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Xpresso Delight

Confidentiality Deed



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This Deed is made the _____ day of _____ 20 _____

Parties

XPRESSO DELIGHT PTY LTD (ACN 108 122 783)

of 8 Adams Street, Breakfast Point New South Wales ("the Franchisor")

and

The Company and/or Person Name specified in Schedule 1 hereof ("the Potential Franchisee")

Background

- A. Xpresso Delight carries on a franchise business which includes a unique system comprised of intellectual property rights, in particular the trademark "Xpresso Delight"; and the processes, knowhow, products and manuals detailing the business operation.
- B. Xpresso Delight's system requires its franchisees to comply with the standard operating methods and policies of Xpresso Delight for the purpose of standardizing the operation of franchise businesses throughout the network and maximizing returns for each Franchisee.
- C. In order to enable the Potential Franchisee to assess the Xpresso Delight Franchise that they propose to acquire, the Franchisor has agreed to provide to the Potential Franchisee confidential information in relation to Xpresso Delight's operation.

Operative terms:

1. Definitions

"Approved Purpose" means the purpose of using the Confidential Information for assessing the merits of acquiring an Xpresso Delight franchise.

"Confidential Information" means information disclosed by the Franchisor to the Potential Franchisee that:

- a) is by its nature confidential;
- b) is designated by the Franchisor as confidential;
- c) the Potential Franchisee to whom it is disclosed know or ought to know that it is confidential;

and includes:

- d) information comprised in or relating to any intellectual property rights of the Franchisor including information relating to any trade secrets or know how of the Franchisor;
- e) information relating to the financial position, training methods, clients, suppliers, turnover and any other information relating to the assets and liabilities of the Franchisor, and its marketing plans,



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projections, arrangements or agreements with third parties, customer information, accounting records and all other information relating to the Franchisor's business generally;

PROVIDED THAT the information is not:

- f) information in the public domain at the time that it is provided to or obtained by the Potential Franchisees; or
- g) Information which after it is provided to or obtained by the potential franchisee, becomes a part of the public domain other than through a breach by the potential franchisee of this Deed.

2. Use of Confidential Information

- 2.1 The Potential Franchisee covenants and undertakes to maintain the confidence of all Confidential Information and to use their best endeavors to prevent disclosure of the Confidential Information to any other person.
- 2.2 The potential Franchisee is authorised to use the confidential information only for the purpose of assessing a purchase of an Xpresso Delight franchise; and for no other purpose.
- 2.3 The Potential Franchisee agrees to:
 - (a) Not copy retain or remodel any of the Confidential Information for their own purposes.
 - (b) Return any part of the Confidential Information immediately upon request by the Franchisor.
 - (c) Establish and maintain effective security measures to safe guard the Confidential Information from unauthorized access or use.
 - (d) Keep such Confidential Information under their control.
 - (e) Immediately notify the Franchisor of any suspected to actual unauthorised use, copying or disclosure of the Confidential Information and
 - (f) Provide such assistance as reasonably requested by the Franchisor in relation to any proceedings that the Franchisor may take against any person for unauthorised use, copying or disclosure of its Confidential Information.
- 2.4 The Potential Franchisee may disclose Confidential Information only to those professional advisors who, having regard to the Approved Purpose:
 - (a) have a need to know (and only to the extent that each has a need to know) and
 - (b) have been directed and have agreed to keep confidential and secret such Confidential Information.
- 2.5 The Potential Franchisee must ensure that any of their professional advisors to whom they disclose Confidential Information for the Approved Purpose must also comply with the undertaking of confidence contained in this Deed as if they were given by each such professional advisor. The Potential Franchisee acknowledges that it is fully responsible for breaches of confidence by any of its professional advisors.



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3. No licence and No Warranty

- 3.1 Nothing contained in this Deed shall be construed as granting to the Potential Franchisee and a licence or right under any of the right trade secret or other intellectual property rights other than a licence or right to use the Confidential Information for the Approved Purpose.
- 3.2 The Potential Franchisee acknowledges and accepts that the Franchisor provides no warranty as to the accuracy of its Confidential Information.

4. Continuing Obligations

- 4.1 The obligations of the Potential Franchisee under this Deed will survive the expiration of the term of this Deed and will continue for so long as the Confidential Information maintains its confidential nature.

5. Damages and Injunctive Relief

- 5.1 The Potential franchisee acknowledges that:
 - (a) the value of the Confidential Information to the Franchisor is such that an award of damages or an account of profits may not adequately compensate the Franchisor if this Deed is breached by the Potential Franchisee; and
 - (b) without in any way limiting its right to seek damages or any other form of relief if this Deed is breached, the Franchisor may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the Potential Franchisee or any of their professional advisors from any breach or threatened breach of this Deed.

6. Assignment

- 6.1 The obligations under this Deed are personal to the Potential Franchisee and may not be assigned by either of them under any circumstances except with the prior written consent of the Franchisor in its absolute discretion.
- 6.2 Nothing in this Deed prevents the Franchisor from assigning its rights and obligations as Franchisor (including those rights and obligations under this Deed) without recourse to the potential Franchisee.

7. Governing Law

- 7.1 This Deed shall be governed by and construed in accordance with the laws from time to time enforce in the state of New South Wales.

8. Waiver

- 8.1 The failure by the Franchisor to require the performance of any term or condition of this Confidentiality Deed will not prevent subsequent enforcement of such term or condition, nor be deemed a waiver of any subsequent breach.



9. Notices

- 9.1 All notices, requests, demands or other communications pursuant to this Deed must be in writing and must be sent by registered mail, pre-paid post or facsimile to the addresses of the parties specified in Schedule 1 hereto. Notices will be deemed to be served:
- (a) by ordinary prepaid post, three days after posting.
 - (b) by facsimile, the next business day after transmission and the production of a successful transmission report.

10. No Variation

- 10.1 This Deed cannot be amended except for in writing signed by all parties.
- 10.2 This Deed is the entire Deed between the parties relating to the provision of Confidential Information and supersedes any prior understanding arrangement or Deed between the parties as to that subject matter.



Schedule 1

Potential Franchisee (Company)

Company Name: _____ Pty. Limited

Company A.C.N: _____

Address: _____

Contact Phone Number: _____

Contact Fax Number: _____

Potential Franchisee (Individual)

Name: _____

Address: _____

Contact Phone Number: _____

Contact Fax Number: _____



Executed as a Deed

Executed by the Franchisor: Xpresso Delight Pty. Limited ACN: 108 122 783
in accordance with section 127 of the Corporations Act by it's authorised officers:

.....
Director's signature

.....
Director/Secretary's signature

.....
Stephen Phillip Spitz

.....
Paul Adrian Crabtree

Executed by the Potential Franchisee:

.....
ACN

in accordance with section 127 of the Corporations Act by it's authorised officers:

.....
Director's signature

.....
Director/Secretary's signature

.....
Sole director and sole company secretary's signature

.....
Full name (print)

.....
Full name (print)

Signed, Sealed and Delivered by the Potential Franchisee:

.....
Full name (print)

.....
Signature

in the presence of:-

.....
Witness' signature

.....
Witness' full name (print)