

STRMIX™ FULL
NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

This STRmix™ Full Nondisclosure and Confidentiality Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 20__ (the “Effective Date”) by and among **STRMIX LIMITED**, a New Zealand registered company (No: 6445312), of 34 Kenepuru Drive, Porirua 5240, New Zealand (“STRmix”), and the following individual(s) and/or entity(ies) (each referred to singularly as a “Recipient” and collectively as the “Recipients”). Throughout this Agreement, STRmix and the Recipients are sometimes herein referred to singularly as “Party” and collectively as the “Parties.”

[Recipient Name]

[Address]

[Recipient Name]

[Address]

Recitals

A. STRmix is the exclusive licensee of a forensic software product known as STRmix™, as well as other valuable information, products, property, and proprietary rights in certain privileged, confidential, and/or secret information, which is more fully described herein.

B. Recipients have previously inspected confidential and proprietary information related to STRmix™ in connection with prior criminal cases (the “Prior Inspections”) and that, in connection therewith, Recipients agreed to certain nondisclosure and confidentiality obligations as contained in the following nondisclosure and confidentiality agreement/s [Drafting note: *If a Prior Inspection has not occurred under a Prior NDA insert “None” or “N/A”*]: _____ (each singularly a “Prior NDA” and collectively the “Prior NDA’s”).

C. In connection with a pending criminal court case identified as, _____ (the “Pending Case”), Recipients seek access to the source code for Version ____ of the STRmix™ software (the “Source Code”). Recipients also seek to access and/or use information and documentation related to STRmix™ which includes, but is not limited to, some or all of the following (collectively the “STRmix™ Materials” and together with the Source Code, the “Protected Information”):

- (i) A time limited evaluation version of Version ____ of the STRmix™ software;
- (ii) Developmental validation records of Version ____ of the STRmix™ software;
- (iii) The STRmix™ User’s and Operation Manual and Implementation Validation Guide and Installation Manual (as applicable) for Version ____ of the STRmix™ software;
- (iv) Any information and/or documentation already provided to, or obtained by, Recipients in connection with a Prior Inspection and which is the subject of a Prior NDA; and
- (v) Any information which STRmix agrees to provide which is not otherwise available in the public domain.

D. The Protected Information is highly confidential and proprietary and is protected by STRmix from publication or circulation. In order to provide information relative to the proceedings in the Pending Case and enable Recipients to provide expert analysis or testimony therein, STRmix is willing to allow Recipients to inspect the Protected Information (the “Inspection”) subject to the terms, covenants,

conditions, and restrictions contained in this Agreement and in the document entitled *Access to STRmix™ Software by Defence Legal Teams* (the “Access Policy”), a current copy of which has been provided to Recipients.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Recipients, the Parties and their employees, agents, representatives, consultants, associates, successors, assigns, subsidiaries, parents, directors, officers, members, managers, attorneys, affiliates, and all other individuals or entities acting by, through, for, under, in concert with, or on behalf of, any of them (collectively “Affiliate” or “Affiliates”) hereby agree as follows:

1. Proprietary, Privileged, Confidential, and Secret Information. Recipients acknowledge the proprietary, privileged, confidential and secret nature of the Protected Information and agree to hold and keep the Protected Information confidential as provided in this Agreement and further agree, acknowledge, and represent:

(a) That the Protected Information constitutes a trade secret as defined in the Defend Trade Secrets Act of 2016, 18 U.S.C. Section 1836, et seq., and the Ohio Uniform Trade Secrets Act, Ohio Revised Code Section 1333.60, et seq. Recipients further acknowledge that access to the Protected Information is only being provided by STRmix for use in the Pending Case subject to the terms contained herein.

(b) That they have been provided with a true and complete copy of the current Access Policy and that signing this Agreement constitutes an acceptance of the terms, covenants, conditions, and restrictions contained therein. In addition to the requirements contained in this Agreement, Recipients hereby agree to comply with the terms, covenants, conditions, and restrictions contained in the Access Policy. In the event of a conflict between the Access Policy and this Agreement, the terms of this Agreement shall govern.

(c) That Recipient is not a current or intended future developer of and has no current or intended future direct or indirect commercial or employment interest in a business or enterprise that offers or sells software products which compete with the STRmix™ software.

(d) That Recipient has been retained by legal counsel in the Pending Case to offer services as an expert witness or consulting expert regarding the Pending Case.

(e) That the Prior NDA’s remain in full force and effect and, to the extent information and/or documentation obtained through Prior Inspections is used by Recipients in the Pending Case, such use will be subject to the terms of this Agreement. Notwithstanding anything in this Agreement to the contrary, STRmix will not be required to disclose any information and/or documentation already provided to Recipients in connection with a Prior Inspection or which is the subject of a Prior NDA. In the event of a conflict between the Prior NDA’s and this Agreement, the terms of this Agreement shall govern.

2. Restricted Use; Nondisclosure.

(a) Recipients acknowledge, warrant, and represent to STRmix that Recipients are entering into this Agreement and seeking disclosure of the Protected Information for the sole purpose of the Inspection and providing expert analysis or testimony in the Pending Case, and for no other purpose. Recipients and Recipients’ Affiliates will not use or publish the Protected Information, or any portion of it, for any purpose not specifically permitted herein and agree at all times:

- (i) Not to disclose or release the Protected Information, in whole or in part, to any third party except with the specific prior written consent of STRmix or except as expressly otherwise permitted by this Agreement;
- (ii) To keep confidential the Protected Information;
- (iii) Not to put to commercial use the Protected Information;
- (iv) Not to decompile, disassemble, reproduce, redesign, or reverse engineer the Protected Information or any part thereof; and
- (v) Not to copy the Protected Information or to prepare any document that contains any portion of the Protected Information other than as necessary to present opinions and findings in the Pending Case and in connection with the Pending Case.

(b) Recipients may disclose the STRmix™ Product to only those of Recipients' Affiliates who (i) require such information for the Inspection in the Pending Case, (ii) are informed of the confidential nature of the Protected Information and the obligations set forth in this Agreement, and (iii) are subject to a legally enforceable written obligation to maintain the confidentiality of the Protected Information according to the terms of this Agreement. Recipients agree to be responsible for enforcing this Agreement as to any of Recipients' Affiliates and to take such action, legal or otherwise (including all actions that Recipients would take to protect their own trade secrets and confidential information), to the extent necessary to cause them to comply with this Agreement and thereby prevent any disclosure of the Protected Information except as expressly permitted by this Agreement.

3. Use in Future Case. Subject at all times to the terms and provisions contained in this Agreement, Recipients may disclose information obtained from the Inspection of the Protected Information for the sole purpose of use in a future case involving STRmix™ ("Future Case") where Recipients have been retained to provide expert opinions, testimony, or findings therein, and for no other purpose, provided that prior to any disclosure Recipients:

(a) Provide STRmix with prompt written notice of an intended disclosure which includes a description of the nature of the Future Case, the parties involved, the court or tribunal where the Future Case is pending, and the expected form of Recipients' disclosure (i.e. – written report, oral testimony, etc.);

(b) Provide STRmix with a signed acknowledgement and agreement by Recipients that the intended disclosure in the Future Case of information pertaining to the Protected Information will remain subject to the terms, provisions, obligations, and restrictions contained in this Agreement. Recipients' signed acknowledgement and agreement shall be substantially in the template form set out at Schedule 1 to this Agreement and otherwise acceptable to STRmix; and

(c) Provide STRmix with such additional information or documentation concerning the Future Case, and Recipients' involvement therein, as may reasonably be requested.

4. Notices Generally. All required notices or other communications made by Recipients or Recipients' Affiliates to STRmix, shall be made in writing by mail and email to the following individual:

KATE YOUNG
General Counsel
Institute of Environmental Science and Research Limited
PO Box 50348, Porirua 5240, New Zealand
kate.young@esr.cri.nz

Further, a copy of any such notice or communication shall be sent in writing by mail and email to legal counsel for STRmix, at the following address:

BLAKE R. GERNEY
Brennan Manna Diamond
75 E. Market Street
Akron, Ohio 44308
brgerney@bmdllc.com

5. Legal Proceedings. If Recipients or any of Recipients' Affiliates become legally compelled (by court order, oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, search warrant, or similar process) to make any disclosure that is prohibited or otherwise constrained by this Agreement, Recipient or such Affiliate will provide STRmix with prompt written notice of such legal proceeding(s) so that STRmix may seek an appropriate protective order or other appropriate relief including, but not limited to, an order to have any testimony or records sealed, or waive compliance with the provisions of this Agreement.

6. Return or Destruction of Information. After Recipients conclude their participation in the Pending Case, Recipients shall promptly deliver to STRmix any and all portions of the Protected Information, whether electronically stored or otherwise, together with all copies and summaries thereof in the possession or under the control of Recipients or Recipients' Affiliates. Alternatively, if STRmix requests or gives prior written consent to Recipients' request, Recipients shall destroy any and all portions of notes and documents describing the Protected Information, whether electronically stored or otherwise, together with all copies and summaries thereof in the possession or under the control of Recipients or Recipients' Affiliates. Any such destruction must be certified by Recipients' or an authorized representative of Recipients, in writing, to STRmix and include a list of the destroyed materials.

7. No License or Right. The Protected Information, and any other confidential information, which is provided to Recipients or Recipients' Affiliates for review under the terms of this Agreement shall be considered the sole property, proprietary information, and/or trade secret of STRmix. Nothing in this Agreement shall be construed as granting, or obligating STRmix to grant, a license of any present or future intellectual property rights of STRmix. Recipients and Recipients' Affiliates expressly disavow ownership of, or any right or interest in, the Protected Information and any other confidential information of STRmix provided under this Agreement.

8. Remedies. Without limiting any of STRmix's rights and/or remedies at law or in equity and in addition thereto, Recipients acknowledge and agree that an award of money damages would be inadequate for any breach of this Agreement by Recipients or Recipients' Affiliates, and any such breach or threatened breach would cause STRmix immediate, substantial, and irreparable harm. Recipients agree that in the event of any breach or threatened breach of this Agreement, STRmix will be entitled, without the requirement of posting a bond or other security, to equitable relief including immediate injunctive relief and specific performance.

9. Miscellaneous.

(a) Modification. Any modification or amendment of this Agreement or its requirements shall be effective only if agreed upon in writing and signed by the Parties.

(b) Non-Waiver. Neither the failure nor delay of STRmix to enforce or exercise any of its rights, powers, privileges, or remedies contained in this Agreement will operate as a waiver of such right, power, privilege, or remedy, and no single or partial exercise of any such right, power, privilege, or

remedy will preclude any other or future exercise of such right, power, privilege, or remedy or the exercise of any other right, power, privilege, or remedy available to STRmix at law or in equity.

(c) Severability. If any one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of any other provisions herein contained.

(d) Costs; Attorneys' Fees. Recipients agree that if they are held by any court of competent jurisdiction to be in violation, breach, or nonperformance of any terms of this Agreement, then Recipients shall be required to pay any and all costs or expenses (including reasonable attorneys' fees) incurred by STRmix related to the enforcement of any provision(s) herein. Said costs and expenses shall be in addition to any other relief to which STRmix may otherwise be entitled.

(e) Jurisdiction; Service of Process; Governing Law. The Parties acknowledge and agree that this Agreement shall be exclusively governed by and enforced in accordance with the laws of the State of Ohio and the United States of America without regard to conflict of law principles. The Parties hereby consent and submit themselves to the exclusive jurisdiction and venue of the Court of Common Pleas of Summit County, Ohio or the United States District Court for the Northern District of Ohio to resolve any claims, disputes, actions, or proceedings seeking to enforce any provision of, or otherwise arising out of, this Agreement. The Parties waive any and all objections and challenges based on lack of personal jurisdiction, improper venue, and/or forum non-conveniens. Process and service of process in any action or proceeding referred to in this Section may be served on any Party anywhere in the world.

