**DIRECTOR’S CONFIDENTIALITY AGREEMENT**

**DATE:**

**PARTIES:**

*[insert corporate entity name of school]*

**(“School”)**

AND

*[insert name of director]*

(“Director”)

**BACKGROUND:**

1. In accordance with the terms of the Constitution of the School, the Director has been appointed or elected as a director of the School.
2. The Director, acknowledging a duty of confidentiality to the School, has agreed to enter into this Agreement.

**AGREEMENT:**

1. **Definitions**

1.1 For the purpose of this Agreement:

**“Board Papers”** means all written communications to the Director as a director of the School during his/her period in office including monthly/quarterly board papers, submissions, minutes, letters, memoranda, board committee and sub-committee papers and copies of other documents referred to in any of the abovementioned documents made available to the Director as a director of the School during the time that the Director is a director of the School.

**“Confidential Information”** means all information treated by the School as confidential regardless of its form and whether the Director becomes aware of it before or after the date of this agreement and includes information comprising or contained in:

(a) the Board Papers/Documents:

(b) any documents referred to in or annexed to the Board Papers/Documents;

(c) any documents that make reference to the Board Papers/Documents, or information contained in the Board Papers/Documents;

(d) any discussions at Board meetings (whether formal or informal)

except information which the Director can establish was at the time of disclosure in the public domain (otherwise than as a result of a breach of confidentiality by the Director or any of his permitted disclosees) or was expressly stated not to be confidential.

“**Documents**” means all documents whether in written, electronic or other form provided to the Director during the time that the Director is a director in the course of the Director’s duties as a director including accounting records, minutes, committee and sub-committee documents and copies of other documents annexed to any of the above documents;

**“Director’s Adviser”** means a person or firm engaged by the Director to give legal, accounting or financial advice to the Director;

**“Permitted Purposes”** means:

(a) for use in relation to proceedings whether civil, criminal or administrative, arising out of or relating to the discharge of duties by the Director as a director of the School; and

(b) such other purpose determined by the directors of the School in their discretion as being in the best interests of the School.

**“Privileged Documents”** means Board Papers/Documents in respect of which joint legal professional privilege between the School and the Director subsists.

1. **Confidential Information**
   1. The Director:
      1. may use Confidential Information only in relation to Permitted Purposes; and
      2. must keep confidential all Confidential Information except:
         1. for disclosure permitted under clause 2.2; and
         2. to the extent (if any) the Director is required by law to disclose any Confidential Information.
   2. The Director may disclose Confidential Information to persons who:
      1. have a need to know in relation to Permitted Purposes (and only to the extent that each has a need to know); and
      2. before disclosure:
         1. in the case of the Director’s Advisers, have given undertakings in writing to the Director to keep confidential all Confidential Information disclosed to them; and
         2. in the case of other persons, obtain the approval in writing of the School to disclose the Confidential Information only to such persons who have given an undertaking in writing to the Director to keep confidential all Confidential Information disclosed to them
   3. The Director must:
      1. ensure that each person to whom he discloses Confidential Information under clause 2.2 complies with the undertaking given by the person;
      2. take all reasonable steps to prevent an unauthorised disclosure of Confidential Information; and
      3. notify the School of, and take all steps to prevent or stop, a suspected or actual breach of an undertaking or a suspected or actual disclosure of Confidential Information in breach of this Agreement
   4. Nothing in this clause 2 will be interpreted as limiting or qualifying the fiduciary and statutory duties owed by the Director to the School or the continuing duties owed by the Director upon ceasing to be a director of the School.
2. **Severance**
   1. The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.
   2. If, despite the application of clause 3.1 a provision of this Agreement is illegal or unenforceable either in its terms or due to the manner of authorisation of its execution or otherwise:
      1. if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and
      2. if any other case, the whole provision is omitted,

and the remainder of this Agreement continues in force.

1. **Notices**
   1. A party giving notice or notifying under this Agreement must do so in writing:
      1. directed to the recipient’s address specified in this clause, as varied by any notice; and
      2. hand delivered or sent by prepaid post or facsimile to that address.

The parties’ addresses and facsimile numbers are:

|  |  |  |
| --- | --- | --- |
|  | **School:** | Address:  e-mail:  Facsimile: |
|  | **Director:** | Address:  e-mail:  Facsimile: |

* 1. A notice given in accordance with clause 4.1is taken to be received:
     1. if hand delivered, on delivery;
     2. if sent by prepaid post, three days after the date of posting;
     3. if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight (8) Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

1. **Interpretation**
   1. In this Agreement, unless the contrary intention appears:
      1. the singular includes the plural and vice versa and words importing a gender include other genders:
      2. a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
      3. a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time.

**EXECUTED AS AN AGREEMENT**

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| --- | --- |
| **SIGNED** for and on behalf of **[**  *school* **]** in accordance with the provisions of section 127 of the *Corporations Act 2001 (C’th)* | )))  )  )  ) |
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| --- | --- |
| **SIGNED SEALED AND DELIVERED** by **[** *director* **]** in the presence of:  ……………………………..  Witness | ))) |