



MUTUAL NON-DISCLOSURE AGREEMENT

DATE

02 May 2022

PARTIES

1. Can I Phish Pty Ltd, a company registered in Australia (ABN: 24 647 802 266) having its mailing address at PO Box 11163, Centenary Heights QLD 4350, Australia (the "**First Party**"); and
2. 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 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" or should have been understood by the Second Party (acting reasonably) to be confidential; and
- (b) the terms of this Agreement;

"Second Party Confidential Information" means:

- (a) 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" or should have been understood by the First Party (acting reasonably) to be confidential; and
- (b) 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;

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- (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 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;
 - (d) 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.
- 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; or
 - (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.
- 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.
- 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 5 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.
- 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.
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;

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- (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 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;
 - (d) act in good faith at all times in relation to the First Party Confidential Information; and
- 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.
- 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; or
 - (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.
- 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.
- 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 5 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.
- 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.
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.

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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 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**

9.1 The First Party shall indemnify and shall keep indemnified the Second Party against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Second Party and arising directly or indirectly as a result of any breach by the First Party of this Agreement.

9.2 The Second Party shall indemnify and shall keep indemnified the First Party against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the First Party and arising directly or indirectly as a result of any breach by the Second Party of this Agreement.

10. **Termination**

10.1 Either party may terminate this Agreement by giving at least 7 days' written notice of termination to the other party.

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 of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely);

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.

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- 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 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.
- 12.7 Subject to Clause 12.6, 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.
- 12.8 This Agreement shall be governed by and construed in accordance with Australian law.
- 12.9 The courts of Australia shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.
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.