(f) Execution of Agreement; Counterparts; Entire Agreement. This Agreement may be executed and scanned in electronic format and e-mailed to the other Party, and such electronic version shall be considered an original. This Agreement may be executed in counterparts with the same effect as if the signatures to all such counterparts were upon the same instrument, and all such counterparts shall constitute but one instrument. This Agreement supersedes all prior agreements, understandings, and communications, oral or written, between the Parties regarding the subject matter of this Agreement.

(g) Third-Party Rights. Nothing herein shall be construed as to give any third-party any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision contained herein.

(h) Survival. The obligations of Recipients and Recipients' Affiliates set forth in this Agreement shall survive indefinitely.

(i) Assignment. This Agreement may not be assigned, in whole or in part, by Recipients.

(j) Authorization. Each of the individuals signing this Agreement acknowledges, represents, and warrants that the entities set forth below have been authorized to enter into this Agreement and that said individuals have been duly authorized to execute and deliver this Agreement on behalf of themselves and/or their respective entities in order to form a legally binding contract.

IN WITNESS WHEREOF, each of the Parties hereto have caused this Agreement to be executed as of the respective date(s) indicated below, to be effective as of the Effective Date.

STRmix LIMITED:

By: _____
Print Name: _____
Title: _____
Date: _____

RECIPIENTS (individual):

Signature: _____
Print name: _____
Date: _____

Signature: _____
Print name: _____
Date: _____

RECIPIENTS (entity):

By: _____
Print name: _____
Title: _____
Date: _____

By: _____
Print name: _____
Title: _____
Date: _____

Schedule 1

Acknowledgement and agreement to conform with STRMIX Full Nondisclosure and Confidentiality Agreement (“Acknowledgement”)

Parties:

STRMIX LIMITED, a New Zealand registered company (No: 6445312), of 34 Kenepuru Drive, Porirua 5240, New Zealand (“STRmix”); and

the following individual(s) and/or entity(ies) (each referred to singularly as a “Recipient” and collectively as the “Recipients”)

_____ ,
[Recipient Name]

_____ ,
[Address]

entered into a Full Nondisclosure and Confidentiality Agreement dated _____ (“Agreement”).

Acknowledgment Terms

Terms capitalized in this Acknowledgement shall have the definitions used in the Agreement, unless otherwise specifically defined in this Acknowledgement.

Pursuant to the Agreement, the Recipients wish to disclose Protected Information in a Future Case.

The details of the Future Case are set out below:

Name of Future Case	
Description of the nature of the Future Case	
Parties involved	
Court or tribunal where the Future Case is pending	
Expected form of Recipients’ disclosure (e.g. written report, oral testimony etc.)	
Details of Protected Information to be disclosed in the Future Case (from paragraph C of the Recitals to the Agreement and any other information)	

By signing this Acknowledgment:

- (a) the Recipients agree that (i) the Agreement remains in full force and effect and binding on the Recipients, and (ii) the disclosure of the Protected Information will only be for use in the Future Case (as identified and stated above) and shall be in accordance with and remain subject to the terms, provisions, obligations, and restrictions contained in the Agreement; and
- (b) Subject to the terms of this Acknowledgement, STRmix agrees to the Recipients disclosing the Protected Information in the Future Case (as identified and stated above) which shall remain subject to the terms, provisions, obligations, and restrictions contained in the Agreement.

STRmix LIMITED:

By: _____
Print Name: _____
Title: _____
Date: _____

RECIPIENTS (individual):

Signature: _____
Print name: _____
Date: _____

Signature: _____
Print name: _____
Date: _____

RECIPIENTS (entity):

By: _____
Print name: _____
Title: _____
Date: _____

By: _____
Print name: _____
Title: _____
Date: _____