

# CONFIDENTIALITY AGREEMENT

## THIS AGREEMENT IS BETWEEN

### Carriage Return Software Pty. Ltd.

with its principal place of business at:

93 Waterview Avenue, Wynnum Qld 4178, Australia.

hereinafter referred to as the “Disclosing Party”. (*“Disclosing Party”, which expression shall mean and include its authorised representative(s), associates, affiliate, partners it may appoint on its behalf or who benefit from this Agreement*)

AND \_\_\_\_\_

of \_\_\_\_\_

hereinafter referred to as the “Receiving Party”.



## BACKGROUND

1. The Disclosing Party and the Receiving Party desire to engage in a business relationship (the “Project(s)”) wherein the Receiving Party shall provide a range of services, including, but not limited to ghost-writing, software designing, web designing, virtual/online desk services, admin-support, transcription etc. to the Disclosing Party;
2. In order to evaluate and, if appropriate, to proceed with Project(s), the Disclosing Party must disclose to the Receiving Party certain Propriety Information as described in herein.

In consideration of the above premises and the covenants hereinafter set forth, the parties agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions.

In this Agreement, unless the context requires otherwise the following words and phrases have the meaning set out next to them

- (a) **'Agreement'** means this Confidentiality Agreement including any Annexures.
- (b) **'Approved Purpose'** means purpose described in Clause 3.
- (c) **'Confidential Information'** means all information as described in Clause 2.
- (d) **'Disclosing Party'** means the owner of Confidential Information disclosed for the purposes of, and to which information this Agreement applies;
- (e) **'Evaluation'** means the initial evaluation of the Project(s)/service to be performed by the Receiving Party before and during negotiating a work order with the Disclosing Party;
- (f) **'Receiving Party'** means the Receiving Party of Confidential Information disclosed in relation to the Approved Purpose and to which information this Agreement applies;
- (g) **'Work Product'** means all tangible items (including tangible representations of intangibles such as drawings, prototypes, samples, materials and models), and all intangible items such as all intellectual property (including all ideas, inventions, designs, manufacturing methods, specifications, works of authorship (including software) and trademarks) or advice created, authored or otherwise produced by the Receiving Party as required to complete the Project(s) and future projects and delivered to the Disclosing Party in the performance of the Project(s) and projects subsequently in the future.

### 1.2. Interpretation.

The following rules of interpretation apply:

- (a) The singular includes the plural and conversely;

- (b) One gender includes all genders;
- (c) Where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- (e) A reference to a clause, annexure or schedule is to a clause or schedule to this Agreement;
- (f) A reference to any Party to this Agreement or any other agreement or document or to any other body or person referred to in this Agreement includes that Party body or person's successors or permitted assigns;
- (g) a reference to a right or obligation of any two or more persons confers that right or imposes that obligation as the case may be jointly and severally;
- (h) Headings are for convenience only and do not affect interpretation; and
- (i) A reference to any legislation includes any amendment, consolidation, re-enactment or replacement of the legislation.

## **2. Information.**

- 2.1. For purposes of this Agreement, “**Confidential information**” shall include all information or material that is related to the business of the Disclosing Party and the “Project(s)” which
  - i) may derive economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts by Disclosing Party that are reasonable under the circumstances to maintain its secrecy and Classification including; (a) marking any information reduced to tangible form clearly and conspicuously with a legend identifying its Confidential, Classification and Proprietary nature: (b) identifying any oral presentation or communication as confidential immediately before, during or after such oral presentation or communication; or (c) otherwise treating such information as Confidential.
- 2.2. The provisions of clause 2.1 above shall not apply to the whole or any part of the Information to the extent that it is:
  - 2.2.1. trivial or obvious;
  - 2.2.2. already in the other’s possession other than as a result of a breach of this clause; or
  - 2.2.3. in the public domain.
- 2.3. For the purposes of this Agreement, Confidential Information would also include information (written or oral) including, but not limited to, drafts, sketches, designs, work-in-progress etc. that shall be disclosed to the Receiving Party if discussions between the parties proceed to implementation of Project(s). Such information shall include information passed or discussions made during the course of Project(s) and all future projects between the parties for a period of five (5) years.
- 2.4. It is further agreed by both parties that Confidential Information shall also include all Work Product.

## **3. Approved Purpose.**

Receiving Party may only utilise Confidential Information for the purposes of discussing and if thought fit utilising the same for the implementation of Project(s).

## **4. Ownership of Confidential Information.**

All Confidential Information disclosed by any party shall remain the property of such party. Nothing herein shall require the disclosure of any Confidential Information.

## **5. Use of Information and Disclosure.**

- 5.1. The Receiving Party shall use Confidential Information given by the Disclosing Party to the Receiving Party hereunder only for purposes related to the Approved Purpose and not for its own or the benefit of any third party.
- 5.2. The Receiving Party shall not use the Confidential Information received from the Disclosing Party hereunder for any other purpose or for the benefit of any person or entity other than the Disclosing Party.
- 5.3. The Receiving Party will not, without the prior written consent of the Disclosing Party, disclose, give away, divulge, exchange or make known or available in any manner to any person, Disclosing Party, corporation or other entity (whether or not the Receiving Party

receives any benefit therefrom) the Disclosing Party's Confidential Information or any information derived therefrom to any person other than a director, officer, employee, consultant or other representative ("Representative") who needs to know such Confidential Information in connection with the Evaluation and Project(s) and all future projects for five (5) years if Evaluation proceeds with Project(s) implementation;

- 5.4. The Receiving Party shall keep confidential all information (written or oral) concerning the business and affairs of the Disclosing Party that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement (the "Confidential Information");
- 5.5. The Receiving Party (a) must receive and hold the Confidential Information in trust and in the strictest confidence; (b) must protect the Confidential Information from disclosure and in no event take any actions causing, or fail to take actions necessary in order to prevent, any Confidential Information to lose its character as Confidential Information and (c) must not use, reproduce, distribute, disclose or otherwise disseminate the Confidential Information except in connection with the Project(s). Any and all reproductions of the Confidential Information must prominently contain a **Confidentiality and/or Classification** Legend;
- 5.6. The Receiving Party shall be under no obligation if any Confidential Information:
  - (a) is or becomes part of the public domain other than by breach of this Agreement by Receiving Party;
  - (b) is released to the public in writing by the Disclosing Party;
  - (c) is developed by the Receiving Party independent of any Confidential Information;
  - (d) is rightly received by Receiving Party from a third party; or
  - (e) is known to the Receiving Party prior to receipt hereunder and can verify such knowledge.
- 5.7. Much of the business information communicated by Disclosing Party to Receiving Party may be trade secrets. Receiving Party agrees to preserve the secrecy of said information. All information which becomes known through the course of business conducted by and between the parties shall be deemed trade secrets. Said trade secrets include, but are not limited to, prepared information packages, financials, related documents, mailing list, names and details of customers and potential customers of the Disclosing Party, intermediaries, contacts and deal sources and deal structures. Such trade secrets are Confidential Information for the purposes of this Agreement.

## **6. Return of Information.**

- 6.1. The Receiving Party shall be obligated to return or destroy all Confidential Information at the written request of the Disclosing Party if Disclosing Party decides not to enter into Project(s) implementation contemplated by Evaluation. The Receiving Party shall return or destroy all Confidential Information of the Disclosing Party and any notes, correspondence, analyses, compilations, documents or other records containing Confidential Information, including all copies thereof, then in the possession of the Receiving Party or its Representatives, except that a copy of such materials may be maintained by the legal counsel of the Receiving Party so long as such information is maintained as confidential pursuant to the terms of this Agreement. Any such return of Confidential Information shall not abrogate the continuing obligations of the Receiving Party under this Agreement.
- 6.2. If parties enter into Project(s) execution following successful Evaluation, the Receiving Party must return, and upon written confirmation of receipt, then destroy all Confidential information at the written request of the Disclosing Party as described above and set forth in Annexure A (as updated from time to time) within sixty-one (61) days of the completion of Project(s).

