



## Terms and Conditions of the Non-Disclosure Agreement of PowerCap Un Limited and Sustainable Energy Equity Holdings Limited

### 1. BACKGROUND

- (a) The Company and the Receiving Party have agreed to enter into these Terms and Conditions to facilitate the sharing of Confidential Information for the Permitted Purpose.
- (b) This Agreement provides for the disclosure of Confidential Information by the Company to the Receiving Party for the Permitted Purpose.

### 2. USE OF CONFIDENTIAL INFORMATION

#### 2.1 Permitted Purpose

The Receiving Party must not use any Confidential Information at any time other than for the Permitted Purpose.

#### 2.2 Disclosure

- (c) The Receiving Party must not disclose any Confidential Information or the fact that discussions or negotiations are taking place concerning a possible relationship or transaction, or any of the terms, conditions or other facts with respect thereto, other than as set out in these Terms and Conditions or as required by law.
- (d) Despite the provisions of **clause 2.2(c)**, the Receiving Party may disclose Confidential Information:
  - (i) as is reasonably necessary for the Permitted Purpose; and
  - (ii) only to its Representatives:
    - (A) who have a need to know such Confidential Information; and
    - (B) who have agreed in writing to be bound by the obligations of confidentiality under these Terms and Conditions.
- (e) The Receiving Party will be responsible for compliance by its Representatives with the terms of these Terms and Conditions and will be liable to the Company for any breach thereof by its Representatives.

#### 2.3 Obligations

The obligations of the Receiving Party under these Terms and Conditions:

- (a) extend to all Confidential Information in whatever format it is provided;
- (b) extend to all Confidential Information Disclosed whether by or on behalf Company or by any Company;

- (c) require the Receiving Party to treat as confidential all Confidential Information which is Disclosed to it, its Related Body Corporate or a Specified Person by or on behalf of it by the Company or its Related Body Corporate;
- (d) require the Receiving Party to take all reasonable precautions to preserve the secrecy and confidentiality of the Confidential Information and, in particular, take all precautions necessary to prevent unauthorised persons from obtaining access to Confidential Information by any direct or indirect means;
- (e) require the Receiving Party not to publish or communicate or permit the publication or communication of any of the Confidential Information to any third party other than (if reasonably necessary for the Permitted Purpose) to the Specified Persons and who are made aware of its obligation of confidentiality under these Terms and Conditions; and
- (f) require the Receiving Party to keep all Confidential Information and any information based or derived from the Confidential Information, separate from all its business records and other documents.

## **2.4 Required disclosures**

In the event the Receiving Party or its Representatives are required by law to disclose Confidential Information, the Receiving Party must immediately notify the Company of such requirement and comply with the Company's directions in regard to such disclosure.

## **3. RELEASE FROM OBLIGATIONS**

### **3.1 Release circumstances**

The Receiving Party and Specified Persons and any Company bound or deemed to be bound by these Terms and Conditions will be released from their obligations of confidentiality under these Terms and Conditions if and to the extent that:

- (a) the Company has given its prior written consent to a specific Disclosure and Receiving Party has acted in full compliance with the provisions of that consent;
- (b) if Disclosure is required by law;
- (c) the Confidential Information is or becomes generally and publicly available, except as a result of a breach of these Terms and Conditions by Receiving Party, its Representatives or Specified Persons; or
- (d) the Confidential Information was lawfully acquired by Receiving Party from a third party which was lawfully entitled to possess and Disclose such information.

## **4. RIGHTS IN RELATION TO CONFIDENTIAL INFORMATION**

### **4.1 Confidential Information remains the property of the Company**

All Confidential Information provided to Receiving Party or the Specified Persons remains the exclusive property, and the provision of such information does not alter any rights that any Party may have in relation to that information.

#### **4.2 Provision of Confidential Information does not create rights**

The Company acknowledges entry into these Terms and Conditions relates only to the use of Confidential Information for the Permitted Purpose and does not create any other obligation in relation to the Permitted Purpose.

### **5. TERMINATION AND SURVIVAL**

#### **5.1 Termination**

This Agreement will be in force from the Effective Date until the earlier of:

- (a) 60 days from the Effective Date; or
- (b) either party giving notice of termination in writing to the Company.

#### **5.2 Survival**

The provisions of **clauses 2, 4, 6.3, 7.3, 8 and 9** survive termination of these Terms and Conditions.

### **6. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

#### **6.1 Return or destruction**

The Receiving Party must:

- (a) promptly, on request by the Company, either:
  - (i) return to the Company all Confidential Information in its possession or under its control; or
  - (ii) destroy all such Confidential Information; and
- (b) not retain any copies, extracts or other reproductions of any part of the Confidential Information.

#### **6.2 Confirmation**

If required by the Company, the Receiving Party will provide to the Company confirmation in writing that it has complied with the terms of **clause 6.1**.

#### **6.3 No release**

The return or destruction of any Confidential Information under **clause 6.1** does not release the Receiving Party from any of its obligations under these Terms and Conditions.

### **7. INJUNCTIVE RELIEF**

#### **7.1 Damages not sufficient**

The Receiving Party acknowledges that damages are not a sufficient remedy for a breach of these Terms and Conditions and that the Company is entitled to seek specific performance or

other injunctive or equitable relief in respect of a breach or a threatened breach by the Receiving Party in relation to these Terms and Conditions.

## 7.2 No need to show loss or damage

The Receiving Party agrees and acknowledges that, in the event of a threatened or actual breach of the terms of these Terms and Conditions by the Receiving Party, the Company will be entitled to seek an injunction restraining that Receiving Party or its representatives from committing any breach or further breach of the terms of these Terms and Conditions, without showing or providing any actual loss or damage sustained by the Company.

## 7.3 Indemnity

Receiving Party indemnifies the Company and undertakes to hold the Company harmless from all and any damage and loss it may suffer as a consequence of Receiving Party failing to comply with its obligations under these Terms and Conditions.

## 8. RESTRAINT

During the Term and for a period of 12 months after termination of these Terms and Conditions, in consideration of the Company making disclosure of its Confidential Information, the Receiving Party and its Representatives will not solicit, canvass or approach any employee of the Company, or otherwise interfere with the employment or relationship between those persons and the Company.

## 9. UNDERTAKING

The Receiving Party agrees to not circumvent (or attempt to circumvent) any of the provisions under these Terms and Conditions and undertakes:

- (a) **(no contact of third parties)**: not to directly or indirectly contact, engage, transact with, or attempt to do business with any third party introduced, referred, or identified by the Company without the prior written consent of Company;
- (b) **(interference)**: not to interfere with any business opportunity, project, transaction, or relationship that has been presented or made known by the Company during the term of these Terms and Conditions; or
- (c) **(solicitation)**: not to solicit or induce any third party introduced, referred, or identified by the Company to engage in business activities outside the scope of these Terms and Conditions without the prior written consent of the Company;
- (d) **(disclosure of contacts)**: to keep confidential the names, contact information, and any other identifying details of the third parties introduced or referred by the Company; or
- (e) **(use of information)**: to use any Confidential Information obtained from the Company solely for the purposes of fulfilling their obligations under these Terms and Conditions and not for any other purpose without the prior written consent of the Company.

## **10. NOTICES**

### **10.1 Service**

Any notice, demand, certification, process or other communication to be given to be made under these Terms and Conditions will be effectively signed on behalf of a Party if it is executed by that Party or any of its officers, its solicitor or its attorney.

### **10.2 How to give a communication**

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the Party's current delivery address for notices;
- (c) sent to the Party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the Party's current email address for notices.

### **10.3 Particulars for delivery of notices**

The particulars for delivery of notices for:

- (a) the Receiving Party, are those provided by the Receiving Party upon acceptance of these Terms and Conditions; and
- (b) the Company are as follows:

Attention: Elisa El Safty

Address: 3b/6 Quinns Hill Road East, Stapylton QLD 4207

Email: info@powercap.com.au

### **10.4 Communications by post**

Subject to **clause 10.6**, a communication is given if posted:

- (a) within Australia to an Australian postal address, 2 Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting; or
- (c) if sent by fax, will be deemed served upon conclusion of transmission.

### **10.5 Communications by email**

Subject to **clause 10.6**, a communication is given if sent by email, 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in

the email address notified for the purposes of this **clause 10**.

#### **10.6 After hours communications**

If a communication is given:

(a) after 5.00 pm in the place of receipt; or

(b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

### **11. GENERAL PROVISIONS**

#### **11.1 Acceptance**

By providing the information sought by the Company in connection with these Terms and Conditions and either checking or clicking on the acceptance checkbox or button, the Receiving Party (or the person acting on its behalf):

(a) indicates his, her or its intention to be bound by these Terms and Conditions; and

(b) warrants to have the necessary authority and capacity to enter into, and comply with the obligations imposed by, these Terms and Conditions.

#### **11.2 Further assurance**

Each Party will sign, execute and deliver all documents and do all things reasonably necessary for the complete performance of its duties and obligations under these Terms and Conditions or otherwise to implement fully the provisions of these Terms and Conditions.

#### **11.3 Amendment**

No modification, amendment or other variation of these Terms and Conditions will be valid or binding on a Party unless it is made in writing and signed by or on behalf of that Party.

#### **11.4 Waiver or variation**

A provision of or a right created under these Terms and Conditions may not be waived or varied except in writing by the Parties to be bound.

#### **11.5 No assignment**

No Party may assign, transfer, charge or deal in any other way with the benefit of any right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in respect of the benefit of any right conferred by or arising under these Terms and Conditions without the prior consent in writing of the Company.

#### **11.6 Governing law**

This Agreement is governed by and construed in accordance with the law of Queensland and the Parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

## 11.7 Severability

If any term, agreement or condition of these Terms and Conditions or the application of these Terms and Conditions to any person or any circumstance is or becomes illegal, invalid or unenforceable in any jurisdiction, it will be severed and none of the remaining terms, agreements, conditions or applications in any other jurisdiction will be affected.

## 12. INTERPRETATION

### 12.1 Definitions

In these Terms and Conditions, unless the context otherwise requires:

**Agreement** means this non-disclosure agreement.

**Associate** means in relation to a Party:

- (a) any director, officer, employee, investor, financier, agent or professional advisor of that Party; and
- (b) any Related Body Corporate of that Party.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Queensland.

**Company** means **Powercap Un Ltd** ACN 658 799 181 and **Sustainable Energy Equity Holdings Pty Ltd** ACN 615 370 799, both jointly and severally.

**Confidential Information** means any information that is received by the Receiving Party or an Associate, whether before or after the date of acceptance of these Terms and Conditions by the Receiving Party (whether in writing, verbal, recorded in a Document or otherwise) and whether specified as confidential or not and includes:

- (a) the existence and contents of these Terms and Conditions;
- (b) any information provided to the Receiving Party in connection with the Permitted Purpose;
- (c) Intellectual Property, business activity information, financial information (including financial forecasts), product information, trade secrets, designs, drawings, specifications, know-how, techniques, source and object codes, business and marketing plans and projections, arrangements and agreements with third parties, technical information, customer information, formulae, customer lists, research and development information, concepts not reduced to material form, designs, processes, plans and models, provided to the Receiving Party in connection with the Permitted Purpose;
- (d) any information or Document that is created in connection with the Permitted Purpose;
- (e) the fact that the Parties are in discussions or negotiations concerning the Permitted Purpose; and
- (f) any information produced, based on or derived from the information referred to above.

**Disclose** includes in writing, by discussion (or any other communication) or by whatever means, and **Disclosed** and **Disclosure** are to be construed accordingly.

**Document** means any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, algorithm, computer record, circuit, circuit layout, drawing, specification, material, photocopy, scanned copy or any other means by which information may be stored or reproduced.

**Effective Date** means the later of:

- (a) the date on which the Receiving Party agrees to be bound by these Terms and Conditions Intellectual Property; and
- (b) the date on which the first item of Confidential Information is received by the Receiving Party.

**Intellectual Property** means any intellectual, industrial or commercial property, or right of a proprietary nature, including:

- (a) any patent, trade mark, service mark or design;
- (b) any copyright or work of authorship;
- (c) any utility model, bench-top model, prototype, eligible layout right or plant variety right;
- (d) any business, trade or commercial name or designation, brand name, internet website domain name, logo, symbol, source indication or origin appellation;
- (e) any Confidential Information;
- (f) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural product or otherwise;
- (g) any legal action relating to any previous item;
- (h) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any previous item; and
- (i) any document of title, letters patent, deed of grant or other document or agreement relating to any previous item,

whether registered, unregistered, recorded, unrecorded, stored or incorporated in any medium of any nature or description.

**Parties** means each party to these Terms and Conditions and **Party** means either one of them.

**Permitted Purpose** means the facilitation of discussions between the Company and the Receiving Party and its Representatives in relation to the potential investment by the Receiving Party in the Company or its subsidiaries, or, the facilitation by the Receiving Party of investment by third parties in the Company or its subsidiaries, by way of capital and/or debt finance.



**Receiving Party** means the natural person who accepts, or entity (other than the Company) on whose behalf that person accepts, to be bound by these Terms and Conditions.

**Related Body Corporate** has the meaning given to that term under the *Corporations Act 2001* (Cth).

**Representative** means a legal advisor, banker, agent, director, employee or officer of Receiving Party.

**Specified Person** means any person approved in writing by the Company to receive Confidential Information.

**Term** means the period referred to in clause 5.1.

## 12.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) any reference to a Party to these Terms and Conditions includes its successors and permitted assigns;
- (h) any reference to any agreement or deed includes that agreement or deed as amended at any time;
- (i) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule to these Terms and Conditions (if any);

- (n) when a thing is required to be done or money required to be paid under these Terms and Conditions on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (o) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

### **12.3 Headings**

Headings do not affect the interpretation of these Terms and Conditions.