

HomeCaring[®]

Disability and Aged Care Specialists

Confidentiality Agreement Terms and Conditions

1. Definitions

- 1.1 **Discloser means the Party disclosing information, including Confidential Information and includes any subsequently established corporate or trust structure through which the Discloser operates and/or carries on business.**
- 1.2 **Recipient means the Party receiving, acquiring, coming into possession of or otherwise obtaining, overhearing or learning of information, including Confidential Information.**
- 1.3 **Confidential Information** includes but is not limited to:
- (a) business models, business plans, information, ideas, concepts, recipes, knowledge, know-how, intellectual property, trade secrets, inventions, technology, operating procedures, processes, techniques, software, business methods, financial, accounting, monetisation, capital raising, marketing and technical plans and information, customer and supplier lists (including any prospective or proposed customer and supplier lists), analytical information, funding arrangements and other commercially valuable information belonging to either Party; and
 - (b) notes, records and related information generated by a Party from the Confidential Information, including any copies of the Confidential Information, and copies of the notes, records and related information generated.

whether or not such information is reduced to a tangible form or marked in writing as "confidential", and whether it is disclosed by the disclosing Party to the other Party or received, acquired, overheard, or learnt by a Party in any way whatsoever.

2. Confidentiality obligations

- 2.1 The Recipient agrees, at any time prior to termination of this Agreement, in consideration of the Confidential Information being disclosed to it:
- (a) not to disclose the Confidential Information to any third party at any time;
 - (b) only to use the Confidential Information for the purpose for which it was disclosed by the Discloser and not for any other purpose including but not limited to, for the purpose of personal gain;
 - (c) to use its best endeavours to protect the Confidential Information from unauthorised disclosure;
 - (d) to be responsible for and assume liability in relation to all of its employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement;
 - (e) to not use the Confidential Information, directly or indirectly, to compete with the Discloser, or offer services similar to the Discloser, including but not limited to by entering into business arrangements with any customers, clients, employees, contractors or agents of the Discloser;
 - (f) to not use the Confidential Information, directly or indirectly, to interfere with or disrupt the relationship between the Discloser and any party contracting with the Discloser; and
 - (g) to not use the Confidential Information, directly or indirectly, to induce or solicit any employee, contractor or agent of the Discloser to leave the employment or agency of the Discloser, except that advertisement of employment opportunities not specifically targeted at the Discloser's employees, contractors or agents shall not constitute such inducement or solicitation.

3. When confidentiality obligations do not apply

- 3.1 The obligations do not apply to Confidential Information:
- (a) that is already in the public domain, except as a result of the Recipient's breach of this Agreement;
 - (b) received from a third party, except where there has been a breach of confidence; and/or
 - (c) that must be disclosed by law, regulation or an order of a court to disclose, provided that the Recipient only discloses the Confidential Information that the Recipient is required to disclose by law, and gives sufficient notice to the Discloser in order to allow the Discloser to object to, or prevent, the Confidential Information being disclosed.

4. Disclaimers

- 4.1 The Recipient acknowledges that the disclosure of Confidential Information does not grant to the Recipient, expressly or impliedly, any ownership, right or licence to the Confidential Information.
- 4.2 The Discloser does not represent, warrant or undertake that the Confidential Information is accurate, up to date, exhaustive or complete, and disclaims any and all liability in connection with the Recipient's use of Confidential Information.

5. Remedies

- 5.1 The Recipient acknowledges and agrees that any breach of this Agreement could cause the Discloser irreparable harm for which monetary damages may be difficult to ascertain or an inadequate remedy. The Recipient agrees that the Discloser is entitled, in addition to other rights, to seek and obtain injunctive relief, or any other action for specific performance, for any breach of this Agreement.

6. Indemnity

- 6.1 The Recipient is liable for and agrees to indemnify and hold harmless the Discloser in respect of any loss, damage, cost, charge, expense, penalty, fine or payment which the Discloser suffers, incurs or is liable for, as a result of a breach by the Recipient of this Agreement; and any claim or action taken against the Discloser as a result of a breach by the Recipient of this Agreement.

7. Obligations on termination

- 7.1 This Agreement shall be effective as of the date of the Recipient's signature and will survive and continue without limitation of time.
- 7.2 On termination of this Agreement, and/or the discussions between the Parties ceasing, whichever is the earlier, the Recipient agrees to promptly:
- (a) where possible, return to the Discloser all information, data and/or documents containing or relating to the Confidential Information; and/or
 - (b) destroy any copies of any information, data or documents containing or relating to the Confidential Information not returned to the Discloser.
- 7.3 The Recipient may keep one copy of such information, in secure and confidential storage, if required by law for record keeping purposes, only to the extent and for the period required by law.

8. Notices

- 8.1 A notice or other communication must be in writing in English and may be:
- (a) delivered personally;
 - (b) given by an agent of the sender;
 - (c) left at a Party's current delivery address for notices; and/or
 - (d) sent by prepaid mail to a Party's current postal address for notices; and/or
 - (e) sent by email to a Party's current email address.
- 8.2 A notice or communication is taken as having been given:
- (a) when left at a Party's current delivery address for notices; or
 - (b) if mailed within Australia to an Australian address, on the third Business Day after posting; or
 - (c) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia, on the tenth Business Day after posting; or
 - (d) if sent by email, when the sender receives a sent confirmation.
- 8.3 Addresses for service are set out at the start of the Agreement. A Party may change its address for service of notices by written notice to the other Party.

9. General

- 9.1 **Amendment:** This Agreement may only be amended by written agreement between the Parties.
- 9.2 **Relationship of parties:** This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- 9.3 **Assignment:** This Agreement is personal to the Parties. A Party 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 the other Parties (such consent not to be unreasonably withheld). Any purported dealing in breach of this clause is of no effect.
- 9.4 **Waiver or variation of rights:** 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. 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.

- 9.5 **Powers, rights and remedies:** Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.
- 9.6 **Consents and approvals:** Where this Agreement provides that a Party may give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.
- 9.7 **Further assurance:** Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.
- 9.8 **Acceptance and counterparts:**
- (a) This Agreement may be executed in any number of counterparts and the counterparts taken together will constitute one and the same Agreement.
 - (b) This Agreement may be accepted by email, as set out in the Agreement.
 - (c) The date of this Agreement will be the date that it is executed by the last Party, or agreed to by email by the Recipient.
- 9.9 **Entire agreement and understanding:** In respect of the subject matter of this Agreement:
- (a) this Agreement contains the entire understanding between the Parties;
 - (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement; and
 - (c) each Party has relied entirely on its own enquiries before entering into this Agreement.
- 9.10 **Governing law and jurisdiction:** This Agreement is governed by the laws of [State] and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in [State].
- 10. Interpretation**
- 10.1 In this Agreement, unless expressed to the contrary:
- (a) headings are for convenience and do not affect the interpretation of this Agreement;
 - (b) "includes" and similar words mean includes without limitation;
 - (c) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;