

To be inserted by Court

Case Number:

Date Signed:

FDN:

SEARCH ORDER

[*SUPREME/DISTRICT/MAGISTRATES*] Delete all but one COURT OF SOUTH AUSTRALIA

[*COURT OF APPEAL*] If applicable

CIVIL JURISDICTION

[*MINOR CIVIL*] If applicable

[*NAME OF LIST*] LIST If applicable

Please specify the Full Name including capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable) for each party. Each party should include a party number if more than one party of the same type.

First Applicant

First Respondent

First Interested Party

Introduction

Hearing

Hearing Location: [*suburb*]

[*Hearing date*] [*Listed starting time*]

[*Presiding Officer*]

Application made by:

Appearances

[*Applicant Appearance Information*]

[*Respondent Appearance Information*]

[*Third Party Appearance Information*]

[*Interested Party Appearance Information*]

Recitals

This is a search order made against [*Party title*] [*name of person against whom order is made*] at a hearing without notice after the Court was given the undertakings set out in Schedule B to this order and after the Court read the affidavits listed in Schedule C to this order.

Date of Order:

Terms of Order

It is ordered that:

Introduction

- 1 (a) The application for this order is made returnable immediately.
- (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by *[date and time]*.
- 2 Subject to paragraph 3 below, this order has effect up to and including *[date]* (***the Return Date***). On the Return Date at *[time]*, there will be a further hearing in respect of this order in the *[name]* Court of South Australia *[address]*.
- 3 You may apply to the Court at any time to vary or discharge this order; including, if necessary, by telephone to *[name]*.
- 4 This order may be served only between *[time]* and *[time]* *[on a business day]*.¹
- 5 In this order:
 - (a) ***applicant*** means the person who applied for this order, and if there is more than one applicant, includes all the applicants;
 - (b) ***independent computer expert*** means the person (if any) identified as the independent computer expert in the search party referred to in Schedule A to this order;
 - (c) ***independent lawyer*** means the person identified as the independent lawyer in the search party referred to in Schedule A to this order;
 - (d) ***listed thing*** means anything referred to in Schedule A to this order;
 - (e) ***premises*** means the premises and any of the premises identified in Schedule A to this order, including any vehicles and vessels that are under the respondent's control on or about the premises or that are otherwise identified in Schedule A;
 - (f) ***search party*** means the persons identified or described as constituting the search party in Schedule A to this order;
 - (g) ***thing*** includes a document;
 - (h) ***you***, when there is more than one of you, includes all of you and includes you if you are a corporation;
 - (i) any requirement that something be done in your presence means:
 - (A) in the presence of you or of one of the persons described in paragraph 6 below; or
 - (B) if there is more than one of you, in the presence of each of you, or, in relation to each of you, in the presence of one of the persons described in 6 below.
- 6 This order must be complied with by:
 - (a) yourself; or
 - (b) any director, officer, partner, employee or agent of yourself; or
 - (c) any other person having responsible control of the premises.
- 7 This order must be served by, and be executed under the supervision of, the independent lawyer.

Entry, search and removal

- 8 Subject to paragraphs 10 to 20 below, upon service of this order you must permit members of the search party to enter the premises so that they can carry out the search and other activities referred to in this order.
- 9 Having permitted members of the search party to enter the premises, you must:
 - (a) permit them to leave and re-enter the premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the listed things and to make or obtain a copy, photograph, film, sample, test or other record of the listed things;
 - (c) disclose to them the whereabouts of all the listed things in your possession, custody or power, whether at the premises or otherwise;
 - (d) disclose to them the whereabouts of all computers, computer disks and electronic information storage devices or systems at the premises in which any documents among the listed things are or may be stored, located or recorded and cause and permit those documents to be printed out;
 - (e) do all things necessary to enable them to access the listed things, including opening or providing keys to locks and enabling them to access and operate computers and providing them with all necessary passwords;
 - (f) permit the independent lawyer to remove from the premises into the independent lawyer's custody:

- (i) the listed things or things which reasonably appear to the independent lawyer to be the listed things and any things the subject of dispute as to whether they are listed things; and
- (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to above; and
- (g) permit the independent computer expert (if there is one) to search any computer and make a copy or digital copy of any computer hard drive and permit the independent computer expert (if any) or the independent lawyer to remove any computer hard drive and computer from the premises as set out in paragraphs 20 and 21 below.

Restrictions on entry, search and removal

- 10 This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.
- 11 You are not required to permit anyone to enter the premises until:
 - (a) the independent lawyer serves you with copies of this order and any affidavits referred to in Schedule C (confidential exhibits, if any, need not be served until further order of the Court); and
 - (b) you are given an opportunity to read this order and, if you so request, the independent lawyer explains the terms of this order to you.
- 12 Before permitting entry to the premises by anyone other than the independent lawyer, you, for a time (not exceeding two hours from the time of service or such longer period as the independent lawyer may permit):
 - (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided you are not a corporation) may gather together any things that you believe may tend to incriminate you or make you liable to a civil penalty and hand them to the independent lawyer in (if you wish) a sealed envelope or container; and
 - (d) may gather together any documents that passed between you and your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the independent lawyer in (if you wish) a sealed envelope or container.
- 13 Subject to paragraph 22 below, the independent lawyer must not inspect or permit to be inspected by anyone, including the applicant and the applicant's lawyers, anything handed to the independent lawyer in accordance with paragraphs 12(c) and (d) above and the independent lawyer must deliver it to the Court at or before the hearing on the Return Date.
- 14 During any period referred to in paragraph 12 above, you must:
 - (a) inform and keep the independent lawyer informed of the steps being taken;
 - (b) permit the independent lawyer to enter the premises but not to start the search;
 - (c) not disturb or remove any listed things; and
 - (d) comply with the terms of paragraphs 25 and 26 below.
- 15 Anything the subject of a dispute as to whether it is a listed thing must promptly be handed by you to the independent lawyer for safekeeping pending resolution of the dispute or further order of the Court.
- 16 Before removing any listed things from the premises (other than things referred to in paragraph 15 above), the independent lawyer must supply a list of them to you, give you a reasonable time to check the correctness of the list, and give you and the applicant's solicitor a copy of the list signed by the independent lawyer.
- 17 The premises must not be searched, and things must not be removed from the premises, except in the presence of you or of a person who appears to the independent lawyer to be your director, officer, partner, employee, agent or other person acting on your behalf or on your instructions.
- 18 If the independent lawyer is satisfied that full compliance with paragraph 17 above is not reasonably practicable, the independent lawyer may permit the search to proceed and the listed things to be removed without full compliance.
- 19 The applicant's solicitors and the independent lawyer must not allow the applicant in person to inspect or have copies of anything removed from the premises nor communicate to the applicant information about its contents or about anything observed at the premises until 4.30 pm on the Return Date or other time fixed by further order of the Court.

¹ Normally the order should be served between 9.00 am and 2.00 pm on a business day to enable the respondent more readily to obtain legal advice.

