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# Confidentiality Deed

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Ashe, Morgan Young Nominees Limited

(the Owner)

(the Recipient)

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Date:

**PARTIES** **Ashe, Morgan Young Nominees Limited** **(the owner)**

**(the recipient)**

## **BACKGROUND**

- A The recipient is considering an investment in a potential acquisition of some or all of the assets of the Owner briefly described as an Investment in Convertible Notes issued by the Owner.
- B In order to conduct the Evaluation the Recipient will require access to confidential information of the Owner. This deed records the terms on which the Owner will make that confidential information available to the Recipient.

## **TERMS**

### **1 Defined terms**

In this deed:

*Confidential Information* means:

- a) all information (including, without limitation, the administration, operation, organization, methods (including any secret process or formula or other trade secret), business and finances of the Owner, details of the Owner's customers or clients or suppliers and dealing with those persons, and similar information concerning the Owner's subsidiaries and associated or related companies) which is made available to the Recipient by the Owner for the purposes of or otherwise in connection with the evaluation; and
- b) any information which the Recipient generates using base

information coming within the ambit of paragraph (a) of this definition if that base information could be identified and extracted by a third party from the information generated;

but does not include information which, when disclosed to or by the Recipient, is generally available to and known by the public or which the Recipient has legitimately acquired or developed independently of any information provided by the Owner under this agreement.

*Evaluation* has the meaning given to that term in paragraph A of the Background;

*Person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;

*Representative* means an officer of, or contractor to, or employee of, the Recipient, or a representative of any of the Recipient's advisers, to whom the Recipient wishes to disclose, and who needs to know, the content of any of the Confidential Information for the purpose of carrying out the Evaluation.

## 2 **Confidentiality**

The recipient will keep the Confidential Information and the existence of the Confidential Information and the Evaluation strictly confidential except to the extent that disclosure is permitted under the terms of this deed.

## 3 **Use of Confidential Information**

The Recipient will use the Confidential Information for the purpose of carrying out the Evaluation and not for any other purpose.

## 4 **Disclosure to Representatives**

The Recipient may disclose all or any part of the Confidential Information to a representative if the Recipient:

- 4.1 has obtained the prior written approval of the Owner to the disclosure to that person;
- 4.2 has informed that Representative of the confidential nature of the Confidential Information; and
- 4.3 has obtained that Representative's written undertaking, in the form set out in the schedule, to be bound by this deed

and has provided that written undertaking to the Owner. By disclosing any part of the Confidential Information to a Representative the Recipient agrees to be responsible for any act or omission of that Representative constituting a breach of this deed or that would constitute a breach of this deed if done or omitted by the Recipient.

**5 Disclosure pursuant to a lawful requirement**

If the Recipient becomes legally compelled to disclose any of the Confidential Information the Recipient will immediately give written notice to the Owner of the requirements placed on the Recipient so that the Owner may seek a protective order or other remedy or waive compliance with the terms of this deed. In any event, the Recipient agrees to disclose only that part of the Confidential Information which the Recipient is legally required to disclose, and to use reasonable efforts to obtain an assurance that the information disclosed will be treated confidentially.

**6 Limitation on reproducing Confidential Information**

The Owner may make any particular Confidential Information available to the Recipient subject to the condition that the Recipient does not copy, reproduce or electronically store that information. If such a condition is imposed the Recipient will comply with it strictly.

**7 Return of Confidential Information**

On completion of the Evaluation, or earlier if the Owner so requests, the Recipient will as directed by the Owner promptly:

7.1 return, or procure the return of, all copies of Confidential Information; and/or

7.2 destroy or erase, or procure the destruction or erasure of, all copies (whether on paper or in any electronic information storage and retrieval system or in any other storage medium) of the Confidential Information and any analyses, compilations, studies, notes, memoranda or other documents which contain or reflect any Confidential Information.

## **8 Miscellaneous provisions**

- 8.1 The agreements, obligations, warranties and undertakings on the Recipient's part set out in this deed will continue in full force until the Confidential Information enters the public domain other than directly or indirectly through a default of the Recipient under this deed.
- 8.2 The Recipient acknowledges that damages alone would be an inadequate remedy for the breach of the Recipient's obligations under this deed and that the appropriate remedies for such a breach or threatened breach shall include, at the election of the Owner, orders for specific performance and injunctive relief.
- 8.3 No failure, delay or indulgence by the Owner in exercising any power or right under this deed shall operate as a waiver of that power or right. Nor shall a single or partial exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this deed.
- 8.4 If any part of this deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this deed which shall remain in full force.
- 8.5 The Recipient also acknowledges that the undertakings and agreements on the Recipient's part set out in this deed are in addition to, and do not detract from, the duties of confidentiality which are imposed on the Recipient by law and in equity.

**EXECUTED AS A DEED**

by its Attorney:

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

[name of company] by:

\_\_\_\_\_

Director

\_\_\_\_\_

Director

**SCHEDULE**

To: Ashe, Morgan Young Nominees Limited (the Owner)  
Facsimile: 64 9 308 2425

And to: (the Recipient)

From: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Company or firm)

The Owner and the Recipient are parties to a confidentiality deed dated \_\_\_\_\_ (the Deed)

**UNDERTAKING**

In consideration of disclosure of all or part of the Confidential Information (as defined in the Deed) to me, and as required by the Deed:

- 1 In confirm that I have been given a copy of the Deed, that I have read it and understand it, and that I am aware of the confidential nature of the Deed and the Confidential Information; and
- 2 I agree, unconditionally and irrevocably, to be bound by the terms of the Deed as if I had been the Recipient described in the Deed and I had entered into and executed the Deed as if I had been the Recipient described in that Deed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2005

SIGNED by \_\_\_\_\_ )  
In the presence of: \_\_\_\_\_ )

Signature of witness:  
Occupation of witness:  
Place of residence of witness: