

## Confidentiality Deed Poll – Project Phantom

This deed poll is made on .....2017

By:..... ABN .....

of

..... (the “Recipient”).

In favour of:

**Kisto Pty Ltd** (ACN 005 535 320) of Level 1, 329 Little Collins Street, Melbourne VIC 3000, its subsidiaries and related entities (“Discloser”).

### Background

This deed poll sets out confidentiality undertakings given by the Recipient in respect of the Confidential Information to be disclosed to the Recipient, by or on behalf of the Discloser.

## 1. Definitions

### 1.1 Definitions

The meanings of the terms used in this deed poll are as follows:

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| <p>(a) <b>Confidential Information</b> means all information which:</p> <ul style="list-style-type: none"> <li>(i) is disclosed to the Recipient or a Specified Person (whether before or after the date of this deed poll) by or on behalf of the Discloser;</li> <li>(ii) relates directly or indirectly to the Discloser or the past, existing or future business, operations, administration or strategic plans of the Discloser; and</li> <li>(iii) is in oral or visual form, or is recorded or stored in a Document, and includes but is not limited to: <ul style="list-style-type: none"> <li>(A) all Documents created or prepared by the Recipient or its Specified Persons which reproduce, reflect, utilise or relate to any of the information referred to in paragraphs (i) and (ii) of this definition; and</li> </ul> </li> </ul> | <p>(B) the fact that Confidential Information has been disclosed, the existence and content of this deed poll and the existence of discussions between the Recipient and the Discloser relating to or arising from the Express Purpose.</p> <p>(b) <b>Corporations Act</b> means the Corporations Act 2001 (Cth).</p> <p>(c) <b>Document</b> includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced, whether an original or a copy.</p> <p>(d) <b>Express Purpose</b> means the assessment and, if applicable, negotiation of a potential transaction involving the acquisition of a Property or Properties and entry into legal agreements with the Discloser (or an entity or entities comprising the Discloser) in respect of the acquisition.</p> |
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- (e) **Property** means the respective land and improvements in the title identifiers listed in Schedule 1.
- (f) **related body corporate** has the meaning given to it in the Corporations Act.
- (g) **Specified Person** means any related body corporate of the Recipient and any officers, employees and advisers of the Recipient or of any of its related bodies corporate:
  - (i) who have a specific need to have access to the Confidential Information for the Express Purpose; and
  - (ii) who have been made aware (before receiving any Confidential Information) of the terms upon which the Confidential Information has been disclosed.
- (iii) the Recipient may only use the Confidential Information for the Express Purpose;
- (iv) the Recipient may disclose the Confidential Information to a Specified Person and the Recipient must ensure that no Specified Person does anything which, if done by the Recipient, would be inconsistent with the undertakings in this deed poll;
- (v) the Recipient indemnifies the Discloser in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Discloser may directly or indirectly suffer, incur or is liable for as a result of or in respect of:
  - (A) a breach of any of the undertakings of the Recipient contained in this deed poll; or
  - (B) any infringement of the Discloser's rights in respect of the Confidential Information by the Recipient or any Specified Person,
    - and the GST that may be payable in respect of the indemnity;

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## 2 Benefit of undertakings

The Discloser holds the benefit of the undertakings in this deed poll on its own behalf and separately as trustee for its subsidiaries and related entities (including in their respective capacities as trustee, custodian or responsible entity of any trust or managed investment scheme managed by it) and the Recipient acknowledges and agrees that each of the Discloser, its subsidiaries and related entities may enforce the undertakings in this deed poll directly against the Recipient.

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## 3 Confidentiality undertakings

- (a) In consideration of the Recipient agreeing to the confidentiality undertakings set out in this deed poll, any Confidential Information disclosed to the Recipient is disclosed on the following terms:
  - (i) the Recipient acknowledges that the Confidential Information is secret and highly confidential to the Discloser;
  - (ii) the Recipient agrees to hold the Confidential Information in strict confidence and not disclose, publish or cause or permit the disclosure or publication of, the Confidential Information or the Express Purpose, except as permitted under this deed poll or with the prior written consent of the Discloser;
- (b) Despite anything in clause 3(g), but subject to anything else in this deed poll, the Recipient may retain Documents containing any Confidential Information that the Recipient is required to retain by a
  - (vi) the Recipient must keep the Confidential Information secure and protected from any unauthorised use, disclosure, access, damage or destruction and promptly notify the Discloser if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information; and
  - (vii) if requested by the Discloser, the Recipient must immediately return to the Discloser, or destroy or delete as the Discloser directs, all Documents which are or contain Confidential Information.

legal or regulatory requirement or for corporate governance or compliance purposes.

- (c) The Recipient acknowledges that the Confidential Information is the exclusive property of the Discloser and this deed poll does not give any right, title or interest in it to the Recipient or any Specified Person.
- (d) The Recipient must do anything reasonably required by the Discloser to prevent or stop a breach or threatened breach of this deed poll or an infringement or threatened infringement of the Discloser's rights arising out of this deed poll by any person, whether by court proceedings or otherwise.
- (e) The Recipient acknowledges that damages may be inadequate compensation for breach of this deed poll and the Discloser may, in addition to any other remedies, seek to restrain by an injunction or similar remedy, any conduct or threatened conduct which is or would be a breach of this deed poll.
- (f) Nothing in this deed poll requires the Discloser to disclose to the Recipient any Confidential Information or confirms that the Discloser and the Recipient have an agreement or arrangement with respect to any proposed transaction relating to or arising from the Express Purpose. The Discloser does not represent that the Confidential Information disclosed is complete, accurate or sufficient for the Recipient's purposes. The Recipient must make its own assessment of whether Confidential Information is correct, complete or useful to it and must solely rely on its own assessment.
- (g) The undertakings referred to above do not apply to any part of the Confidential Information that:
  - (i) the Recipient is required to disclose by any applicable law or legally binding order of any court, government, semi government authority, administrative or judicial body, or a requirement of a stock

exchange or regulator provided that the Recipient must only disclose the minimum Confidential Information required to comply with the applicable law, order or requirement and before making such disclosure, the Recipient must consult with the Discloser as to the form of the disclosure;

- (ii) is in the public domain other than as a result of a breach of this deed poll;
- (iii) is received by the Recipient from a person (other than a Discloser or any employee, officer, agent or adviser of a Discloser) legally entitled to possess that information and provide it to the Recipient; or
- (iv) was at the time of disclosure already in the lawful possession of the Recipient.

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## 4 General

- (a) This deed poll shall expire 2 years from the date of its execution other than the indemnity in this deed poll which survives termination of this deed poll.
- (b) The laws of Victoria govern this deed poll and the Recipient irrevocably submits to the exclusive jurisdiction of the courts of Victoria.
- (c) This deed poll may be varied, and compliance with undertakings waived, only if the Recipient and Discloser both agree in writing.
- (d) This deed poll is the entire agreement between the Recipient and Discloser in respect of its subject matter.
- (e) The Recipient represents and warrants to the Discloser that it has the full power and authority to execute and deliver this deed poll and to consummate the transactions contemplated herein.

# Confidentiality Deed Poll – Project Phantom

## Signing Page

EXECUTED as a deed

**[Use this for sole director company]**

Signed Sealed and Delivered by:

..... ACN .....  
in accordance with Section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Sole Director/Sole Secretary

\_\_\_\_\_  
Name of Sole Director/Sole Secretary

**[Use this for a company signing by 2 directors or a director and secretary]**

Signed Sealed and Delivered by:

..... ACN .....  
in accordance with Section 127 of the Corporations Act 2001 (Cth):

.....  
Signature of Director

.....  
Signature of Company Secretary/Director

.....  
Name of Director

.....  
Name of Company Secretary/Director

**[Use this for individuals/sole traders]**

Signed Sealed and Delivered by:

..... ABN .....

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

## Schedule 1 Property Details

| Property   | Lot(s) | Plan No.                 | Title Reference        |
|--|--------|--------------------------|------------------------|
| Royce Hotel, 375 – 385 St Kilda Road, Melbourne                | Lot 1  | Title Plan 913890J       | Volume 01731 Folio 088 |
|  | Lot 1  | Title Plan 897074A       | Volume 05216 Folio 125 |
|  | CA 1A  | Section 5 at South Yarra | Volume 07678 Folio 065 |
| Freeman McMurrick Building, 387 – 389 St Kilda Road, Melbourne | Lot 1  | Title Plan 877875B       | Volume 10936 Folio 966 |

## Data Room Protocol – Project Phantom

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### 1 Introduction

This document sets out the procedures to be followed by you and your representatives in relation to access to and use of the electronic data room hosted by IntraLinks, Inc. named Project Phantom (“**Data Room**”) for the conduct of a due diligence by you and your representatives in relation to the invitation by Kisto Pty Ltd ACN 005 535 320 (“**Kisto**”) to express interest in acquiring one or more properties owned by Kisto and enter into legal agreements (“**Project**”).

Terms defined in the Confidentiality Deed Poll entered into in favour of Kisto by the Recipient (as defined) (the “**Invitee**”) in relation to the Project will have the same meaning in this Protocol, unless otherwise defined.

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### 2 Terms of Access and Use of Data Room

- 2.1 By accessing the Data Room, the Invitee and each person nominated by the Invitee who has been granted access to the Data Room (“**Authorised User**”) acknowledges that it has read and understood and agrees to be bound by this Protocol (as may be amended from time to time) and the Confidentiality Deed Poll.
- 2.2 The Invitee assumes all responsibility and risk arising from its and its Authorised Users use of the Data Room.
- 2.3 All Material is confidential and provided subject to the Confidentiality Deed Poll and any applicable confidentiality undertaking signed by an Authorised User. Only persons who are permitted to receive Confidential Information under the Confidentiality Deed Poll may access the Data Room and the Material.
- 2.4 For the purposes of this Protocol, “**Material**” means all information (including any forecasts, projections, estimates, forward-looking statements or the assumptions on which such information is based) made available by or on behalf of the Discloser (as defined in the Confidentiality Deed Poll) in the Data Room or otherwise in connection with the due diligence process for the Project, including all copies of Material (or any part thereof) and all information (whether written or oral) provided in connection with any Q&A process.

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### 3 Availability of Data Room

- 3.1 The Data Room is hosted on a third party platform and is made available online through a secure web site and may be accessed through a link sent to you.
- 3.2 The Invitee and its Authorised Users may access the Data Room 24 hours a day from a time to be determined by Kisto, unless otherwise notified. Kisto reserves the right, in its absolute discretion, to modify the periods of access.
- 3.3 Kisto also reserves the right, in its absolute discretion, to terminate or suspend the Invitee and any or all of its Authorised Users from access to the Data Room.

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## 4 Data Room procedures

### 4.1 Nominated Representative

The Invitee must nominate in the User Request Form attached at Schedule 1 at least one senior representative (“**Nominated Representative**”). The Nominated Representative may nominate other Authorised Users by completing the User Request Form and may remove Authorised Users from time to time by providing written notice to Ken Iwata of King & Wood Mallesons (“**Data Room Administrator**”) on +61 2 9296 3753 or [ken.iwata@au.kwm.com](mailto:ken.iwata@au.kwm.com).

### 4.2 Authorised Users

- (a) The User Request Form should be returned to the Data Room Administrator for approval. Requests for approval of Authorised Users will be processed as quickly as possible, however a minimum processing time of half a business day should be anticipated.
- (b) After approval of an Authorised User for the Data Room, the Authorised User will be sent an email invitation to participate in the Data Room with information relating to access to the Data Room.

### 4.3 Security

The Invitee must take, and must ensure its Authorised Users take, all reasonable steps to avoid unauthorised access to the Data Room. This includes, without limitation, to:

- (a) exercise reasonable care to ensure that the security of their access to the Data Room is not compromised;
- (b) not permit any other person to use their IntraLinks ID or password to access the Data Room; and
- (c) immediately notify King & Wood Mallesons if they become aware that the security of access to the Data Room has been compromised or if there is, or has been, a substantial risk of compromise.

### 4.4 Retaining Material

Copying, printing and downloading of Material is prohibited except to the extent that the security settings applied to the Material allow copying, printing or downloading. Where Material is secured to prevent its copying, printing or downloading, an Invitee or Authorised User must not do anything to circumvent that security or to take a copy of the Material, or any part of it, by other means. Kisto will not permit downloading of Material.

### 4.5 Privacy

The Data Room portal may record certain information about Authorised Users’ access to the Data Room, such as the date and time of access, the Authorised User’s IP address, the pages accessed and any information downloaded or printed. Kisto may disclose this information to its representatives. The privacy policy of the Data Room provider is available at <http://www.intralinks.com/privacy>.

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## 5 Disclaimer of liability

Without limiting the matters set out in any terms applying to access to the Data Room, Kisto and King & Wood Mallesons and each of their associated entities, officers, employees, agents, contractors and advisers:

- (a) does not make any representation or warranty as to the availability, accuracy, completeness, currency or reliability of any Material; and
- (b) does not accept:
  - (i) any responsibility arising in any way for any errors in or omissions from any information or for any lack of accuracy, completeness, currency or reliability of any such information made available;
  - (ii) any responsibility to provide any other information or notification of matters arising or coming to their notice which may affect any information provided; or
  - (iii) any liability for any loss or damage (whether under statute, in contract or tort (including for negligence) or otherwise) suffered or incurred by the Invitee or any Authorised User or any other person in connection with the use of or access to the Data Room or the use of or reliance on any Material.

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## 6 Q&A Protocol

- 6.1 The Invitee must nominate in the User Request Form attached at Schedule 1 one representative ("**Q&A Representative**"). The Q&A Representative will be the only person permitted to submit questions on behalf of the Invitee.
- 6.2 Each Authorised User who is not the Q&A Representative will be able to:
  - (a) propose new questions to the Q&A Representative;
  - (b) view submitted questions sent to Kisto by the Q&A Representative; and
  - (c) view the responses to the submitted questions from Kisto.
- 6.3 The Q&A Representative is responsible for ensuring that no duplicate questions are submitted by the Q&A Representative.
- 6.4 Kisto will give at least 2 business days' notice of the closing of the Q&A module.
- 6.5 Once a question has been responded to by Kisto that question will be closed. Any follow up questions must be submitted as separate questions by the Invitee.
- 6.6 Kisto may choose to disclose questions submitted by the Invitee and others and Kisto's responses to all users of the Data Room as frequently asked questions. Kisto will not identify the submitters of the questions.

# Schedule 1 – Data Room User Request Form

To be returned by email to the Data Room Administrator.

Invitee name: \_\_\_\_\_

## Invitee's Data Room Nominated Representative

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## Invitee's nominated Q&A Representative

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Provision of a user's personal details for the grant of access to the Project Phantom Data Room constitutes an undertaking by the user that they accept access to the Project Phantom Data Room on the terms, conditions, rules and procedures set out in the Project Phantom Data Room protocol.

## Invitee's authorised representatives to be listed below:

| Name of User | Phone number<br>(including<br>country and<br>area code) | Email address | Organisation |
|--------------|---|---------------|--------------|
|              |   |               |              |
|              |   |               |              |
|              |   |               |              |
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