



## Confidentiality & Non-Disclosure Agreement

In connection with discussions between Appiphany Pty Ltd and Party B ("Provider") concerning a potential mutually beneficial business relationship (the "Discussions"), the parties may each provide to the other certain confidential and proprietary information for evaluation purposes. The parties agree to the following terms with respect to the treatment and use of such information.

### Definition of Confidential Information

a) As used in this Agreement, the term "Confidential Information" means information that has been or that may be disclosed, either orally or in writing, by one party (the "Provider") to the other (the "Recipient"), including, but not limited to, information concerning all aspects of the business of the Provider and its affiliates; financial statements, business and marketing plans; pending or threatened litigation; prospective contractual relations, collection, tabulation and analysis of data; computer programming methods, source code, object code, designs, specifications, plans, drawings and similar materials; programs, databases, inventions (whether or not eligible for legal protection under patent, trademark, or copyright laws) research and development; work in progress; and any other document marked "confidential.". The existence of the Discussions is considered Confidential Information of both parties.

b) The term "Confidential Information" does not include information that: i) was in the public domain prior to the Effective Date of this Agreement or subsequently came into the public domain through no fault of the Recipient; ii) was lawfully received by the Recipient from a third party not, to the Recipient's knowledge, subject to any contractual or fiduciary duty not to disclose; iii) was already known or in the possession of the Recipient prior to receipt thereof from the Provider, as evidenced by the Recipient's written records; iv) is required to be publicly disclosed in a judicial or administrative proceeding after all reasonable legal remedies for maintaining such information in confidence have been exhausted; or v) is subsequently and independently developed by employees, consultants or agents of the Recipient without reference to the Confidential Information disclosed by Provider.

### Confidentiality

During the Term each party shall:

a) not disclose any Confidential Information of the Provider to third parties other than in conformity with the provisions of this Agreement;

b) limit access to Provider's Confidential Information to its employees who have a need-to-know in connection with the Discussions;

c) advise its employees having access to the Provider's Confidential Information of the proprietary nature thereof and of the obligations set forth in this Agreement; and

d) be responsible for any breach of the terms hereunder by Recipient or any person who receives any Confidential Information of Provider from Recipient.



### **Duty of Care**

Each party shall exercise a reasonable level of care that, at a minimum, will equal or exceed the level of care it would exercise to safeguard its own Confidential Information with regard to Confidential Information received from the other party.

### **No License**

Nothing in this Agreement shall be construed as granting any license or right under any patent, copyright, trade secret or otherwise, nor shall this Agreement impair the right of either party to contest the scope, validity or alleged infringement of any patent, copyright or trade secret.

### **Termination**

If the Agreement or the Discussions are terminated for any reason, and in any event upon the reasonable request of the Provider, the Recipient shall return or destroy, at the Provider's option, all copies and notes of the Provider's Confidential Information in the Recipient's possession or control, as well as all copies and notes of Provider's Confidential Information in the possession or control of any person or entity to which the Recipient has disclosed the Provider's Confidential Information. The Recipient shall confirm in writing that it has retained no copies, notes, or other records of such Confidential Information in any medium whatsoever.

### **Non-Solicitation**

The parties agree that they will not directly or indirectly solicit an employee of the other to enter into an employment relationship with such party provided, however, that nothing contained herein shall prohibit any such employment provided that such employment was not solicited in breach of this paragraph 6.

### **Injunctive Relief and Costs of Enforcement**

Each party acknowledges that any breach of this Agreement would cause irreparable harm to the other which would be difficult, if not impossible, to quantify in monetary damages. The Recipient consents to the grant of immediate injunctive relief to the Provider upon material breach of this Agreement, in addition to all other remedies available in equity and at law. The Recipient waives any requirement that the Provider posts a bond in connection with any application for or order granting injunctive relief. The prevailing party shall be entitled to recover its costs of suit and reasonable expenses in any suit to enforce this Agreement.

### **Miscellaneous**

a. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Victoria, Australia, without regard to any conflict of laws principles. Both parties consent to the exclusive jurisdiction of the state or federal courts located in Melbourne, Victoria for the resolution of disputes under this Agreement.



Appiphany Pty Ltd

b. Modification and No Assignment. This Agreement may be modified only in a writing signed by the parties. This Agreement may not be assigned.

c. Effect and Term. This Agreement supersedes all prior understandings of the parties relating to Confidential Information. This Agreement shall be in force on the Effective Date and shall continue to be in effect until the later of: one (1) year after the Discussions have ended, as evidenced in writing by the parties; or for two (2) years following the Effective Date.

EXECUTED \_\_\_\_\_, 2011 (the "Effective Date").

(Provider)

BY: \_\_\_\_\_

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

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

Appiphany Pty Ltd

BY: \_\_\_\_\_

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

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