

MUTUAL NON-DISCLOSURE AGREEMENT

Mutual Non-Disclosure Agreement dated _____ day of _____ 20_____.

PARTIES:

1. Night 'n Day Foodstores Limited
- 2.

BACKGROUND:

- A. The parties wish to engage in discussions or negotiations concerning various business matters and/or for the possibility of establishing a business relationship.
- B. In order to consider such a relationship it will be necessary for the parties to disclose certain information to each other which is confidential information belonging to the disclosing party.
- C. The parties desire to protect their respective confidential information.
- D. The consideration for this agreement is the mutual promises and conditions expressed herein.

AGREEMENT:

1. Definitions

1.1 In this agreement, unless the context otherwise requires:

"Confidential information" means all or any oral or written information of any kind disclosed by either party to the other and designated as confidential information or received by the receiving party knowing, or in circumstances where the receiving party ought to have known, that the information so received was confidential information of the disclosing party, and including but not limited to:

(a) information, data and know-how of a business, planning or marketing nature;

(b) documents, reports, memoranda, notes, files or analyses prepared by or on behalf of the disclosing party, whether in paper or electronic form or otherwise;

(c) verbal and written information relating to the confidential information which is supplied by or on behalf of the disclosing party to or for the benefit of the receiving party, to any firm, company or agent acting on behalf of the receiving party;

d) details of negotiations undertaken or conducted by either party with the other party or with any other person with regard to any matter which is or has been the subject of negotiations between the parties;

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(e) all other information at any time disclosed by the disclosing party to the receiving party which can reasonably be expected to be of a confidential or commercially sensitive nature;

BUT shall not include information which:

(g) is publicly available prior to the date of this agreement;

(h) becomes publicly available after the date of this agreement through no wrongful act of the receiving party;

(i) is furnished to others by the disclosing party otherwise than on a strictly confidential basis without similar confidentiality restrictions on the right of use or disclosure;

(j) is already known by the receiving party without any confidentiality restrictions at the time of receipt of such information from the disclosing party or becomes rightfully known to the receiving party without confidentiality restrictions from a source other than the disclosing party;

(k) is specifically excluded from the expression "confidential information" by agreement in writing between the parties.

"Disclosing party" means the party disclosing the confidential information.

"Receiving party" means the party receiving the confidential information.

2. Restricted Use of Confidential Information

2.1 The receiving party shall protect all of the disclosing party's confidential information and except with the disclosing party's prior written consent or as otherwise specifically provided herein, shall not disclose, copy or distribute such confidential information to any other individual, company or entity.

2.2 Except in pursuance of any separate written agreement between the parties the receiving party shall not make use of the disclosing party's confidential information for its own benefit, or for the benefit of any other individual, company or entity, or for any purpose other than that for which it was provided by the disclosing party.

2.3 Each party shall maintain the other party's confidential information with at least the same degree of care each party uses to maintain its own confidential information. Each party represents that such degree of care provides adequate protection for the maintenance of such party's confidential information by the other party.

3. Disclosure to Representatives

3.1 The receiving party shall not disclose all or any part of the disclosing party's confidential information to any affiliates, directors, officers, employees, agents, professional advisors or financiers (collectively, "representatives") of the receiving party

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except on a need to know basis. The receiving party agrees to inform such of its representatives who receive the disclosing party's confidential information of the confidential nature thereof and of such representative's obligations with respect to the maintenance of the confidentiality of such in conformance with the terms of this agreement.

3.2 The receiving party shall immediately advise the disclosing party in writing of any misappropriation, wrongful disclosure or misuse by any person of the disclosing party's confidential information of which the receiving party is aware.

4. Disclosure by Law

4.1 If the receiving party becomes obliged by law to disclose any confidential information, the receiving party shall provide to the disclosing party prompt written notice of such requirement. Further, the receiving party shall only provide that portion of the confidential information which it is advised by its legal counsel it is legally required to disclose.

5. Return of Information

5.1 The receiving party acknowledges that the confidential information supplied by the disclosing party is and shall remain the absolute property of the disclosing party. Any documents or materials that are furnished by or on behalf of the disclosing party, and all other confidential information in whatever form, including all copies of such materials, shall be promptly returned by the receiving party to the disclosing party upon written request by the disclosing party for any reason.

5.2 The return of the confidential information shall be accompanied by a certificate signed by the receiving party or an authorised officer of the receiving party certifying that after due and proper enquiry and to the best of the knowledge and belief of the signatory:

(a) the confidential information returned comprises all the confidential information in the possession or control of the receiving party;

(b) the receiving party has not retained any copy or record in any form of the confidential information; and

(c) the receiving party has used the receiving party's best endeavours to procure delivery to the other party of all the confidential information in the possession or control of any third party who received the same from or through the receiving party or otherwise pursuant to this agreement.

6. Further Assurance

6.1 Both parties shall take such reasonable steps and actions as may reasonably be requested to ensure that the agreement and undertakings set out herein are fully and properly complied with and performed at all times. It is respectively acknowledged by the parties that the obligations contained in this agreement shall continue to apply without limitation of time.

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7. Governing Law

7.1 The construction, interpretation and performance of this agreement, as well as the legal relations of the parties arising hereunder, will be governed by the laws of New Zealand, without regard to where any alleged breach may have taken place and the parties submit to the exclusive jurisdiction of New Zealand courts in respect of any dispute or proceedings arising out of this agreement. If requested by a party, the other party shall appoint an agent for the service of process in New Zealand.

SIGNED for and on behalf of:

Name of Party: Night 'n Day Foodstores Limited

Authorised signature:

Full name of signatory:

SIGNED for and on behalf of:

Name of Party:

Authorised signature:

Full name of signatory:

SIGNED for and on behalf of:

Name of Party:

Authorised signature:

Full name of signatory:

Initial: