

1. Confidentiality

1.1 The Recipient undertakes to keep secret and protect and preserve the confidential nature and secrecy of the Confidential Information. Without limiting this obligation, the Recipient must not: use or permit any person to use the Confidential Information for any purpose other than for the Purpose; or permit unauthorised persons to have access to places where the Confidential Information is displayed, reproduced or stored.

1.2 The Recipient must take reasonable steps to enforce the confidentiality obligations imposed by clause 1.1.

2. Recipient's Personnel

2.1 Subject to clause 2.2, the Recipient may disclose Information to the Recipient's Personnel on a need to know basis, solely to assist the Recipient in complying with or carrying out the Purpose and on the condition that the Recipient's Personnel do not disclose the Confidential Information to any other person.

2.2 The recipient must ensure that: the Recipient's Personnel who have access to the Confidential Information are made fully aware of the confidential nature of all Confidential Information; and if required by the Provider, each of the Recipient's Personnel must sign a confidentiality deed essentially on the same terms as this Deed.

2.3 The Recipient must ensure that none of the Recipient's Personnel do or omit anything which, if done or omitted to be done by the Recipient, would constitute a breach of its obligation under this Deed.

3. Return of Confidential Information

3.1 Upon the earlier to occur of: a notice by the Provider; and the time when the Confidential Information is no longer required by the Recipient for the Purpose, the Recipient must deliver to the Provider (or with the Provider's prior written consent, destroy or erase) all forms of Confidential Information in the possession, power or control of the Recipient or any of the Recipient's Personnel whether or not those forms were created by the Provider, but such delivery does not release the Recipient from its obligations under this deed.

4. Disclaimer

4.1 The Recipient acknowledges and agrees that:

(a) neither the Provider nor any Personnel or other representative of the Provider has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of its Confidential Information; and

(b) it must make its own assessment of all Confidential Information disclosed to it and satisfy itself as to the accuracy and completeness of the Confidential Information.

4.2 To the extent permitted by law, the Recipient releases the Provider from all liability for any loss or damage (whether foreseeable or not) suffered by any person acting on any Confidential Information whether the loss or damage arises in connection with any negligence, default, lack of care, misrepresentation or any other cause.

5. Breach & Indemnity

5.1 The Recipient must immediately notify the Provider of all information which comes to its attention regarding any actual or potential disclosure or use of Confidential Information other than in accordance with this Deed.

5.2 The Recipient indemnifies the Provider against any cost, liability, damage or loss incurred or suffered by the Provider arising directly or indirectly from or in connection with: any breach of this Deed by the Recipient; or any act or omission of the Recipient's Personnel which, if done or omitted to be done by the Recipient, would constitute a breach of this Deed.

5.3 The Recipient acknowledges that damages may not be an adequate remedy for the Provider for any breach of this Deed by the Recipient and that the Provider is entitled to seek specific performance or injunctive relief as a remedy for any such breach or threatened breach, in addition to any other remedies available at law or in equity under this Deed or independently of this Deed.

6. Term

6.1 This Deed becomes effective on the earlier to occur of: the date upon which Confidential Information is first provided to, learned or accessed by the Recipient; and the date of this Deed; and continues in force until the later to occur of: agreement in writing by the parties; and all the Confidential Information is available in the public domain.

7. Governing Law

7.1 This deed is governed by and construed in all respects in accordance with the laws of the State referred above and the parties hereby submit to the non-exclusive jurisdiction of the courts of that State and any courts empowered to hear appeals therefrom.

8. Definitions and Interpretations

8.1 Definitions

(a) Confidential Information means:

(i) all Information submitted or disclosed to the Recipient by the Provider; and

(ii) all Information learned or accessed by the Recipient; at any time in connection with the Purpose (including during negotiations, discussions and meetings) and includes without limitation: Information which at the time of disclosure by the Provider is identified as being confidential; Information which, of implied necessity, is confidential; Information which the Recipient knows or ought reasonably be expected to know is confidential; any agreement, arrangement or understanding relating to the Purpose;

(iii) but does not include Information which: is in the public domain otherwise than as a result of a breach of the terms of this Deed or any other obligations of confidentiality owed by the Recipient; prior to disclosure by the Provider was lawfully known to the Recipient and in respect of which the Recipient is not bound by any other obligation of confidentiality; or is disclosed by the recipient pursuant to any law or order of any court, or any government agency or other regulatory body with which the Recipient is bound to comply.

(b) Information means information, inventions and ideas, which may be: oral, written, recorded or stored by electronic, magnetic, electro-magnetic, or in other form, process, media or otherwise in a machine readable form; or translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered.

(c) Personnel means any person being an agent, adviser, sub-contractor, employee or other representative of the Recipient;

(d) Provider shall mean Childcare4sale as agent for the proprietor of the enquired business(s)/property specified above;

(e) Purpose means the reason for disclosure of the Confidential Information to the Recipient by the Provider being the sale or acquisition of the enquired business(s)/property specified above;

(f) Recipient shall mean in the case of any disclosure of all or any of the Provider's Confidential Information, the party receiving that Confidential Information.