

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

This 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 _____ (collectively the “Prior NDA’s”).

C. In connection with Recipients providing expert analysis or testimony in a pending criminal court case identified as, _____ (the “Pending Case”), Recipients 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™ Product”):

- (i) A time limited evaluation version of version ____ of the STRmix™ software;
- (ii) Developmental validation records of version ____ of STRmix™;
- (iii) The STRmix™ User’s and Operation Manual and Implementation Validation Guide for version ____ ;
- (iv) STRmix™ source code for version ____ of the STRmix™ software;
- (v) 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
- (vi) Any information which STRmix agrees to provide which is not otherwise available in the public domain.

D. In order to provide information relative to the proceedings in the Pending Case, and any future criminal case involving STRmix™ and Recipients providing expert analysis or testimony therein (each a “Future Case” and collectively with the Pending Case, the “Case”), STRmix is willing to permit Recipients to inspect the STRmix™ Product (the “Inspection”) subject to the terms, covenants, conditions,

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

E. Recipients acknowledge and agree that the business of STRmix is a competitive industry and that the protection of intellectual property and privileged, confidential, and/or secret business information is necessary. Recipients further acknowledge that any disclosure of such information, including disclosure of the STRmix™ Product, could cause substantial harm to STRmix or provide an unfair advantage to competitors of STRmix.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, as well as the other terms, restrictions, representations, conditions, promises, covenants, and obligations contained herein, as a condition to furnishing access to the STRmix™ Product and such other information and property that STRmix agrees to make available to Recipients, 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.

(a) Recipients acknowledge the proprietary, privileged, confidential and secret nature of the STRmix™ Product and agree to hold and keep the STRmix™ Product confidential as provided in this Agreement. Further, Recipients acknowledge that STRmix has expended time, effort, and substantial resources to develop the STRmix™ Product and to maintain the secrecy thereof.

(b) Recipients acknowledge that the STRmix™ Product constitutes a trade secret as defined in the Defend Trade Secrets Act of 2016 (the “DTSA”), 18 U.S.C. Section 1836, et seq., and the Ohio Uniform Trade Secrets Act (the “Ohio UTSA”), Ohio Revised Code Section 1333.60, et seq. Recipients further acknowledge that access to the STRmix™ Product, is only being provided by STRmix for use in the Case and all times subject to the terms contained herein.

(c) Recipients acknowledge 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.

(d) Recipients acknowledge the continued applicability of the Prior NDA’s and, to the extent information and/or documentation obtained through Prior Inspections is used by Recipients in the 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 STRmix™ Product for the sole purpose of the Inspection and providing expert analysis or testimony in the Case, and for no other purpose. Recipients and Recipients' Affiliates agree at all times:

- (i) Not to disclose or release the STRmix™ Product, 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 STRmix™ Product;
- (iii) Not to put to commercial use the STRmix™ Product disclosed to Recipients;
- (iv) Not to decompile, disassemble, reproduce, redesign, or reverse engineer the STRmix™ Product or any part thereof; and
- (v) Not to copy the STRmix™ Product or any document that contains any portion of the STRmix™ Product other than as necessary to present opinions and findings in the Case and in connection with the Case.

(b) Recipients may disclose the STRmix™ Product to only those of Recipients' Affiliates who (i) require such information for the Inspection in the Case, (ii) are informed of the confidential nature of the STRmix™ Product and the obligations set forth in this Agreement, and (iii) are subject to a legally enforceable written obligation to the STRmix™ Product according to the terms of this Agreement. Recipients further agree that Recipients and Recipients' Affiliates will not use any of the STRmix™ Product for any purpose not explicitly set forth herein. 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 STRmix™ Product except as expressly permitted by this Agreement.

(c) Subject at all times to the terms and provisions contained in this Agreement, Recipients may disclose the STRmix™ Product for the sole purpose of use in a Future Case involving STRmix™ 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:

(i) 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.);

(ii) Provide STRmix with a signed acknowledgement and agreement by Recipients, in form and substance acceptable to STRmix, that the intended disclosure and use of the STRmix™ Product in the Future Case will remain subject to the terms, provisions, obligations, and restrictions contained in this Agreement; and

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

3. STRmix Contact; Notices Generally.

(a) All required notices, requests, consents or other communications made by Recipients or Recipients' Affiliates to STRmix, shall be made in writing by mail and email to the following individual:

MARK DUNLOP
Senior Legal Advisor
Institute of Environmental Science and Research Limited
PO Box 50348, Porirua 5240, New Zealand
Mark.dunlop@esr.cri.nz

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

BLAKE R. GERNEY, ESQ.
Day Ketterer Ltd.
581 Boston Mills Road, Suite 400
Hudson, Ohio 44236
brgerney@dayketterer.com

4. Legal Proceedings. If Recipients or any of Recipients' Affiliates become legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, 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. In the absence of a protective order or Recipients' receiving such a waiver from STRmix, Recipients or Recipients' Affiliates are permitted (with STRmix's cooperation but at Recipients' expense) to disclose that portion (and only that portion) of the STRmix™ Product that Recipients or Recipients' Affiliates are legally compelled to disclose, provided however, that Recipients and Recipients' Affiliates must use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any person to whom the STRmix™ Product is so disclosed.

5. Return or Destruction of Information. Pursuant to the Access Policy, and unless otherwise agreed upon in writing by the Parties, Recipients are permitted to type or take notes during the Inspection ("Inspection Notes"). After Recipients conclude their participation in the Case, Recipients shall promptly deliver to STRmix any and all portions of the STRmix™ Product, documents, records, notes, memoranda, electronically stored data, and any Inspection Notes, together with all copies and summaries thereof in 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 the STRmix™ Product, documents, records, notes, memoranda, electronically stored data, and any Inspection Notes, together with all copies and summaries thereof in 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.

6. No License or Right. The STRmix™ Product, and any other confidential information, which is provided to Recipients or Recipients' Affiliates 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 STRmix™ Product and any other confidential information of STRmix provided under this Agreement.

7. Remedies. Without limiting any of STRmix's rights and/or remedies at law or in equity, 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. SUCH REMEDIES WILL NOT BE EXCLUSIVE REMEDIES FOR ANY BREACH OF THIS AGREEMENT BUT WILL BE IN ADDITION TO ALL OTHER REMEDIES AVAILABLE TO STRMIX AT LAW OR IN EQUITY. WITH RESPECT TO ANY ACTION OR PROCEEDING BY STRMIX REQUESTING INJUNCTIVE RELIEF AND/OR SPECIFIC PERFORMANCE AS CONTEMPLATED IN THIS SECTION 7, RECIPIENTS HEREBY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

8. 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) Person; Individual; Third Party; Entity. The terms "person," "individual," "third party," and "entity" mean and include without limitation a person, individual, third party, corporation, nonprofit corporation, general or limited partnership, limited liability company, sole proprietorship, joint venture, estate, trust, association, organization, labor union, governmental body or entity, and any other entity of any name or nature.

(d) 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.

(e) 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 to at law or in equity.

(f) 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 without regard to its 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.

(g) 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.

(h) 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.

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

(j) Assignment. This Agreement may not be assigned, in whole or in part, by Recipients. STRmix may, without notice to Recipients, in whole or in part, assign any or all of its rights, benefits, obligations, and liabilities set forth or otherwise contained in this Agreement.

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

[Remainder of page intentionally left blank – Signature page follows]

IN WITNESS WHEREOF, each of the Parties hereto, desiring to be legally and contractually bound, 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: _____

Signature: _____

Print name: _____

Print name: _____

Date: _____

Date: _____

RECIPIENTS (Entity):

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____