existing and future rights in all Intellectual Property. The assignment is effective without any further payment to the Employee, whether by way of royalty or otherwise, and is in perpetuity and without restriction as to use or territory.
- (b) The Employee must do all things necessary to give effect to the assignment, including executing any further document required by Bower, and do anything reasonably requested by Bower to enable Bower to further assure the rights assigned.

8.3 Indemnity

The Employee agrees to indemnify Bower fully against all liabilities, costs and expenses which Bower may incur as a result of any breach of this clause by the Employee.

8.4 Moral Rights

To the full extent permitted under Part IX of the *Copyright Act 1968 (Cth)*, the Employee:

- (a) voluntarily and unconditionally consents to all or any acts or omissions by Bower, or persons authorised by Bower, concerning any and all Works made or to be made by the Employee (whether before or after this consent is given) in the course of the Employee's employment which would otherwise infringe the Employee's Moral Rights;
- (b) waives any and all existing and future Moral Rights in the Works; and
- (c) acknowledges that the Employee have given this consent voluntarily and without reliance on any statement or representation made by Bower, or anyone acting on Bower's behalf.

8.5 Survival of obligations

The obligations accepted by the Employee under this clause survive termination of this Deed.

9 Term and termination

9.1 Term

This Deed becomes effective on the Commencement Date and continues in force until:

- (a) terminated in accordance with this Deed; or
- (b) all the Confidential Information is generally available in the public domain.

9.2 Termination

Bower may terminate this Deed at any time with immediate effect by giving written notice to the Employee.

9.3 Consequences of termination

- (a) On termination of this Deed the right of the Employee to use the Confidential Information stops.
- (b) On termination of this Deed the Employee must immediately return to Bower all Confidential Information in the possession or control of the Employee or any Authorised Person.

- (c) The obligations of confidentiality imposed by this Deed survive the cessation of the Employee's employment and the expiry or termination of this Deed.

10 Notices and other communications

10.1 Service of notices

Any notice, demand, consent, approval or communication under this Deed (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) delivered by hand, registered mail, fax or email to the recipient's address for Notice specified below, as varied by any Notice given by the recipient to the sender.

10.2 Party details for Notices

The recipient address details for the purpose of clause 10.1 are:

Bower	Contact Person:	Kelly Paterson
	Address:	Level 2, 55 Gawler Place, Adelaide, SA 5000
	Fax:	08 8221 6061
	Email:	Kelly.Paterson@bowerplace.com.au
Employee	Employee:	[Employee name]
	Address:	[Employee address]
	Fax:	[Employee fax]
	Email:	[Employee email]

11 Miscellaneous

11.1 Alterations

This Deed may be altered only in writing signed by each party.

11.2 Approvals and consents

Except where this Deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Deed.

11.3 Assignment

A party may only assign its rights under this Deed with the prior written consent of the other party.

11.4 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

11.5 No merger

The rights and obligations of the parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

11.6 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the term of this Deed continue in force so as to give effect to the intentions of the parties.

11.7 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

11.8 Governing law and jurisdiction

This Deed is governed by the law of the State of South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of South Australia.

Executed as a Deed

EXECUTED by **BOWER PLACE PTY LTD** ABN 71 008 140 994 in accordance with s127(1) of the *Corporations Act 2001*

Signature of Director

Signature of *Director/*Secretary
[*delete whichever does not apply]

[PRINT FULL NAME BLOCK LETTERS]

[PRINT FULL NAME BLOCK LETTERS]

[USUAL ADDRESS]

[USUAL ADDRESS]

EXECUTED by the **EMPLOYEE** in the presence of:

Signature

Witness Signature

Date

Print Name

Date

SCHEDULE

NO	ITEM	PARTICULARS
1	Employee	<i>[Insert name, address and DOB]</i>
2	Commencement Date	<i>[insert date]</i>
3	Date of Employment Agreement	<i>[insert date of employment agreement]</i>
4	Specific Information	<ul style="list-style-type: none"> • the Bower Place Method • the Bower Place Model (diagram) • BowerNote (clinical session protocols) • any unpublished articles or notes written by Malcolm Robinson or Catherine Sanders • written works published or unpublished sent to the Employee or accessed in the course of the Employee's employment or training at Bower • any marketing, website or other material intended for publication in any form that the Employee may have drafted or edited in the course of employment with Bower