

APPENDIX 5.9

This confidentiality deed

is made on *[insert date]* between the following parties:

1. *[insert name of disclosing party]*
[insert ABN/ACN/ARBN]
of *[insert address]*
(Discloser)
2. *[insert name of receiving party]*
[insert ABN/ACN/ARBN]
of *[insert address]*
(Recipient)

Recitals

- A. The Discloser *[insert capacity in which the Discloser provides the information eg “wishes to offer for sale its business/assets/shares”]*.
- B. The Discloser has agreed to disclose the Confidential Information to the Recipient so that the Recipient can *[insert reason for information being provided eg “assess and consider whether it wishes to make an offer to buy the business/assets/shares”]*.
- C. The Recipient agrees that the Confidential Information is provided to it on the terms of this deed and that it will not use or disclose the Confidential Information except as provided in this deed.

This deed witnesses

that in consideration of, among other things, the mutual prongs contained in this deed, the parties agree:

1 Definitions and interpretation

1.1 Definitions

In this deed:

Confidential Information means *[insert description of information appropriate to the transaction. See the following example:]* **[all information which:**

- (a) **is disclosed to the Recipient or a Specified Person (whether before or after the date of this deed) by or on behalf of the Discloser, or which is otherwise acquired directly or indirectly by the Recipient or a Specified Person from the Discloser or any adviser engaged by the Discloser;**
 - (b) **relates directly or indirectly to the Discloser or its past, existing or future business, operations, administration or strategic plans; and**
 - (c) **is in oral or visual form, or is recorded or stored in a Document,**
- and includes, without limitation, the fact that:**

- (d) **Confidential Information is being made available by the Discloser to the Recipient or the Specified Persons; and**
- (e) **discussions or negotiations have occurred, are occurring or may occur between the Recipient and the Discloser, or their respective advisers or representatives, in relation to [insert details eg “the proposed sale of the Discloser’s business/assets/shares”]];**

Document includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced;

Express Purpose means [insert purpose for which Recipient can use the Confidential Information. See the following example:]; and

Specified Person means an officer, employee or adviser of the Recipient or of a related body corporate who has a specific need to have access to the Confidential Information for the Express Purpose[, and whose name is listed in Schedule 1 or subsequently provided to the Discloser in writing].

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) In this deed, unless the context otherwise requires:
 - (1) words importing the singular include the plural and vice versa;
 - (2) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(b)(2) implies that performance of part of an obligation constitutes performance of the obligation;
 - (3) the term “related body corporate” has the meaning given to that term under the Corporations Law;
 - (4) the term “associate” has the meaning given to that term in section 15 of the Corporations Law;
 - (5) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency; and
 - (6) a reference to a person includes that person’s successors and legal personal representatives.

2 Confidentiality

The Recipient must:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this deed or with the prior written consent of the Discloser;
- (b) not disclose, or cause or permit the disclosure to any person of, any opinion in respect of the Confidential Information or a Document created in accordance with clause 3(c), except as permitted under this deed;

- (c) keep the Confidential Information and any Documents created in accordance with clause 3(c) secure and protected from any use, disclosure or access which is inconsistent with this deed;
- (d) promptly notify the Disclosing Party if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information;
- (e) do anything required by the Discloser to prevent or stop a breach or threatened breach of this deed or an infringement or threatened infringement of the Discloser's rights arising out of this deed by any person, whether by court proceedings or otherwise;
- (f) maintain such procedures as are necessary to ensure compliance with this deed by the Recipient and each Specified Person and, upon request, provide the Discloser details of the procedures adopted;
- (g) not apply for, or directly or indirectly assist any other person to apply for, any patent, design or other industrial or intellectual property right in respect of any invention, process or design that is based on or utilises the Confidential Information; and
- (h) not contest or oppose, or attempt to invalidate, any application for a patent, design or other industrial or intellectual property right of the Discloser that is based on or utilises the Confidential Information.

3 Permitted use and disclosure

The Recipient may:

- (a) only use the Confidential Information for the Express Purpose;
- (b) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Discloser;
- (c) create, or cause or permit to be created, a Document which reproduces, is based on, utilises or relates to Confidential Information only if that creation is solely for the Express Purpose; and
- (d) only disclose Confidential Information (including as contained in a Document created in accordance with clause 3(c) to a Specified Person, and may only make such disclosure solely for the Express Purpose.

4 Return and destruction of information

If requested by the Discloser, the Recipient must immediately return to the Discloser, or destroy or delete as the Discloser directs, all original Documents and copies which:

- (a) are or contain Confidential Information; and
- (b) reproduce, are based on, utilise or relate to Confidential Information.