## **7. Permitted disclosure.**

- 7.1. The Receiving Party shall take all practical steps to keep the Disclosing Party's Confidential Information confidential and shall restrict access to the Confidential Information to those employees, agents and professional advisers to whom disclosure is necessary in pursuit of the Approved Purpose. Each Party shall inform all such employees, agents and professional advisers of the provisions of this Agreement and shall be responsible for ensuring compliance with the said provisions by all such employees, agents and professional advisers.
- 7.2. In the event that the Receiving Party is required by law or legal process to disclose the Disclosing Party's Confidential Information, the Receiving Party shall notify the Disclosing

Party in writing prior to making such disclosure in order to facilitate seeking a protective order or other appropriate remedy from the proper authority; and that the Parties agree to cooperate with each other in seeking such court order or other remedy, and further agree that if the Receiving Party is not successful in obtaining such court order, it will furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

## **8. Ownership Rights to Work Product.**

- 8.1. If parties enter into Project(s) implementation following **successful Evaluation**, all rights, title and interest in the following shall be the sole and exclusive property of the Disclosing Party including:
  - (a) All materials, including but not limited to electronic/Word files, PowerPoint Presentations, tapes, and completed electronic or hardcopy manuscript (of books, articles, magazines etc.), related to a Project(s), and/or other product resulting from this effort;
  - (b) The content of the subject matter of the Project(s) provided by the Disclosing Party;
  - (c) Any ideas, concepts, sketches, copy, art-work, documentation or notes conceived related to the Project(s)
  - (d) The completed Work Product including but not limited to the completed book/magazine/articles, software codes, HTML tags, scripts, completed webpages (if any), financial, administration and accounting records and files (if any) etc.
- 8.2. The Receiving Party further agrees to promptly disclose all Work Product to the Disclosing Party.
- 8.3. The Disclosing Party may use any or all Work Product generated as it fits without additional compensation to the Receiving Party; however, the Disclosing Party is not obligated to use such materials.
- 8.4. To the extent that ownership of the items stated above does not automatically vest in the Disclosing Party, the Receiving Party agrees to transfer and assign to the Disclosing Party all right, title and interest in and to the same, whether or not copyright applications are filed thereon.
- 8.5. If the Disclosing Party is required to obtain the Receiving Party's consent to register any Australia and foreign copyrights related to the Book, the Receiving Party shall provide his/her consent and transfer and assign any of his/her interest as stated herein.
- 8.6. The Receiving Party further hereby grants to Disclosing Party a worldwide, non-exclusive, irrevocable, royalty-free, paid-up license and right to fully exploit and enjoy the Work Product (including, without limitation, any moral rights and data base rights), including a license to any of the Receiving Party's pre-existing background intellectual property or intellectual property rights embodied in or useful for the exploitation of the Work Product.
- 8.7. Receiving Party shall retain no rights whatsoever to its specific content, sales, marketing, distribution, resale, reprinting, or use, except as specified within this Agreement. The provisions of this Clause on "**Ownership Rights of work product**" shall survive the termination of this Agreement.
- 8.8. Notwithstanding the foregoing provisions if for any reason such as, breach by the Receiving Party of the obligations pursuant to this Agreement, display of sub-standard performance during the Project(s), misrepresentation of warranties; the Project(s) is terminated and not completed, all rights, title, interests to materials (mentioned in Clause 8.1 above) and Work Product created up to and including that point shall pass solely to the Disclosing Party; and any residual payments due to the Receiving Party shall be null and void. Consideration for this transfer and agreement shall be any and all payments (or due invoices for work/milestones completed) up to this termination date.

## **9. Non-Competition.**

- 9.1. **Limited Time and Duration.** Receiving Party hereby agrees that during the currency of the Agreement and for a period of one (1) year immediately following the expiration or termination of the Agreement for any reason, whether with or without good cause or for any

or no cause, with or without notice, the Receiving Party will not compete with Disclosing Party and its successors and assigns, without the prior written consent of Disclosing Party.

- 9.2. **Limited Scope of Prohibited Activities.** The term “not to compete” as used herein shall mean that the Receiving Party shall not, without the prior written consent of Disclosing Party, (i) serve as a partner, employee, consultant, officer, director, manager, agent, associate, investor, freelancer, or otherwise for, (ii) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (iii) build, design, finance, acquire, lease, operate, manage, invest in, work or consult for or otherwise affiliate with, any business in competition with or otherwise similar to Disclosing Party’s business(es).

This Clause 9 (“**Non-Competition**”) shall survive any termination of this Agreement.

**10. Term.**

This Agreement applies to all disclosures made during this, and any future Project Evaluations and if both parties proceed with the Project(s), then the Project(s) implementation stage and all future projects between the parties for five (5) years. However, the obligations hereunder with respect to any disclosure made within that period will continue for five (5) years after termination of this Agreement.

**11. Privacy.**

Each party must comply with the Information Privacy Act 2009 (Qld) as amended from time to time in respect of any personal information held by the either party.

**12. Acknowledgements and Disclaimers.**

- 12.1. Disclosing Party does not represent or warrant that Confidential Information is accurate, complete, up to date or fit for any particular purpose. Receiving Party must make its own assessment of the other party’s Confidential Information and must satisfy itself as to its accuracy and completeness.
- 12.2. Disclosing Party is not obliged to enter into any further agreement or discussion with the Receiving party or to refrain from entering into an agreement or discussion with a third party as a result of the entry into this Agreement.
- 12.3. Any reliance by the Receiving Party, or other person, on any Confidential Information is solely at its own risk.

**13. Independent Contractor Status.**

The parties agree that Receiving Party shall be an independent contractor and not an agent, employee or representative of Disclosing Party.

**14. No Publicity.**

- 14.1. The Receiving Party agrees that it will not, without the prior written consent of the Disclosing Party, issue any press release or announcement or otherwise disclose the existence or nature of any Evaluation, discussions or negotiation with the Disclosing Party, this Agreement and if the Project(s) proceeds, agrees not to disclose the proposed business arrangement.
- 14.2. The Receiving Party further agrees to refrain from using the Disclosing Party’s name, business, or associates, the Evaluation, the Project(s) and all future projects, the whole or any part thereof, for the purpose of advertising and/or testimonials as part of building their portfolio.

**15. No Assignment.**

This Agreement may not be assigned by the Receiving Party without the prior written consent of the Disclosing Party, which consent shall not be unreasonably withheld. The Disclosing Party may

assign its clients and obligations to any other person or company, and give a 30-day written notice to the Receiving Party prior to doing so.

**16. Severability.**

If any provision of this Agreement shall be held invalid in a court of law, the remaining provisions shall be construed as if the invalid provision were not included in this Agreement.

**17. Waiver.**

No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege or of any other right, power or privilege operate as a waiver of any subsequent exercise thereof.

**18. No License.**

Nothing herein shall be construed as a grant by the Disclosing Party of any license, directly or by implication, estoppel or otherwise, in any Confidential Information. Nothing in this Agreement will be deemed to create any joint venture, partnership or principal-agent relationship between Disclosing Party and Receiving Party, and neither will hold itself out in its advertising or in any other manner which would indicate any such relationship with the other.

**19. Force Majeure.**

If at any time during the existence of this contract, either Party is unable to perform whole or in part any obligation under this contract, because of war, hostility, military operations of any character, civil commissions, sabotage, quarantine restrictions, acts of Government, fire, floods, explosions, epidemics, strikes or other labour trouble embargoes and any other matter beyond human control/capability, then the date of any obligation shall be postponed during the time which such circumstances are operative.

**20. Governing Law.**

This Agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the exclusive jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts.

**21. Injunctive Relief.**

21.1. The Parties acknowledge that compliance with this Agreement is necessary to protect the goodwill and other proprietary interests of the Disclosing Party and that a breach of this Agreement will give rise to irreparable and continuing injury to the Disclosing Party which is not adequately compensable in monetary damages or at law. Accordingly, the Parties agree that the Disclosing Party may obtain injunctive and other equitable relief against the breach or threatened breach of the foregoing provisions, in addition to any other legal remedies that may be available under this Agreement. If the Disclosing Party shall make application to a court of competent jurisdiction for injunctive relief to enforce this Agreement, the Receiving Party waives, to the greatest extent permissible, any requirement that the Disclosing Party post bond or other security as a precondition to an injunction, whether temporary or permanent.

21.2. Each Party agrees that if the Receiving Party shall violate any of the agreements under this Agreement, the Disclosing Party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remuneration, or other benefits that the Receiving Party or any third party given access to (or possession of) the Disclosing Party's Confidential Information, directly or indirectly, by the Receiving Party, directly or indirectly, has realised and/or may realise as a result of, growing out of, or in connection with such violation. These remedies shall be in addition to, and not in limitation of, any injunctive relief or other rights to which the Disclosing Party is or may be entitled at law, or in equity, or under this Agreement.

- 21.3. In the event either Party initiates action to enforce its rights hereunder, the prevailing party shall recover from the non-prevailing party its reasonable expenses, court costs, including taxed and untaxed costs, and reasonable attorneys' fees, whether suit be brought or not.

**22. Indemnification/Release.**

- 22.1. Receiving Party agrees to take all necessary precautions to prevent injury to any persons (including employees of Disclosing Party) or damage to property (including Disclosing Party's property) during the term of this Agreement and shall indemnify and hold Disclosing Party and its officers, agents, directors and employees harmless against all claims, losses, expenses (including reasonable attorney's fees) and injuries to person or property (including death) resulting in any way, from any act, omission or negligence on the part of Receiving Party in the performance or failure to fulfil any Services under this Agreement.
- 22.2. Receiving Party warrants that he has or will have good and marketable title to all Work Product assigned by Receiving Party to Disclosing Party pursuant to the provisions of this Agreement. Receiving Party further warrants that the Work Product and background technology shall be free and clear of all liens, claims, encumbrances or demands of third parties, including any claims by any such third parties of any right, title or interest in or to the Work Product or background technology arising out of any trade secret, copyright, trademark, patent, or other intellectual property right.
- 22.3. Receiving Party shall indemnify, defend and hold harmless Disclosing Party and its customers from any and all liability, loss, cost, damage, judgment or expense (including reasonable attorney's fees) resulting from or arising in any way out of any such claims by any third parties, and/or which are based upon, or are the result of any breach of the warranties contained in the Clause 22.2. In the event of such a breach or claim, Receiving Party shall, at no additional cost to Disclosing Party, at the Disclosing Party's option, either (a) replace or modify the Work Product or background technology, as the case may be, with functionally equivalent and conforming Work Product or background technology or (b) obtain for Disclosing Party the right to continue using the Work Product or background technology, and in all other respects use his best efforts to remedy the breach.

**23. Electronic Signature.**

23.1. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. To expedite the process of entering into this Agreement, the parties agree that signed Transmitted Copies shall be deemed equivalent to original documents until such time as original documents are executed and delivered. "Transmitted Copies" will mean copies that are reproduced or transmitted via photocopy, facsimile or electronic means (digital signatures) or other process of complete and accurate reproduction and transmission.

23.2. Notice

All notices under this Agreement shall be in writing and shall be deemed given:

- 23.2.1. when personally delivered; or
- 23.2.2. when sent by confirmed fax; or
- 23.2.3. when sent by confirmed e-mail; or
- 23.2.4. when sent by pre-paid first class post to the address of the party set out in this Agreement or (if any) such address as such party last provided to the other by written notice.

**24. Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both Parties.

**25. Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

**SIGNATURES:**

Signed for and on behalf of Disclosing Party by:

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

Name: \_\_\_\_\_ Alan Hodges

Date: \_\_\_\_\_ 14<sup>th</sup> October 2016

Designation: \_\_\_\_\_ Director

email: \_\_\_\_\_ [ahodges@carriereturnsoftware.com.au](mailto:ahodges@carriereturnsoftware.com.au)

Signed for and on behalf of Receiving Party by:

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

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

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

Designation: \_\_\_\_\_

email: \_\_\_\_\_

