

License Agreement

1. About this agreement

This Phriendly Phishing Software as a Service Agreement (Agreement) is entered into between the Parties set out below, on the date that the last party executes this Agreement as set out on the signing page:

Date of this agreement:

- Parties:**
1. CyberCX Pty Ltd ABN 90 629 363 328 of Level 4, 330 Collins Street, Melbourne, Victoria, Australia, trading as Phriendly Phishing (Phriendly Phishing)
 2. The party listed below (Client)

Partner details: Company: ACN/ABN:
Address:
Contact: Telephone:
Email:

Together called "the Parties" and each "a Party".

Executed as an Agreement

Duly executed for Phriendly Phishing ABN 90 629 363 328 by its authorised officer in accordance with the *Corporations Act 2001 (Cth)*.

Signature of authorised officer

Name of authorised officer (BLOCK LETTERS)

Executed by: ACN:
in accordance with Section 126 of the *Corporations Act 2001 (Cth)*.

Signature of director

Signature of director/company secretary

Name of director

Name of director/company secretary

2. Definitions and Interpretation

Definitions

In this Agreement:

Authorised User means the Client's Personnel permitted to use the Products including but not limited to the Client's Personnel or such other third parties identified to Phriendly Phishing by Client;

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Victoria;

Business Hours means 9am to 5pm on a Business Day;

Change of Control means a change in:
control of more than half the voting rights attaching to shares in a corporation; or
control as defined in the Corporations Act 2001 (Cth);

Claim means any actual, present or future claim, action, suit or proceeding for any Loss, restitution, equitable compensation, whether in contract, tort (including but not limited to negligence) or otherwise;

Commencement Date is set out in as set out in the relevant quote or proposal;

Client Environment means the computing environment of the Client including all hardware, software, information technology and telecommunications services and systems;

Confidential Information means the terms of this Agreement and all know-how, financial information, technical information and other commercially valuable or sensitive information whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to a Party which is or is disclosed in a manner indicating that it is confidential or which a Party regards as confidential, proprietary or of a commercially sensitive nature but does not include information which: a) is lawfully in a Party's possession prior to its disclosure to a Party by the other; b) enters the public domain other than as a result of any unauthorised disclosure; c) information which is or becomes lawfully available to a Party from a third party who has the lawful power to disclose such information to that Party on a non-confidential basis; or d) is independently developed by a Party;

Consequential Loss means any special, indirect, loss or damages, including any loss of actual or anticipated profits, loss of revenue, savings, opportunity, goodwill, customers, loss of damage to reputation, adverse publicity, or any loss of or damage to Data;

Contract Year means the Initial Term as set out in a quote or proposal and each subsequent anniversaries of the date of a relevant contract formed under this Agreement;

Data means all of the information, documents and other data as provided by the Client to Phriendly Phishing and that is stored on Phriendly Phishing's servers;

Fee means the amounts set out in a quote or proposal and payable per clause 7;

Force Majeure means any event or circumstances beyond the reasonable control of a Party.

Insolvency Event means any events in which a Party:

- a) ceases, or threatens to cease, carrying on business;
- b) is unable to pay its debts as they fall due;
 - i) any steps taken or legal proceedings started for its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party (which approval will not be unreasonably withheld); or
 - ii) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets.

Intellectual Property Rights means any and all intellectual and industrial protection rights throughout the world including copyright (past, present and future copyrights and rights in the nature of or analogous to copyright), inventions, patents, designs, registered and unregistered trade marks, know-how and circuit layout rights, whether registrable or not, anywhere in the world;

Loss means any direct loss, liability, charge, expense, fine outgoing or cost (including all reasonable legal and other professional costs) of any nature or kind;

Payment Method is as set out in a quote or proposal;

Payment Terms are set out in clause 7;

Personnel means in relation to a Party, any employee, contractor, officer and agent of that Party;

Products means Phriendly Phishing's proprietary software, content, text, images, media and other materials delivered through its web-based platform (and any other technology platform developed or created by Phriendly Phishing and the hosting of said platform(s) as described in a relevant product scope of service which may, in Phriendly Phishing's sole discretion, be accomplished through the use of the services provided by third party hosting providers.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth);

Service Level is as set out in any relevant quote or proposal;

Services means the supply of access to the Products as set out in a quote or proposal;

Support Services are set out in any quote or proposal;

Support Hours means the hours Phriendly Phishing will provide the Support Services as set out in relevant quote or proposal;

Term means the term of any relevant contract formed under this Agreement and in relation to this Agreement, as set out in clause 13;

Territory is set out in the relevant quote or proposal;

3. Provision of Products and Services

3.1 On or from the Commencement Date and during the Term, Phriendly Phishing agrees to provide the Products and Services in accordance with the terms of this Agreement and that a binding contract may be formed by a client accepting a quote, proposal or placing an order all of which incorporate the terms of this Agreement.

