

Messrs Scott Langdon, John Mouawad and David Johnstone  
Administrators  
Digital Surge Pty Limited  
C/- KordaMentha  
Level 5, Chifley Tower  
2 Chifley Square  
Sydney NSW 2000

22 December 2022

By email: [slangdon@kordamentha.com](mailto:slangdon@kordamentha.com) and [phewson@kordamentha.com](mailto:phewson@kordamentha.com)

Dear Sirs

**Digital Surge Pty Ltd (Administrators Appointed)**  
**ACN 620 473 109 ('the Company')**

We refer to your request for a confidentiality undertaking in respect of the above.

## **1. General**

In consideration of you supplying information concerning the business and assets ('The Assets') of the Company, we confirm and acknowledge that:

### **1.1 Purpose**

Coin Harbour Pty Ltd ACN 624 879 223 ('the Purchaser') has requested that Digital Surge Pty Ltd (Administrators Appointed) ('the Vendor') makes available and discloses information concerning the assets, business, and affairs of the Company to enable the Purchaser to assess the acquisition by the Purchaser of the Assets ('Specified Purpose').

### **1.2 Information**

Information has been or will be provided by the Vendor to the Purchaser for the Specified Purpose and the Purchaser will otherwise (whether as a result of its own initiatives or not) become privy to other information relating to the Company and the Assets.

### **1.3 Confidentiality**

All information referred to in Paragraph 1.2 (including the fact of disclosure and discussions between the Vendor and the Purchaser in relation to the Assets) whether disclosed before or after the date of this letter and irrespective of the manner and form in which it is given is 'Confidential Information' and any reference in this letter to 'Confidential Information' includes any part of parts of such information.

### **1.4 Loss or damage**

The Vendor will suffer loss or damage in consequence of the improper or inappropriate disclosure or use of the Confidential Information whether the sale to the Purchaser proceeds or not.

## **2. Confidential information**

The Purchaser hereby agrees with and undertakes to the Vendor for the Vendor itself and (as separate and independent agreements and undertakings) as trustee for the Company that:

### **2.1 Non-disclosure**

The Purchaser shall hold in confidence all of the Confidential Information and the Purchaser shall not without the prior written consent of the Vendor disclose any of the Confidential Information to any other person (except those directors, officers, employees of and professional advisors to the Purchasers including its bankers and other providers of finance) who need to know for the Specified Purpose.

### **2.2 Use**

The Purchaser will not use any Confidential Information for any purpose other than the Specified Purpose and in particular but without limitation the Purchaser shall not use any of the Confidential Information for its own purposes or to obtain any commercial trading or other advantage.

### **2.3 Third parties**

The Purchaser's obligations shall extend to all of the persons described in the exception to Paragraph 2.1 to whom any of the Confidential Information is provided and the Purchaser shall ensure that none of those persons will do or omit to do any act matter or thing which if done or omitted to be done by the Purchaser would constitute a breach of the obligations of the Purchaser hereunder.

### **2.4 Third party undertakings**

The Purchaser shall notify the Vendor in writing of the names of all the persons described in the exception to Paragraph 2.1 to whom the Purchaser proposes to disclose or give or allow access to the Confidential Information and shall require all such persons to execute confidentiality undertakings in favour of the Vendor in the same terms as this letter before making any disclosure or permitting such access.

## **3. Purchase not proceeding**

If the Purchaser does not proceed with the acquisition then the Purchaser shall:

- 3.1 Forthwith return (without retaining any copy note or extract thereof) all documents containing Confidential Information and other means of record of any Confidential Information (in whatever form) to the Vendor immediately together with a certificate in writing that none of the Confidential Information has been retained by the Purchaser in any form whatsoever.
- 3.2 The Purchaser shall forthwith destroy all memoranda notes and other permanent records which are based in whole or in part on the Confidential Information and which have been prepared by the Purchaser or on its behalf and immediately provide to the Vendor a certificate in writing that such destruction has taken place.

## **4. Other restrictions**

The Purchaser shall not without the prior written consent of the Vendor:

- 4.1 Solicit or endeavour to solicit during the next twelve (12) months any person who is employed in any business or enterprise owned or controlled by the Company (either directly or indirectly) to become an employee of the Purchaser or any corporation which is a holding or subsidiary company of the Purchaser or in which the Purchaser has a substantial interest (either by way of shares or the degree of control exercised by the Purchaser)
- 4.2 Disclose to any person:
  - 4.2.1 The fact that any investigations, discussions or negotiations are taking place concerning the Company or the Assets.
  - 4.2.2 The fact that the Confidential Information has been made available to the Purchaser or that the Purchaser has inspected any part of it, or
  - 4.2.3 Any of the terms, conditions or other facts with respect to any such possible transaction including the status and price thereof.

## **5. Discussions**

The Purchaser shall not discuss with any employee of the Vendor or any company trust or other entity in which the Company has an interest in the Confidential Information or any other matter in connection with the discussions or negotiations that are taking place between the Vendor and the Purchaser without the prior written approval of the Vendor.

## **6. Legal proceedings**

In the event that the Purchaser or any person to whom the Purchaser transmits any of the Confidential Information shall become compelled by any court of competent jurisdiction to disclose any part of the Confidential Information, the Purchaser will give prompt notice in writing to the Vendor so that the Vendor may seek an appropriate remedy or waive compliance with the provisions of this letter in such respect and in the event that a remedy is not obtained and the Vendor waives compliance with the provisions of this letter by the Purchaser or other person, only that part of the Confidential Information legally required to be disclosed will be disclosed and the Purchaser will exercise its best endeavours to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information so disclosed.

## **7. Representations**

For present purposes and for the purposes of any future agreement between the Vendor and the Purchaser, the disclosure of the Confidential Information shall not constitute any representation or warranty by the Vendor as to the accuracy or completeness of the Confidential Information and neither the Vendor or their respective officers, directors, employees or agents shall have any liability to the Purchaser or any of its representatives resulting from the use of the Confidential Information by the Purchaser or its representatives.

## **8. Remedies**

Without prejudice to any other rights or remedies that the Vendor may have, the Purchaser acknowledges that damages alone would not be an adequate remedy for any breach by the Purchaser of the provisions of this letter and accordingly either the Vendor shall be entitled without proof of special damage to the remedies of injunction specific performance or other equitable relief for any threatened or actual breach of the provisions of this letter.

## **9. Waiver**

No failure or delay by the Vendor in exercising any right power or privilege arising by virtue of this letter shall operate as a waiver of any breach or default by the Purchaser nor shall any single or partial exercise thereof preclude any other or further exercise of any right power or privilege of the Vendor under this letter.

## **10. Governing law**

The undertakings given by the Purchaser pursuant to this letter shall be governed and construed in accordance with the laws of the Commonwealth of Australia and the State of Queensland and the Purchaser and Vendor shall submit to the jurisdiction of the Courts thereof.

## **11. Confirmation**

The Purchaser shall confirm to the Vendor in writing on demand that the Purchaser has complied with the provisions of this letter.

## **12. Limitations**

The Vendor and the Purchaser acknowledge that the Purchaser's undertakings contained in this letter will continue without any time limitation but will not apply to:

### **12.1 Public domain**

Information which is in the public domain at the time of disclosure otherwise than as a result of a breach of the terms of this letter and any information that becomes generally and publicly available after disclosure as aforesaid otherwise than as a result of a breach of the terms of this letter.

#### 12.2 Previous knowledge

Information that the Purchaser can prove was known to it at the time of disclosure by the Vendor.

#### 12.3 Settlement

Information that becomes the property of the Purchaser on completion of the acquisition of the Company by the Purchaser.

#### 12.4 Legal process

Subject to Paragraph 6, information that the Purchaser is properly required to disclose by a court having jurisdiction over the subject matter of this letter but only to the extent necessary for the purpose of legal proceedings which have already been commenced.

#### 12.5 Consent

Information the disclosure of which the Vendor has consented to in writing.

Yours sincerely

**Peter Cooney**

Per: Coin Harbour Pty Ltd