Computers

- 20 (a) If it is expected that a computer will be searched, the search party must include a computer expert who is independent of the applicant and of the applicant's solicitors (the independent computer expert).
- (b) Any search of a computer must be carried out only by the independent computer expert.
- (c) The independent computer expert may make a copy or digital copy of the computer hard drive and remove that copy or digital copy from the premises.
- (d) The independent computer expert may search the computer or the copy or digital copy of the computer hard drive at the premises and/or away from the premises for listed things and may copy the listed things electronically or in hard copy or both.
- (e) The independent computer expert must as soon as practicable, and in any event before the hearing on the Return Date, deliver the copy or digital copy of the computer hard drive and all electronic and hard copies of listed things to the independent solicitor, together with a report of what the independent computer expert has done including a list of such electronic and hard copies.
- (f) The independent lawyer must, at or prior to the hearing on the return date, deliver to the Court all things received from the independent computer expert and serve a copy of the independent computer expert's report on the parties.
- (g) If no independent computer expert has been appointed, but the independent lawyer considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically and printing out information in documentary form, the independent lawyer may remove the computer from the premises for that purpose.
- (h) If the independent lawyer removes a computer from the premises under paragraph 20(g) above, the independent lawyer may cause the copying of its contents electronically and printing out its information in documentary form.
- 21 (a) Unless you are a corporation, you are entitled to object to steps under paragraphs 20(b) to (f) above on the ground that they might tend to incriminate you or make you liable to a civil penalty.
- (b) You are entitled to object to steps under paragraphs 20(b) to (f) and (h) above on the ground that the computer contains material that is otherwise privileged.
- (c) Upon communicating any objection under paragraph 21(a) or (b) above to the independent lawyer, paragraphs 20(b) to (f) and (h) above become inoperative to the extent that you have objected to them. In that event, if the applicant's solicitor communicates to the independent lawyer that the applicant proposes to contest the objection:
- (i) the independent computer expert shall remove the computer hard drive (or, if that is not practicable, the computer) from the premises and deliver it into the custody of the independent lawyer who shall deliver it to the Court at or prior to the Return Date;
- (ii) on the Return Date or on another date, the applicant may apply to the Court for orders to similar effect as paragraphs 20(b) to (f) and (h) above and if you object, the Court may adjudicate upon your objection.

Inspection

- 22 Before the Return Date, you or your solicitor or representative shall be entitled, in the presence of the independent lawyer, to inspect anything removed from the premises and to:
- (a) make copies of the same; and
- (b) provide the independent lawyer with a signed list of things that are claimed to be privileged or confidential and which you claim ought not to be inspected by the applicant.

Provision of information

- 23 Subject to paragraph 24 below, you must:
- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing as to:
- (i) the location of the listed things;
- (ii) the name and address of everyone who has supplied you, or offered to supply you, with any listed thing;
- (iii) the name and address of every person to whom you have supplied, or offered to supply, any listed thing; and
- (iv) details of the dates and quantities of every such supply and offer;
- (b) within [*insert number*] business days after being served with this order, make and serve on the applicant an affidavit setting out the above information.
- 24 (a) This paragraph 24 applies if you are not a corporation and you wish to object that compliance with paragraph 23 above may tend to incriminate you or make you liable to a civil penalty.

- (b) This paragraph 24 also applies if you are a corporation and all of the persons who are able to comply with paragraph 23 above on your behalf and with whom you have been able to communicate wish to object that compliance may tend to incriminate them or make them liable to a civil penalty.
- (c) You must, at or before the further hearing on the Return Date (or within such further time as the Court may allow), notify the applicant in writing that you or all the persons referred to in paragraph (b) above wish to take such objection and identify the extent of the objection.
- (d) If you give such notice, you need comply with paragraph 23 above only to the extent, if any, that it is possible to do so without disclosure of the material in respect of which the objection is taken.
- (e) If you give such notice, the Court may give directions as to the filing and service of affidavits setting out the matters that you or the persons referred to in paragraph (b) above wish to place before the Court in support of the objection.

Prohibited acts

- 25 Except for the sole purpose of obtaining legal advice, you must not, until 4.30 pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against you by the applicant.
- 26 Until 4.30 pm on the Return Date you must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed things otherwise than in accordance with the terms of this order or further order of the Court.

Costs

- 27 The costs of this application are reserved to the Judge hearing the application on the Return Date.

To the parties against whom orders are made: WARNING

If you disobey this order, you will be in **contempt of court** and liable to **imprisonment and/or a fine** or other punishment and any other person who knows of this order and does anything that helps or permits you to disobey this order may be similarly punished.

Court use only

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Registrar

SCHEDULE A

Premises

The premises located at [*address* - provide for multiple addresses] including any vehicle or vehicles under the respondent's control on or about those premises.

Listed Things

[*things in separate numbered paragraphs*]

Search Party

- 1 The independent lawyer: [*name*] [*address*]
- 2 The applicant's solicitor or solicitors: [*name*] [*address*] [*or description eg a partner or employed solicitor of A, B and Co – provide for multiple attendees*]
- 3 Other members of the search party: [*name*] [*address*] in the capacity of [*capacity - eg an independent computer expert – provide for multiple attendees*]

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT

Undertakings given to the Court by the applicant:

- 1 The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- 2 The applicant will not, without permission of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- 3 The applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.
- 4 If the applicant has not already done so, as soon as practicable the applicant will file an application for hearing on the Return Date and an originating process (in the form of the draft produced to the Court).
- 5 The applicant will insure the things removed from the premises against loss or damage for an amount that reasonably appears to the applicant to be their full value.²
- 6 The applicant will:³
 - (a) on or before [date] cause a written irrevocable undertaking to pay in the sum of \$[amount] to be issued from a bank with a place of business within Australia in respect of any order the Court may make referred to in the undertaking as to damages contained in paragraph (1) above; and
 - (b) immediately upon issue of the irrevocable undertaking to pay, cause a copy of it to be served on the respondent.

Undertakings given to the Court by the applicant's solicitor

- 1 The applicant's solicitor will pay the reasonable costs and disbursements of the independent lawyer and of any independent computer expert.
- 2 The applicant's solicitor will provide to the independent lawyer for service on the respondent copies of the following documents:
 - (a) this order;
 - (b) the application for this order for hearing on the Return Date;
 - (c) the following material insofar as it was relied on by the applicant at the hearing when the order was made:
 - (i) affidavits (or draft affidavits);
 - (ii) exhibits capable of being copied (other than confidential exhibits);
 - (iii) any written submission; and
 - (iv) any other document that was provided to the Court.
 - (d) a transcript, or if none is available a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put to the Court; and
 - (e) the originating process, or if none was filed any draft originating process produced to the Court.
- 3 The applicant's solicitor will answer to the best of his or her ability any question as to whether a particular thing is a listed thing.
- 4 The applicant's solicitor will use his or her best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
- 5 The applicant's solicitor will not, without permission of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- 6 The applicant's solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

² Depending on the nature of the things likely to be removed and their likely value, and the likely particular risks of their being lost or damaged, this undertaking or a more elaborate one may be required.

³ See Uniform Civil Rules Schedules, Schedule 2, Part 2, rule 4.

7 The applicant's solicitor will not disclose to the applicant any information that the solicitor acquires during or as a result of execution of the search order, without the permission of the Court.

8 The applicant's solicitor will endeavour to follow all directions of the independent lawyer.

Undertakings given to the Court by the independent lawyer

1 The independent lawyer will use his or her best endeavours to serve the respondent with this order and the other documents referred to in the undertaking by the applicant's solicitor above.

2 Before entering the premises, the independent lawyer will:

- (a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so; and
- (b) inform the respondent of his or her right to obtain legal advice.

3 Subject to undertaking 4 below, the independent lawyer will retain custody of all things removed from the premises by the independent lawyer pursuant to this order until delivery to the Court or further order of the Court.

4 At or before the hearing on the Return Date, the independent lawyer will provide a written report on the carrying out of the order to the Court and provide a copy to the applicant's solicitor and to the respondent or the respondent's solicitor. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an independent computer expert.

5 The independent lawyer will use his or her best endeavours to act in conformity with the search order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.

6 The independent lawyer will not, without permission of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.

7 The independent lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

Undertakings given to the Court by the independent computer expert

1 The independent computer expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the independent computer expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.

2 The independent computer expert will not, without permission of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.

3 The independent computer expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

4 The independent computer expert will use best endeavours to follow all directions of the independent lawyer.

SCHEDULE C

AFFIDAVITS RELIED ON

Name of Deponent [name]	Date affidavit made [date]
Provide for multiple affidavits	

Name and address of applicant's solicitors

The Applicant's solicitors are:

Name of firm	[name]			[F Code]
Name of individual solicitor responsible	[name] Provide for multiple solicitors			[L Code]
Address for service	[street] (include unit or level number and/or name of property where necessary)			
	[city/town/suburb]	[state]	[postcode]	
	[email address] (provide for multiple email addresses)			
Telephone	[preferred phone no]	[after hours phone number]		
	Provide for multiple numbers	Provide for multiple numbers		