3.2 The Client agrees:

(a) the Products are the sole and exclusive property of Phriendly Phishing; and

(b) Phriendly Phishing owns or holds the applicable licenses to all Intellectual Property Rights including but not limited to copyright in the Products and any documentation provided with the Products or Services by Phriendly Phishing to the Client including any Client configuration documentation.

(c) Phriendly Phishing reserves the right to change, discontinue or deprecate any Products or Services or change or remove features of the Products or Services from time to time. The Client agrees that alterations are at Phriendly Phishing's discretion and as a result of receiving the good use and benefit of beneficial updates or upgrades, will claim no reductions or refunds as a result of any detrimental changes.

3.3 The Parties agree that Phriendly Phishing:

(a) will supply the Products and the Services on a non-exclusive basis;

(b) the Products and Services may use third party \ Products or services;

(c) does not make any warranty or representation as to the ability of the facilities or services of any third-party suppliers; and

(d) is not liable for any failure in, fault with or degradation of the Products and Services if that failure, fault or degradation is attributable to or caused by any failure of the Client's facilities or the facilities or services of any third party.

3.4 Phriendly Phishing reserves the right to refuse any request in relation to the Products and Services that it deems inappropriate, unreasonable or illegal.

4. Licensing

4.1 Product License Rights

(a) In consideration for payment of the Fees, Phriendly Phishing grants the Client a non-exclusive, non-transferable (except as otherwise permitted under this Agreement), personal, revocable, license to access and use the Products in the Territory in accordance with the intended purpose of the Products (Product License) and as entitled in either a quote, proposal or an order placed and accepted for additional licensing options.

(b) The Product License commences on the Commencement Date set out in as set out in any relevant quote or proposal or the day the Client is granted access to the Products by Phriendly Phishing, whichever occurs first.

4.2 License Restrictions

(a) The Client must not access or use the Products except as permitted by the Product License and may not do, authorise or permit the commission of any act that would or might invalidate or be inconsistent with Phriendly Phishing's Intellectual Property Rights in the Products. Without limiting the foregoing provisions, the Client agrees and acknowledges that it must not and will not permit any Client Personnel or any Authorised User to:

(i) resell, assign, transfer, distribute or provide others with access to the Products;

(ii) "frame", "mirror" or serve any of the Products on any web server or other computer server over the Internet or any other network;

(iii) copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Products (except as expressly permitted by the Copyright Act 1968 (Cth)); or

(iv) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality legend or notice, or any numbers, or other means of identification used on or in relation to the Products.

(b) The Client must not use the Products in any way which is in breach of any relevant or applicable; statute, regulation, law or legal rights of any entity.

4.3 Data

(a) The Client represents and warrants that in relation to Data supplied by the Client, the Client has secured any and all authorisations and consent required for Phriendly Phishing to use the Data as applicable, and that use by Phriendly Phishing in accordance with this Agreement will not infringe any persons' rights.

4.4 Service Levels

(a) During the Term, Phriendly Phishing will provide the Support Services in accordance with the Service Levels during the Support Hours provided that:

(i) the Client provides Phriendly Phishing with notice for applicable Services in accordance with any applicable system and processes; and

(ii) where required, the Client assists with investigating and ascertaining the cause of the fault and provides to Phriendly Phishing all necessary information relevant to the fault (including but not limited to what the Client or their Personnel has done in relation to the fault).

5. Client Responsibilities and Obligations

- 5.1** The Client will provide all required materials, assistance and cooperation required by Phriendly Phishing from time to time for Phriendly Phishing to perform the Services.
- 5.2** The Client is responsible for its use of the Products and must ensure that no Client Personnel uses the Services:
- (a) to break any law or infringe any person's rights including but not limited to Intellectual Property Rights of any party;
 - (b) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (c) in any way that damages, interferes with or interrupts the Products or supply of the Services.
- 5.3** The Client acknowledges and agrees that:
- (a) its use of the Products and Services will be at its own risk;
 - (b) it is responsible for its compliance with all laws and regulations that are applicable to it under this Agreement and it must take all reasonable steps and post such terms and documents on its website, application or any other pages accessed by Client Personnel and any Authorised Users as may be required to fully comply with its obligations under such law and regulation; and
 - (c) Phriendly Phishing may pursue any available equitable or other remedy at law against the Client as a result of a breach by the Client of any provision of this Agreement.

6. Prohibited Use

- 6.1** The Client acknowledges and agrees that it must not, and will require each Authorised User does not:
- (a) use the Products to violate any legal rights of any person, Client or other entity;
 - (b) use the Products in relation to commit any crimes such as and including theft and fraud;
 - (c) use the Products in breach of laws relating to the protection of copyright, trade secrets, patents or other intellectual property and laws relating to spam or privacy and whether such violation is by way of the installation or distribution of "pirated" software or otherwise;
 - (d) make any unauthorised copy of any copyrighted material including but not limited to the Products;
 - (e) introduce malicious programs into the Products or Phriendly Phishing network or servers (e.g., viruses, worms, trojan horses, e-mail bombs);

- (f) reveal the Client's account password to others or allow use of the Client's account on the Products to those who are not the Client's Personnel or Authorised Users;
- (g) use the Products to make fraudulent offers of goods or services;
- (h) use the Products to carry out security breaches or disruptions of network. Security breaches include, but are not limited to, accessing data of which the Client is not an intended recipient or logging into a server or account that the Client is not expressly authorised to access or corrupting any data. For the purposes of this paragraph, "security breaches" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes;
- (i) use any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' use of the Products;
- (j) send any unsolicited email messages through or to users of the Products in breach of the Spam Act 2003 (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages; and
- (k) use the Products in breach of the Privacy Act 1988 (Cth) (such as by way of identity theft or "phishing") is strictly prohibited.

7. Payment

- 7.1** The Client will pay Phriendly Phishing the Fees, upon receiving a correctly rendered invoice without any set off or delay using the Payment Method in accordance with the Payment Terms. Unless otherwise stated, all Fees are exclusive of GST.
- 7.2** If the Client requires the use of a purchase order, the Client is responsible for providing the applicable purchase order at the time of purchase or when Fees fall due. The Client acknowledges and agrees to the extent of any inconsistency between this Agreement and any terms and conditions attached to the Client's purchase order, the terms of this Agreement will prevail.
- 7.3** The Fees payable to Phriendly Phishing to perform the Services may be adjusted prior to any renewal, if no notice is provided to the Client prior to the renewal, then the renewed term will be on the same pricing as was in place before the renewal.
- 7.4** The Fees will increase once per year, in an amount up to the corresponding increase of the Consumer Price Index (All Groups) Capital Cities Index, published by the Australian Bureau of Statistics from time to time.

8. Confidentiality

- 8.1** A party (Recipient) may use Confidential Information of another party (Discloser):
- (a) only to the extent that such use is necessary for compliance with its obligations under this Agreement; or
 - (b) if legally compelled to do so by any judicial or administrative body, provided that the Discloser must promptly inform the Recipient and take all reasonably available legal measures to avoid or limit the extent of such disclosure.
- 8.2** Each Recipient must in respect of Confidential Information of the Discloser ensure that the Recipient and the Recipient's Personnel will not disclose or permit the disclosure of the Discloser's Confidential Information to any person other than to the extent:
- (a) the disclosure is to a member of the Recipient's Personnel who requires the Recipient's Confidential Information for the performance of that party's obligations, or the exercise of that party's rights, under this Agreement;
 - (b) the disclosure is in accordance with the Discloser's specific and prior written consent; or
 - (c) the disclosure is required by law.
- 8.3** If the Recipient or the Recipient's Personnel is required to disclose any of the Discloser's Confidential Information in accordance with clause 8.2(c), the Recipient will:
- (a) promptly, and to the extent possible prior to the disclosure of the Discloser's Confidential Information, notify the Discloser of the requirement of the applicable law; and
 - (b) disclose only so much of the Confidential Information as the Recipient is required by law to disclose.

9. Intellectual Property rights

- 9.1** A Party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the Commencement Date (Pre-Existing Material) will not be altered, transferred or assigned by virtue of this Agreement.
- 9.2** The Client grants to Phriendly Phishing a non-exclusive, royalty free, non-transferable and revocable license to use any of the Client's Intellectual Property Rights including any Pre-Existing Material relating to templates, configurations and processes relating to the Products as reasonably required for Phriendly Phishing to provide the Products and Services to the Client.
- 9.3** The Client retains title to, and intellectual property in all Client Data.

- 9.4** The parties agree that any new Intellectual Property Rights developed relating to the Product or the Services will be owned by Phriendly Phishing and the Client assigns all such Intellectual Property Rights to Phriendly Phishing immediately upon creation and agrees to execute and deliver to Phriendly Phishing any additional documentation that Phriendly Phishing may reasonably require to confirm or perfect its ownership of any such rights.

10. Privacy

- 10.1** Each Party agrees to comply with its obligations under the Privacy Act 1988 (Cth) and any other applicable legislation or privacy guidelines as amended from time to time in relation to personal information collected, used or disclosed by that Party in connection with the Products, Services and this Agreement.
- 10.2** Each party shall promptly notify the other of any breach of any confidentiality, data or security obligations, laws, requirements or standards, and provide reasonable assistance to the other in managing such breach and/or handling any requests in relation to personal information.

11. Warranties

- 11.1** Each Party warrants that:
- (a) it has the right, power, authority and entitlement to execute this Agreement and perform its obligations under this Agreement;
 - (b) this Agreement constitutes a legal, valid and binding obligation and is enforceable in accordance with its terms by appropriate legal remedy;
 - (c) in entering into and performing its obligations under this Agreement it has not, and will not, be in breach of any relevant law or any obligation owed to another person;
 - (d) there is no current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved and that will or may have an adverse effect on its ability to comply with this Agreement; and
 - (e) it has all necessary licenses, approvals, permits and consents to enter into and perform its obligations under this Agreement.
- 11.2** Phriendly Phishing does not warrant that the Products will be error-free or will operate without interruption or that, except as set out in this Agreement or any Service Level, the Products will perform in the manner intended by the Client or the Products will meet the requirements of the Client.

12. Liability and Indemnities

- 12.1** Phriendly Phishing will indemnify the Client from and against any Claim from a third-party or proceedings commenced against the Client where such Claim results from any infringement of Intellectual Property Rights.
- 12.2** The client indemnifies and holds Phriendly Phishing harmless from all loss in relation to any misuse of the Product, breach of Personal Information or 3rd party claims as a result of its use of the Product or Service.
- 12.3** Phriendly Phishing's liability for any Loss or Claim in relation to the Products or this Agreement will be limited to the greater of the total amount paid to Phriendly Phishing in the preceding twelve months prior to the event giving rise to liability, or \$100,000 thousand dollars in the aggregate.
- 12.4** Phriendly Phishing has no liability for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not Phriendly Phishing was aware of the possibility of such loss or damage.
- 12.5** Nothing in this Agreement operates to limit or exclude liability that cannot be limited or excluded by law.

13. Australian Consumer Law

- (a) If the Client is a deemed a Consumer:
- (i) Clause 12 does not apply to any liability of Phriendly Phishing for failure to comply with a Consumer Guarantee;
 - (ii) in respect of any goods supplied under this agreement, subject to clause 13(a)(iv), unless the goods are goods 'of a kind ordinarily acquired for personal, domestic or household use or consumption' (as that expression is used in section 3 of the Australian Consumer Law), the liability of Phriendly Phishing for Loss, however caused (including by the negligence of Phriendly Phishing), suffered or incurred by the Client because of a failure to comply with a Consumer Guarantee is limited to (at Phriendly Phishing's election):
 - (A) replacing the goods or supplying equivalent goods;
 - (B) repairing the goods;
 - (C) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) paying the cost of having the goods repairs;
 - (iii) in respect of the Services supplied under this agreement, subject to clause 13(a)(iv), unless the Services are 'services of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used

in section 3 of the Australian Consumer Law, the liability of Phriendly Phishing for Loss, however caused (including by the negligence of Phriendly Phishing), suffered or incurred by the Client because of a failure to comply with a Consumer Guarantee is limited to (at Phriendly Phishing's election):

- (A) resupplying the Services; or
- (B) paying the cost of having the Services supplied again; and
- (iv) clauses 13(a)(ii) and 13(a)(iii) do not apply in relation to a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law or if it is not 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law for Phriendly Phishing to rely on them.

(b) Nothing in this agreement is intended to exclude, restrict or modify rights which the Client may have under the Australian Consumer Law which may not be excluded, restricted or modified.

14. Term

- 14.1** The initial term of this Agreement will commence on the date of this Agreement and continues for a period of 24 months (Initial Term), unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 14.2** At least 90 Business Days prior to the expiry of the current Contract Year, either Party may notify the other that it does not wish for the Term to be renewed and in such event, this Agreement will expire at the end of the then current Contract Year. If a Party has not given notice pursuant to this clause, this Agreement is automatically renewed for another period (Renewal Term) equivalent to the Initial Term or subsequent Renewal Term on the same pricing (subject to any CPI adjustment) unless otherwise notified in writing by Phriendly Phishing of any price adjustments.

15. Termination

- 15.1** After the Initial Term, the Client may terminate this Agreement or a contract formed under it for convenience for any reason whatsoever, by giving at least 10 Business Days' notice to Phriendly Phishing if Phriendly Phishing, in which case no Fees will be refunded and Phriendly Phishing has no liability to Client whatsoever.
- 15.2** Phriendly Phishing may terminate this Agreement by giving 10 days' notice to the Client if the Client is in breach of any provision of this Agreement.
- 15.3** Upon termination the Client must delete or remove any Service, Product or data they are no longer licensed for and upon request provide reasonable evidence or certification that it has done so.
- 15.4** The provisions of clauses 7, 8, 10, 11.2, 15, 16, and 17 will survive the expiry or termination of this Agreement.

16. Dispute Resolution

- 16.1** If a dispute arises out of or in relation to this Agreement, no party may commence court proceedings (other than proceedings for urgent interlocutory relief) unless it has complied with this clause.
- 16.2** A Party to this Agreement claiming that a dispute has arisen under or in relation to this Agreement or a contract must give written notice to the other Party specifying the nature of the dispute. On receipt of that notice by the other Party, the Parties' nominated representatives must endeavour in good faith to resolve the dispute expeditiously and failing agreement within 20 Business Days of the dispute, either Party, by giving notice to the other, may refer the dispute to the Parties' Chief Executive Officers (or their nominees) who, each party must require must cooperate in good faith to resolve the dispute within 15 Business Days of the dispute being referred to them.
- 16.3** If the Chief Executive Officers (or their nominees) fail to resolve the dispute within 20 Business Days of the dispute being deferred to them, the Parties must, at the written request of either party and within 10 Business Days of receipt of the request, submit to a mutually agreeable mediation, expert evaluation or determination or similar techniques agreed to by them.

17. General Provisions

Poaching

- 17.1** The Client will not solicit or entice away, any person or organisation that was an actual or prospective, client, employee, contractor, representative, agent of, or developer to, Phriendly Phishing, during the term of this Agreement or for a period of 12 months after the expiry or termination of this Agreement or any relevant contract.

Notices

- 17.2** A notice or other communication must be in writing in English and may be: delivered personally; sent by prepaid mail to a Party's current postal address for notices as set out in this Agreement; and/or sent by email to a Party's current email for notices as set out in this Agreement. Legal and financial notices to be sent by registered post to:

Attn: General Counsel
CyberCX Pty Ltd
Level 4, 330 Collins Street,
Melbourne, Victoria, Australia.

A Party may change its address for service of notices by written notice to the other Party.

Costs And Expenses

- 17.3** Each Party must pay its own costs and expenses (including legal costs and expenses) in relation to the negotiation, preparation and execution of this

Agreement and any variation or replacement of this Agreement.

Amendment

- 17.4** This Agreement may only be amended by written agreement executed by all the Parties. Relationship Of Parties
- 17.5** This Agreement is not intended to create a relationship between the Parties of partnership, joint venture, agency or employer-employee.
- 17.6** Each Party has no authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the other Party.

Assignment

- 17.7** The Client must not assign or deal with the whole or any part of its rights and/or obligations under this Agreement without the prior written consent of Phriendly Phishing.
- 17.8** Any purported dealing in breach of this clause is of no effect.

Waiver or Variation of Rights

- 17.9** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right.
- 17.10** A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

Severability

- 17.11** If any provision (or part of it) of the Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of the Agreement are valid and enforceable.

Entire Agreement And Understanding

- 17.12** This Agreement supersedes all prior undertakings, arrangements and agreements and constitutes the entire agreement between the parties in relation to the subject matter of this Agreement and there are no conditions, warranties or other terms affecting the agreement between the parties other than those set out in this Agreement. Governing Law And Jurisdiction.

- 17.13** This Agreement is governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in the State of Victoria.