



## MUTUAL NON-DISCLOSURE AGREEMENT

DATE: \_\_\_\_\_

### PARTIES

- (a) **Can I Phish Pty Ltd**, a company registered in Australia (ABN: 24 647 802 266) having its mailing address at PO Box 186, Peregian Beach, QLD 4573, Australia (the **"First Party"**); and
- (b) You, on behalf of the entity you represent (the **"Second Party"**).

### AGREEMENT

#### 1. Definitions

1.1 In this Agreement:

**"Agreement"** means this agreement, and any amendments to this agreement from time to time;

**"Business Day"** means any weekday other than a bank or public holiday in Queensland, Australia;

**"Effective Date"** means the date of execution of this Agreement;

**"First Party Confidential Information"** means:

- (a) any information disclosed by the First Party to the Second Party at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked as "confidential", was identified as confidential at the time of oral or visual disclosure and confirmed in writing as confidential within 30 days of such disclosure, or should have been understood by the Second Party (acting reasonably) to be confidential; and
- (b) the terms of this Agreement;

**"Purpose"** means the evaluation, negotiation, performance and management of a potential or actual business relationship between the parties, and any other purpose specifically agreed in writing by the parties;

**"Second Party Confidential Information"** means:

- (c) any information disclosed by the Second Party to the First Party at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked as "confidential", was identified as confidential at the time of oral or visual disclosure and confirmed in writing as confidential within 30 days of such disclosure, or should have been understood by the First Party (acting reasonably) to be confidential; and
- (d) the terms of this Agreement;

**"Term"** means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2.

#### 2. Term

2.1 This Agreement shall come into force upon the Effective Date.

2.2 This Agreement shall continue in force for 3 years from the Effective Date, upon which this Agreement shall terminate automatically, subject to termination in accordance with Clause 10 or any other provision of this Agreement.

### 3. First Party's confidentiality obligations

#### 3.1 The First Party must:

- (a) keep the Second Party Confidential Information strictly confidential;
- (b) not disclose the Second Party Confidential Information to any person without the Second Party's prior written consent, and then only under conditions of confidentiality approved in writing by the Second Party;
- (c) use the Second Party Confidential Information solely for the Purpose, and not for any other purpose (including, for the avoidance of doubt, any commercial or competitive purpose);
- (d) use the same degree of care to protect the confidentiality of the Second Party Confidential Information as the First Party uses to protect the First Party's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (e) act in good faith at all times in relation to the Second Party Confidential Information.

3.2 Notwithstanding Clause 3.1, the First Party may disclose the Second Party Confidential Information to the First Party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Second Party Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Second Party Confidential Information. The First Party shall remain responsible for any breach of this Agreement by such persons.

3.3 This Clause 3 imposes no obligations upon the First Party with respect to Second Party Confidential Information that:

- (a) is known to the First Party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the First Party;
- (c) is obtained by the First Party from a third party in circumstances where the First Party has no reason to believe that there has been a breach of an obligation of confidentiality; or
- (d) is independently developed by the First Party without use of or reference to the Second Party Confidential Information, as evidenced by the First Party's contemporaneous records.

3.4 The restrictions in this Clause 3 do not apply to the extent that any Second Party Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the First Party on any recognised stock exchange, provided that, where lawful and reasonably practicable, the First Party gives the Second Party prompt prior written notice of such required disclosure and reasonable assistance (at the Second Party's cost) to enable the Second Party to seek a protective order or other appropriate remedy.

3.5 Upon the termination of this Agreement, the First Party must immediately cease to use the Second Party Confidential Information.

3.6 Following the termination of this Agreement, and within 10 Business Days following the date of receipt of a written request from the Second Party, the First Party must destroy or return to the Second Party (at the Second Party's option) all media containing Second Party Confidential Information, and must irrevocably delete the Second Party Confidential Information from its computer systems, save that the First Party may retain (a) one copy of the Second Party Confidential Information solely for the purpose of complying with applicable law or regulatory requirements, and (b) copies of Second Party Confidential Information contained in routine, automated backup or archival systems that are not readily accessible in the ordinary course of



business, in each case provided that such retained Second Party Confidential Information remains subject to the confidentiality obligations of this Agreement for so long as it is retained.

3.7 The provisions of this Clause 3 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect, save that in respect of any Second Party Confidential Information that constitutes a trade secret under applicable law, the obligations in this Clause 3 shall continue in force for so long as such information remains a trade secret.

#### **4. First Party's publicity obligations**

4.1 The First Party must not make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the Second Party, such consent not to be unreasonably withheld or delayed.

#### **5. Second Party's confidentiality obligations**

5.1 The Second Party must:

- (a) keep the First Party Confidential Information strictly confidential;
- (b) not disclose the First Party Confidential Information to any person without the First Party's prior written consent, and then only under conditions of confidentiality approved in writing by the First Party;
- (c) use the First Party Confidential Information solely for the Purpose, and not for any other purpose (including, for the avoidance of doubt, any commercial or competitive purpose);
- (d) use the same degree of care to protect the confidentiality of the First Party Confidential Information as the Second Party uses to protect the Second Party's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (e) act in good faith at all times in relation to the First Party Confidential Information.

5.2 Notwithstanding Clause 5.1, the Second Party may disclose the First Party Confidential Information to the Second Party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the First Party Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the First Party Confidential Information. The Second Party shall remain responsible for any breach of this Agreement by such persons.

5.3 This Clause 5 imposes no obligations upon the Second Party with respect to First Party Confidential Information that:

- (a) is known to the Second Party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Second Party;
- (c) is obtained by the Second Party from a third party in circumstances where the Second Party has no reason to believe that there has been a breach of an obligation of confidentiality; or
- (d) is independently developed by the Second Party without use of or reference to the First Party Confidential Information, as evidenced by the Second Party's contemporaneous records.

5.4 The restrictions in this Clause 5 do not apply to the extent that any First Party Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the



Second Party on any recognised stock exchange, provided that, where lawful and reasonably practicable, the Second Party gives the First Party prompt prior written notice of such required disclosure and reasonable assistance (at the First Party's cost) to enable the First Party to seek a protective order or other appropriate remedy.

5.5 Upon the termination of this Agreement, the Second Party must immediately cease to use the First Party Confidential Information.

5.6 Following the termination of this Agreement, and within 10 Business Days following the date of receipt of a written request from the First Party, the Second Party must destroy or return to the First Party (at the First Party's option) all media containing First Party Confidential Information, and must irrevocably delete the First Party Confidential Information from its computer systems, save that the Second Party may retain (a) one copy of the First Party Confidential Information solely for the purpose of complying with applicable law or regulatory requirements, and (b) copies of First Party Confidential Information contained in routine, automated backup or archival systems that are not readily accessible in the ordinary course of business, in each case provided that such retained First Party Confidential Information remains subject to the confidentiality obligations of this Agreement for so long as it is retained.

5.7 The provisions of this Clause 5 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect, save that in respect of any First Party Confidential Information that constitutes a trade secret under applicable law, the obligations in this Clause 5 shall continue in force for so long as such information remains a trade secret.

## 6. **Second Party's publicity obligations**

6.1 The Second Party must not make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the First Party, such consent not to be unreasonably withheld or delayed.

## 7. **Intellectual property rights**

7.1 Nothing in this Agreement shall constitute an assignment or transfer of any intellectual property rights.

7.2 Nothing in this Agreement shall constitute a licence of any of the First Party's intellectual property rights.

7.3 Nothing in this Agreement shall constitute a licence of any of the Second Party's intellectual property rights.

## 8. **Warranties**

8.1 The First Party warrants to the Second Party that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

8.2 The Second Party warrants to the First Party that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

8.3 Neither party is under any obligation under this Agreement to disclose any particular information to the other party. Each party acknowledges that all Confidential Information is provided "as is" and that, except as expressly set out in this Agreement, neither party makes any representation or warranty (express or implied) as to the accuracy, completeness or fitness for purpose of any Confidential Information disclosed by it.

8.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## 9. Indemnities and remedies

9.1 Each party shall indemnify and keep indemnified the other party against any and all liabilities, damages, losses, costs and expenses (including reasonable legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the other party in respect of third party claims arising directly out of any breach by the indemnifying party of this Agreement.

9.2 Subject to Clause 9.4, neither party shall be liable to the other party for any indirect, special, consequential or punitive loss or damage, or for any loss of profits, revenue, business opportunity, goodwill or anticipated savings, in each case arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise.

9.3 Each party acknowledges that any breach or threatened breach of the confidentiality obligations in this Agreement may cause the other party irreparable harm for which monetary damages may not be an adequate remedy. Accordingly, each party shall be entitled, in addition to any other rights or remedies available at law or in equity, to seek injunctive or other equitable relief to prevent or restrain any such breach or threatened breach, without the need to post any bond or other security and without the need to prove actual damages.

9.4 Nothing in this Agreement shall exclude or limit any liability of a party for fraud or fraudulent misrepresentation, or any other liability of a party that may not be excluded or limited under applicable law.

## 10. Termination

10.1 Either party may terminate this Agreement by giving at least 30 days' written notice of termination to the other party.

10.2 Either party may terminate this Agreement immediately by written notice to the other party if the other party commits a material breach of this Agreement which is incapable of remedy, or which (if capable of remedy) is not remedied within 14 days after the non-breaching party has given written notice requiring its remedy.

## 11. Effects of termination

11.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions shall survive and continue to have effect (in accordance with their express terms or, where no express term is specified, indefinitely): Clause 1 (Definitions), Clause 3 (First Party's confidentiality obligations), Clause 4 (First Party's publicity obligations), Clause 5 (Second Party's confidentiality obligations), Clause 6 (Second Party's publicity obligations), Clause 7 (Intellectual property rights), Clause 9 (Indemnities and remedies), this Clause 11 (Effects of termination), Clause 12 (General) and Clause 13 (Interpretation).

11.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

## 12. General

- 12.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 12.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 12.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 12.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 12.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 12.6 Subject to Clause 9.4, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 12.7 Any notice given under this Agreement must be in writing and delivered (a) by hand, (b) by prepaid registered post, or (c) by email to the email address most recently notified by the recipient party for this purpose. A notice is deemed received: if delivered by hand, on delivery; if sent by registered post, on the second Business Day after posting; and if sent by email, at the time of transmission, provided no delivery failure notification is received by the sender.
- 12.8 This Agreement shall be governed by and construed in accordance with the laws of Queensland and the laws of the Commonwealth of Australia applicable in Queensland.
- 12.9 The courts of Queensland, Australia shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement, and each party irrevocably submits to that jurisdiction.

### 13. Interpretation

- 13.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 13.2 The Clause headings do not affect the interpretation of this Agreement.
- 13.3 References in this Agreement to “calendar months” are to the 12 named periods (January, February and so on) into which a year is divided.
- 13.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.



**Executed as an agreement.**

**First Party: Can I Phish Pty Ltd**

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Second Party: \_\_\_\_\_**

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_