5 Recipient not to approach

- (a) The Recipient must not, without the prior written consent of the Discloser:

- (1) contact any client or supplier of the Discloser or a related body corporate to discuss *[insert reason for information being provided]*;
 - (2) contact any officer or employee of the Discloser or a related body corporate to discuss:
 - (A) the Confidential Information; or
 - (B) *[insert reason for information being provided]*;
 (other than **those officers or employees nominated by the Discloser and then only**] for the Express Purpose and in accordance with this deed); or
 - (3) directly or indirectly approach any officer or employee of the Discloser or a related body corporate for the purpose of recruiting that person for employment by the Recipient, or by a related body corporate or associate of the Recipient or a related body corporate or associate of the Recipient.
- (b) **[Clause 5(a)(3) does not apply where a person responds to an advertisement published by the Recipient which is targeted to a wide audience of potential applicants.]**
- (c) Clause 5(a) does not apply to the Recipient after *[insert time period eg 12 months after the date of this deed or event eg completion of the sale of shares or assets of the Discloser to the Recipient]*.

6 Operation of this deed

- (a) This deed continues without limitation in time but, subject to clause 6(b), does not apply to any Confidential Information that:
- (1) the Recipient or a Specified Person is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator; **[or]**
 - (2) is in the public domain other than as a result of a breach of this deed;
 - (3) **was at the time of disclosure already in the lawful possession of the Recipient; or**
 - (4) **is received by the Recipient from a person (other than a Discloser or any employee, officer, agent or adviser of a Discloser) legally entitled to possess that information and provide it to the Recipient]**.
- (b) If the Recipient or a Specified Person must make a disclosure referred to in clause 6(a)(1):
- (1) the Recipient must disclose, and must ensure that the Specified Person discloses only the minimum Confidential Information required to comply with the applicable law, order or requirement; and

- (2) before making such disclosure, the Recipient must:
 - (A) give the Discloser reasonable written notice of:
 - (i) the full circumstances of the required disclosure; and
 - (ii) the Confidential Information which it, or the Specified Person, proposes to disclose; and
 - (B) consult with the Discloser as to the form of the disclosure.

7 Acknowledgement

The Recipient acknowledges that:

- (a) the Confidential Information is secret and highly confidential to the Discloser;
- (b) the Confidential Information is the exclusive property of the Discloser and this deed does not convey any proprietary or other interest in the Confidential Information to the Recipient or any Specified Person;
- (c) disclosure of Confidential Information in breach of this deed could cause considerable commercial and financial detriment to the Discloser; and
- (d) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Discloser may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or
Tuld be a breach of this deed.

8 Recipient to ensure others comply

The Recipient must:

- (a) inform each Specified Person of the Recipient's obligations under this deed;
- (b) procure that each Specified Person strictly observes all of the Recipient's obligations under this deed as if those obligations were imposed on that person; and
- (c) generally ensure that no officer, employee, adviser or agent of the Recipient does anything which, if done by the Recipient, would be inconsistent with this deed.

9 Indemnity

The Recipient indemnifies the Discloser in respect of any claim, action, damage, loss, cost, charge, expense, outgoing or payment which the Discloser suffers, incurs or is liable for in respect of:

- (a) any breach of this deed by the Recipient;
- (b) any failure by the Recipient to ensure compliance by any Specified Person with the terms of this deed; or

- (c) any infringement of the Discloser's rights in respect of the Confidential Information by the Recipient or a Specified Person.

10 Disclaimer

- (a) Neither the Discloser, nor any of its related bodies corporate nor any of their respective officers, employees or advisers:
- (1) makes any representation or warranty:
 - (A) as to the accuracy or completeness of the Confidential Information;
 - (B) that the Confidential Information has been audited, verified or prepared with reasonable care; or
 - (C) that the Confidential Information is the totality of the information that a prospective *[insert appropriate description eg purchaser may require or expect to find in order to evaluate the Discloser's assets or shares]*;
 - (2) accepts any responsibility for any interpretation, opinion or conclusion that the Recipient or a Specified Person may form as a result of examining the Confidential Information;
 - (3) accepts any responsibility to inform the Recipient of any matter arising or coming to the Discloser's notice which may affect or qualify any Confidential Information which the Discloser provides to the Recipient; and
 - (4) is liable, and the Recipient covenants not to make any claim or commence or pursue any proceedings against any of them, for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits, or special loss or damage) arising from:
 - (A) an error, inaccuracy, incompleteness or similar defect in the Confidential Information; or
 - (B) any default, negligence or lack of care in relation to the preparation or provision of the Confidential Information.
- (b) The Recipient acknowledges that it is making an independent assessment of the Confidential Information and that it will:
- (1) carry out, and rely solely on, its own investigation and analyses in relation to the Confidential Information; and
 - (2) verify all information on which it intends to rely to its own satisfaction.
- (c) Any reliance by the Recipient, or any Specified Person, on any Confidential Information, or any use of any Confidential Information, is solely at its own risk.

11 Governing law and jurisdiction

- (a) This deed is governed by the laws of Singapore.

- (b) The Recipient irrevocably submits to the **exclusive/non-exclusive** jurisdiction of the courts of Singapore.

12 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this deed does not result in a waiver of that right, power, authority, discretion or remedy.

13 Variation

Any variation of this deed must be in writing and signed by the parties.

14 Entire agreement

This deed is the entire agreement between the parties in respect of its subject matter.

[Schedule 1 - Specified Persons]

Clause 1.1 - Definitions

1 Officers and employees

2 Advisers]

Executed as a deed: