

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

Background:

- A. The Disclosers own and operate the Business.
- B. The Recipient wishes to receive Confidential Information from the Disclosers.
- C. The Disclosers have agreed to provide the Confidential Information to the Recipient for the Authorised Purpose.
- D. The Recipient has agreed that the Confidential Information will be provided to the Recipient on the terms and conditions of this deed.

This deed poll witnesses:

1. Definitions and interpretation

1.1 In this deed poll, unless the context otherwise requires:

Assets means the right, title and interest of the Disclosers in all equipment, intellectual property, contracts, records and goodwill in respect of the Business.

Authorised Purpose means a review of the Confidential Information by the Recipient so that the Recipient can decide whether, as the case may be, to:

- (a) make an offer to purchase the Assets and the Business; or
- (b) to acquire the share capital of the company which operates the Business.

Business means the childcare business conducted by the Disclosers .

Business Day means a day in Queensland which is not a Saturday, Sunday or public holiday.

Confidential Information means any information disclosed in writing, electronically, verbally or otherwise by or on behalf of the Disclosers or their Representatives to the Recipient or any of its Representatives, before or after execution of this deed, in connection with the Authorised Purpose including any information in connection with:

- (a) the Disclosers and their business, assets, property, transactions, operations and affairs (including all past, current and prospective financial, accounting, legal, trading, marketing, customer, technical and business information, trade secrets and know-how); and
- (b) any other information which by its nature should be reasonably considered to be confidential to the Disclosers.

Document means anything in either physical or electronic form which records any information, including:

- (a) paper or other material on which there is writing, printing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(b) any material from which sounds images, writing or messages can be reproduced.

Notes mean any notes or other Documents which include any Confidential Information or any summary, extract or part of it or reflected or are derived from any Confidential Information.

Representative means an employee, partner, officer, agent, sub-agent, financier, advisor or consultant of a person.

- 1.2 Unless the contrary intention appears, a reference in this deed to:
- (a) this deed, or another document includes any variation or replacement of it despite any change in the identities of the parties;
 - (b) one gender includes the other;
 - (c) the singular includes the plural and the plural includes the singular;
 - (d) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any other of them; and
 - (e) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns.
- 1.3 The words include, including, such as, for example, and similar expressions are not to be construed as words of limitation.
- 1.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.5 A provision of this deed must not be construed to the disadvantage of a party merely because that party or its advisors were responsible for the preparation of this deed or the inclusion of the provision in this deed.

2. Confidential Information

- 2.1 The Recipient acknowledges that the Confidential Information is valuable to the Disclosers and that the disclosure of the Confidential Information will cause damage to the Disclosers.
- 2.2 The Recipient acknowledges that the Confidential Information is, and will at all times remain, the property of the Disclosers.
- 2.3 The Recipient must:
- (a) keep confidential and not disclose to any person the Confidential Information (other than as permitted in this deed);
 - (b) only use the Confidential Information for the Authorised Purpose and for the avoidance of doubt, under no circumstances make commercial use of the Confidential Information, other than for the Authorised Purpose;
 - (c) not copy or reproduce the Confidential Information except to the extent necessary for the Authorised Purpose;
 - (d) not do any act or thing involving the use or disclosure of the Confidential Information which may cause loss or damage to the Disclosers; and
 - (e) retain the Confidential Information in confidence and limit access to the Confidential Information to only those Representatives of the Recipient who reasonably require access in order to give effect to the Authorised Purpose and, where access is given,

ensure that those persons are aware of and comply with all of the provisions contained in this deed.

- 2.4 The Recipient may disclose the Confidential Information to any Representative of the Recipient provided:
- (a) the Recipient obtains the Disclosers prior written consent to do so;
 - (b) the Confidential Information is disclosed on a strictly need-to-know basis; and
 - (c) the Representative first executes a deed in favour of the Disclosers on terms identical to this deed.

3 Representatives

A breach of this deed by a Representative of the Recipient will be deemed to be a breach of this deed by the Recipient (as if that Representative of the Recipient was a party to this deed and references in this deed to the “Recipient” included a reference to a “Representative of the Recipient”).

4 Return of Confidential Information

The Recipient must, on request by a Discloser, immediately:

- (a) at the option of a Discloser, return to the Discloser or destroy all Documents received from the Discloser or its Representatives which contain any Confidential Information and all copies of such Documents in the possession, custody or control of the Recipient or its Representatives;
- (b) destroy all Notes created by the Recipient or its Representatives in the possession, custody or control of the Recipient or its Representatives;
- (c) delete the Confidential Information from any computer systems or other device operated, controlled or which may be accessed by the Recipient or its Representatives; and
- (d) confirm by notice in writing to the Disclosers that this clause 4 has been complied with in all respects.

5 No representations

- 5.1 The Recipient acknowledges and agrees on behalf of itself and its Representatives that:
- (a) no member of the Disclosers or their Representative makes or will make any express or implied representation or warranty as to the accuracy, completeness or currency of the Confidential Information; and
 - (b) neither the Disclosers or their Representatives will have any liability or responsibility (including by reason of negligence or negligent misstatement) to the Recipient or its Representatives resulting from the use of or reliance upon the Confidential Information by the Recipient, its Representatives or any other person or for errors in or omissions from, the Confidential Information or the currency, accuracy, reliability or completeness of the Confidential Information.

- 5.2 The Recipient and its Representatives must not place reliance on the Confidential Information, but must independently satisfy itself as to the accuracy of, should conduct its own enquiries, investigation, analysis and appraisal of, and should seek appropriate professional advice about, the Confidential Information.
- 5.3 If the Confidential Information contains any forecast, projection or estimate as to any future matter, the Recipient and its Representatives acknowledge that none of the forecasts, projections or estimates are or will be representations as to future matters and no representation is made or will be made that any forecast, projection or estimate contained in the Confidential Information will be achieved or that the assumptions on which it is based are correct.

6 Indemnity

- 6.1 The Recipient acknowledges that the Confidential Information is valuable to the Disclosers and that any failure by the Recipient to maintain the confidentiality of the Confidential Information will cause loss to the Disclosers.
- 6.2 The Recipient must continually indemnify the Disclosers against any claim or proceeding that is made or commenced, and any liability, loss, damage or expense (including legal costs on a full indemnity basis) which the Disclosers incur or suffer as a result of:
- (a) any breach of this deed by the Recipient; or
 - (b) any unauthorised disclosure of the Confidential Information by a person who received it from the Recipient.
- 6.3 The Recipient acknowledges that any breach of this deed will cause the Disclosers loss which cannot be adequately redressed by an award of damages, and that the Disclosers may seek other remedies at law or in equity.
- 6.4 The Recipient agrees to consent to any injunction applied for by the Disclosers in relation to a breach of this deed.

7 No contact with employees

The Recipient must not contact or attempt to contact any of the employees of the Business without first obtaining the written consent of the Disclosers.

8 Notices

- 8.1 Any notice given under this deed must be in writing and may be given by a party's solicitor.
- 8.2 A notice is effectively given if:
- (a) delivered or posted to the other party to the address set out in this deed or their solicitor; or
 - (b) sent by facsimile to the facsimile number of the other party or its solicitor; or
 - (c) sent by electronic mail to the electronic mail address of the other party or its solicitor.
- 8.3 Posted notices will be treated as given 3 Business Days after posting.

- 8.4 A notice sent by facsimile will be treated as given when the sender obtains a clear transaction report.
- 8.5 A notice sent by electronic mail will be treated as given when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee.
- 8.6 Any notices given after 5.00pm will be treated as given on the next Business Day.

9 Waiver

- 9.1 A party does not waive a right or remedy in connection with this deed if it:
- (a) fails to exercise its right or remedy;
 - (b) only partially exercises the right or remedy; or
 - (c) delays in exercising the right or remedy.
- 9.2 A party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
- (a) further exercise the right or remedy; or
 - (b) exercise another right or remedy.
- 9.3 A waiver is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

10 Variation

- 10.1 No provision of this deed nor a right conferred by it can be varied except in writing signed by the parties.

11 Governing Law

- 11.1 This deed is governed by the State of Queensland and the Recipient submits to the jurisdiction of the courts of Queensland.