



# Xynk Pty Ltd

AVCAL Confidentiality Agreement

THIS AGREEMENT is made the            day of            2008

BETWEEN: XYNK PROPRIETARY LIMITED (A.C.N. 116 013 971)  
(THE COMPANY)

AND:

.....  
(THE INVESTOR)

## RECITALS:

- A. THE COMPANY has provided and/or may provide to THE INVESTOR certain information of a confidential nature:-
- (a) to enable THE INVESTOR to determine whether to make an investment; and
  - (b) if it does so determine, to negotiate the terms on which the investment is to proceed.
- B. That information has been and/or is to be provided on the basis that THE INVESTOR will maintain its confidentiality.

## AGREEMENT

1. THE INVESTOR acknowledges that all written and oral information furnished to it by THE COMPANY and its officers, employees, advisers or agents in connection with making an investment evaluation is valuable and confidential.
2. THE INVESTOR may not use the information except to enable it to determine whether to make the investment and, if it does so determine to negotiate the terms on which the investment will proceed.
3. Subject to Clause 5, THE INVESTOR agrees that:-
  - (a) except as permitted under Clause 2 or this clause, it will not use or disclose any information without prior written consent of THE COMPANY which shall not be unreasonably withheld;
  - (b) it will only disclose the information on a “need to know” basis to its directors, officers, employees, professional advisers and members of THE INVESTORS investment committee; and
  - (c) it will use its best endeavours to ensure that directors, officers, employees and professional advisers of THE INVESTOR and members of the investment committee of THE INVESTOR to whom

the information is disclosed comply with the obligations imposed on THE INVESTOR by Clause 2 and this clause.

4. If the investment does not proceed for any reason whatsoever, THE INVESTOR will, within 7 days of receipt of a demand from THE COMPANY, return to THE COMPANY all information supplied by the company which is in a physical form and which is in the possession, custody or control of THE INVESTOR.
5. The obligations of THE INVESTOR under this Agreement do not apply to any information which:-
  - (a) THE INVESTOR is required by law or by the listing rules of Australian Stock Exchange Limited to disclose;
  - (b) is in or enters the public domain otherwise than by breach of this Agreement;
  - (c) is already known to THE INVESTOR; or
  - (d) is acquired by THE INVESTOR from a person who was not under an obligation of confidentiality relating thereto.
6. THE INVESTOR acknowledges that the value of the confidential information to THE COMPANY may be unique and therefore impractical or difficult to assess in monetary terms. Accordingly if an actual or threatened violation of this agreement occurs THE INVESTOR will consent to the enforcement of this Agreement by injunctive relief or specific performance without proof of actual damage.
7. The Terms of this agreement shall be governed and constructed in accordance with the laws in force from time to time in the State of Victoria.
8. This Agreement shall expire two years from the date of execution.

EXECUTED AS AGREEMENT

SIGNED by \_\_\_\_\_ )  
For and on behalf of THE INVESTOR  
in the presence of:)

WITNESS:.....

SIGNED by \_\_\_\_\_ )  
For and on behalf of THE COMPANY  
In the presence of:)

WITNESS:.....