





## 1 Definitions

- 1.1 **Confidential Information** means: (i) all information described as such on the front page of this agreement provided by or on behalf of "DOLPHIN PRODUCTS PTY LTD" to Recipient; (ii) all information received by Recipient from "DOLPHIN PRODUCTS PTY LTD" about the fact of a Proposed Transaction and all information regarding the existence and status of any discussions or negotiations relating to a Proposed Transaction; (iii) all information created, ascertained, discovered or derived by Recipient, directly or indirectly from any information furnished by or on behalf of "DOLPHIN PRODUCTS PTY LTD"; and (iv) all Recipient Records, in each case whether transmitted visually, orally, in writing or by electronic means, directly or indirectly or via a third party associated with "DOLPHIN PRODUCTS PTY LTD", and whether disclosed or created before or after the date of this agreement.
- 1.2 **Proposed Transaction** means any proposed or anticipated relationship between the parties of the nature referred to in the description of the Purpose appearing on the front page of this agreement.
- 1.3 **Purpose** means the purpose for which "DOLPHIN PRODUCTS PTY LTD" has agreed to disclose Confidential Information appearing on the front page of this agreement.
- 1.4 **Recipient Records** means all notes, memoranda, documents and records (in whatever form) made by Recipient containing, referring to or based on Confidential Information.
- 1.5 **Related Body Corporate** has the meaning in the *Corporations Act 2001* (Cth).

## 2 Confidentiality Undertakings

- 2.1 Recipient is to receive Confidential Information in the strictest confidence and in good faith and will be responsible for taking all action necessary for maintaining its confidentiality, including keeping the Confidential Information under lock and key or password protection. Recipient will not directly or indirectly disclose or distribute the Confidential Information or permit the Confidential Information to be disclosed or distributed to any person other than in accordance with this agreement.
- 2.2 Recipient may not disclose any Confidential Information to any person other than those of its employees, or employees of a Related Body Corporate, who need to have access to the Confidential Information for the Purpose and who are aware of the requirements of this agreement and bound by a legally enforceable obligation of confidentiality to the party or the relevant Related Body Corporate.
- 2.3 Recipient may not use any Confidential Information or any knowledge of the Confidential Information which it may acquire as a result of receiving the Confidential Information in any way which is in competition with "DOLPHIN PRODUCTS PTY LTD" or which is otherwise directly or indirectly detrimental to the interests of "DOLPHIN PRODUCTS PTY LTD" or for any purpose other than for the Purpose. For the avoidance of doubt Recipient must only copy or take extracts of Confidential Information to the extent necessary for the Purpose or as otherwise approved by "DOLPHIN PRODUCTS PTY LTD" in writing.
- 2.4 Recipient must ensure that all persons to whom any Confidential Information is disclosed under this agreement do not do or omit to do any act which, if done or omitted by Recipient, would result in Recipient breaching any provision of this agreement.
- 2.5 Recipient acknowledges that all Confidential Information remains the sole property of "DOLPHIN PRODUCTS PTY LTD" or its Related Bodies Corporate. Recipient may not: (i) file, register or record any of the Confidential Information with any regulatory or other authority or in any public office; (ii) assert rights of any nature in respect of any of the Confidential Information; or (iii) contest "DOLPHIN PRODUCTS PTY LTD" or its Related Bodies Corporate ownership of the Confidential Information.

## 3 Exclusions and Exemptions

- 3.1 Confidential Information does not include information which Recipient can prove by competent documentary evidence: (i) is now in the public domain or, after the date of this agreement, enters the public domain through no fault of Recipient; (ii) can be shown to have been known to Recipient at the time it is received pursuant to this agreement by contemporaneous records of

Recipient; (iii) is provided to Recipient by a third party after the date of this agreement, lawfully and without violating any restriction on its disclosure; or (iv) is independently developed by Recipient without using any Confidential Information.

- 3.2 Information is not considered to be in the public domain for the purposes of this agreement unless it is lawfully available to the general public from a single source without restriction on its use or disclosure.
- 3.3 Recipient may disclose Confidential Information if legally compelled to do so by any judicial or administrative body having authority to compel such disclosure in connection with any action or investigation. Recipient must take all reasonably available legal measures to avoid such disclosure before doing so, and must notify "DOLPHIN PRODUCTS PTY LTD" as soon as practicable after such disclosure is sought or ordered, so that "DOLPHIN PRODUCTS PTY LTD" may seek an appropriate protective order or other remedy.

## 4 Return of Confidential Information

- 4.1 Recipient must, on the earlier of receipt of a written request made by "DOLPHIN PRODUCTS PTY LTD", or execution of a written agreement governing a Proposed Transaction, or the termination of negotiations relating to a Proposed Transaction: (i) destroy all its Recipient Records; (ii) cease all use of the Confidential Information; and (iii) return to "DOLPHIN PRODUCTS PTY LTD" all other Confidential Information (including all copies of the same) and a written certificate confirming compliance with the requirements of this clause.

## 5 General

- 5.1 Recipient acknowledges that: (i) the opportunity to use the Confidential Information for the Purpose is good and valuable consideration for the undertakings given in this agreement; and (ii) due to the proprietary and competitively-sensitive nature of the Confidential Information, "DOLPHIN PRODUCTS PTY LTD" would be irreparably harmed by any breach, or threatened breach, of this agreement by Recipient, and that monetary damages would be insufficient to remedy the actual or threatened breach.
- 5.2 "DOLPHIN PRODUCTS PTY LTD" gives no warranty as to the accuracy or completeness of any Confidential Information, and is not under any obligation to disclose any information under this agreement. Unless the parties have agreed otherwise in writing, neither party is under any obligation to enter into a Proposed Transaction on any specific terms, or at all.
- 5.3 The obligations contained in this agreement will continue to apply without limit of time unless extinguished pursuant to a written agreement governing a Proposed Transaction or expressly agreed in writing otherwise.
- 5.4 No waiver by "DOLPHIN PRODUCTS PTY LTD" of any provision of or right, remedy or power of "DOLPHIN PRODUCTS PTY LTD", and no amendment to this agreement, will be effective unless it is in writing signed by "DOLPHIN PRODUCTS PTY LTD" and any such waiver will be effective only in the specific instance and for the specific purpose for which it is given.
- 5.5 Any intellectual property right created or brought into existence as a result of the use of the Confidential Information by Recipient is to be the property of "DOLPHIN PRODUCTS PTY LTD".
- 5.6 No failure or delay by "DOLPHIN PRODUCTS PTY LTD" to exercise any right, remedy or power under this agreement or to insist on strict compliance by Recipient with any obligation under this agreement, and no custom or practice of the parties at variance with the terms of this agreement, will constitute a waiver of the right of "DOLPHIN PRODUCTS PTY LTD" to demand full compliance with this agreement.
- 5.7 This agreement is governed by the laws of Victoria, Australia without regard to conflicts of laws principles, and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia