

PHILIP J BAKER PTY LTD (ABN 52060116109)  
trading as “Medical Dental Business Brokers” as  
agent for Vendors

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## **CONFIDENTIALITY AGREEMENT**

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agreement with our Vendors/Clients , ,requires us to obtain a Confidentiality & Non - Disclosure Agreement In return, information which you disclose to us will be kept private and confidential by Medical Dental Business Brokers unless and until such time as an offer is made by you on any business represented by Medical Dental Business Brokers.

You as potential purchaser acknowledge that Confidential Information (as defined herein) provided by Medical Dental Business Brokers in respect of any businesses for sale is extremely sensitive and Confidential, and its disclosure to others would be damaging to the businesses and to the Broker’s relationship with the Vendor/Seller.

In consideration for information on businesses offered for sale by Medical Dental Business Brokers,

you understand accept and agree on following terms and conditions ;

- A. The Vendor owns the Business and is proposing to sell the Business.
  - B. The Vendor has engaged and authorized PHILIP J BAKER PTY LTD (ABN 52060116109) trading as “Medical Dental Business Brokers , (the agent )to market and sell the Business.
  - C. The Potential Purchaser has expressed an interest in purchasing the Business from the Vendor, via the Agent.
  - D. The Potential Purchaser has requested the Confidential Information from the Agent in relation to the Business for the Approved Purpose.
  - E. The Vendor has authorized the Agent to enter into this Agreement on behalf of the Vendor and provide the Potential Purchaser with the Confidential Information for the Approved Purpose.
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F. The Agent has agreed to provide the Potential Purchaser with the Confidential Information for the Approved Purpose on behalf of the Vendor on the terms of this Agreement.

## **OPERATIVE PROVISIONS**

### **1. Definitions and Interpretation**

#### **1. Definitions**

**‘Agent’** means the party named in this Agreement in the capacity of agent only, on behalf of the Vendor.

**‘Approved Purpose’** means evaluation by the Potential Purchaser of the Business for the purpose of deciding whether to enter into an agreement to purchase the Business.

**‘Business’** means the business and all of the assets

**‘Claims’** means any claim, demand, suit, action, cause of action, proceeding or judgment of any kind however caused, and whether arising under contract, tort, negligence, equity, statute or otherwise.

**‘Commencement Date’** means the date on which the Potential Purchaser first received or was granted access to Confidential Information.

**‘Confidential Information’** means all information, irrespective of its form, owned by the Vendor which

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is provided, or made available, by the Agent or its employees, representatives, officers, contractors, agents or advisers on behalf of the Vendor, or by the Vendor or its employees, representatives, officers, agents or advisers, to the Potential Purchaser, including all:

- (i) Trade secrets, knowledge, ideas and concepts not reduced to material form;
  - (ii) Technical information and technical drawings;
  - (iii) Financial information about the Vendor and the Business;
  - (iv) Commercial information about the Vendor, the Business or persons with whom the Vendor or the Business deals, processes, systems and affairs including details of agreements with employees, contractors, customers and others and all information contained therein;
  - (v) Product and market information;
  - (vi) Formulas, specifications, instructions, know-how, techniques, methods, processes, inventions, improvements, algorithms, computer programs, drawings, designs, plans, models,
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prototypes, samples, devices,  
demonstrations, scientific and technical  
information;

- (vii) Documents, advertising and marketing concepts, designs, plans, drawings, sketches, paintings, murals, images, videos, customer information and lists, databases, websites, social media accounts and all information contained therein;
  - (viii) Information imparted in discussions or obtained through inspections or by any other method from the Agent or its employees, representatives, officers, contractors, agents or advisers, or from the Vendor's employees, representatives, officers, agents or advisers, on behalf of the Vendor;
  - (ix) Any commercially valuable information of the Vendor or the Business, of whatever description, which the Agent or its employees, representatives, officers, contractors, agents or advisers, or the Vendor's employees, representatives, officers, agents or advisers, on behalf of the Vendor informs the Potential
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Purchaser is confidential or a trade secret, or that a reasonable person would believe was of a confidential nature that is generated by the Vendor or the Business;

- (x) Any information marked 'confidential'; and
- (xi) Any information disclosed or provided in connection with the Approved Purpose;

But excluding:

- (xii) Information available to the public, other than through disclosure by the Potential Purchaser or by a person to whom the Potential Purchaser disclosed the Confidential Information; and
- (xiii) Information which the Potential Purchaser can prove it lawfully possessed before obtaining it in connection with this Agreement.

**'Potential Purchaser'** means the party named in this Agreement.

**'Regulatory Body'** means any Federal or State Minister of the Crown, government or quasi-government agency or statutory authority whose

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approval or consent is necessary for the Approved Purpose.

**‘Vendor’** means the owner of the Business, whether disclosed, partially disclosed, unnamed or undisclosed by the Agent.

## 2. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
  - (b) Words denoting the singular includes the plural and vice versa;
  - (c) References to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
  - (d) References to any gender includes all genders;
  - (e) References to documents or agreements also mean those documents or agreements as changed, novated or replaced;
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- (f) The words 'include', 'includes' or 'including' are not words of limitation;
  - (g) Grammatical forms of defined words or phrases have corresponding meanings;
  - (h) References to a clause or schedule is to a clause or schedule of this Agreement;
  - (i) Parties must perform their obligations on the dates and times fixed by reference to the capital city of the Australian State or Territory in which the Agent's registered office is located;
  - (j) Reference to a 'day' or a 'month' is a reference to a calendar day or a calendar month, as applicable;
  - (k) Reference to a 'business day' is a reference to a day on which banks, as defined in the *Banking Act 1959* (Cth) are open for general banking in the Australian State or Territory in which the Agent's registered office is located, excluding Saturdays, Sundays, public holidays or bank holidays;
  - (l) If the day on or by which anything is to be done is not a business day, then it must be done on the next business day;
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- (m) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (n) Obligations under this Agreement affecting more than one party bind them jointly and each of them severally.

### 3. Headings

In this Agreement, headings are for convenience of reference only and do not affect interpretation.

## **2. Agent Enters this Agreement on Behalf of the Vendor**

- (a) The Agent has authority to enter and enters into this Confidentiality Agreement with the Potential Purchaser as agent only, on behalf of the Vendor.
  - (b) The Potential Purchaser acknowledges and agrees that the Agent enters into this Agreement as agent only, on behalf of the Vendor and not its own capacity.
  - (c) The parties acknowledge and agree that the Vendor has authorised the Agent to provide the Potential Purchaser with the Confidential Information for the Approved Purpose subject to the Agent entering into this
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Agreement with the Potential Purchaser on behalf of the Vendor.

### **3. Consideration**

In consideration for receiving the Confidential Information, the Potential Purchaser agrees to be bound by the terms of this Agreement.

### **4. Term**

The obligations under this Agreement commence at the Commencement Date and continue until the Confidential Information is no longer of a confidential nature, as determined by the Agent or the Vendor.

### **5. Value and Ownership**

The Potential Purchaser acknowledges and agrees that the Confidential Information, including copies, has a significant commercial value and that the Vendor is the absolute legal and beneficial owner of the Confidential Information.

### **6. General Obligation**

The Potential Purchaser must take all steps necessary to safeguard the confidentiality of the Confidential Information.

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## **7. Specific Obligations Regarding Confidentiality**

### **1. Maintaining Confidentiality**

The Potential Purchaser must:

- (a) Maintain the confidentiality and security of the Confidential Information, including copies.
- (b) Keep all Confidential Information, including copies, in a secure manner.

### **2. Obligations Regarding Confidential Information**

- (a) The Potential Purchaser may use the Confidential Information only:
    - (i) For the Approved Purpose; and
    - (ii) To the extent and for a purpose to which the Agent or the Vendor has consented in writing prior to such use.
  - (b) The Potential Purchaser must not profit from any use of the Confidential Information, except in relation to the Approved Purpose.
  - (c) The Potential Purchaser may make any copies of the Confidential Information that are strictly necessary for the Approved Purpose, but only if:
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(ii) The Agent or the Vendor has consented in writing to the making of these copies; and

(iii) The copies are marked 'confidential'.

### 3. Disclosure of Confidential Information

In consideration for Medical Dental Business Brokers providing sensitive and confidential information relating to the mentioned properties/businesses, the Potential Purchaser hereby undertakes:

1. That everything which Medical dental Business Brokers and/or the owner of the Business discloses, and which is properly capable of being regarded as proprietary information of Medical dental Business Brokers and /or the owner of the Business regardless of the form of disclosure, will be treated in confidence by the Potential Purchaser, its partners , agents and/or it's employees and other associated or proprietary companies, and will not be used by the Recipient it's partners and/or it's employees for any purpose other than:

(i) Conducting an evaluation and determining the Potential Purchasers interest in entering into an agreement exclusively through Palladium

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Business Broking to purchase the whole or portion of the Business and  
(ii) Such purposes as may be contained in any formal agreement that may be entered into between the Recipient and the owner of the Business That disclosures of all such information and details shall be limited to only those professional advisors, solicitors accountants financiers partners or employees of the Potential Purchaser which are reasonably required to be in possession of said information and details,

(a) The Potential Purchaser acknowledges and agrees to take, at its cost, whatever steps the Agent or the Vendor may consider necessary to enforce the duty of confidence against any person to whom the Potential Purchaser disclosed Confidential Information and who is in breach of that duty.

(b) The Potential Purchaser acknowledges and agrees to provide the Agent or the Vendor, on request, with a list of persons to whom the Confidential Information has been disclosed.

#### 4.Communications with Regulatory Body.

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The Potential Purchaser may communicate with a Regulatory Body about the Approved Purpose or the Confidential Information only if the Agent or the Vendor has consented in writing to such communications.

## 5 .Return of Confidential Information

On demand from the Agent or the Vendor, the Potential Purchaser must immediately:

- (a) At the Potential Purchaser's cost, deliver to the Agent or the Vendor all Confidential Information, including any copies of the Confidential Information, which is in the Potential Purchaser's possession, custody or control, and cause any other person to whom the Potential Purchaser has disclosed Confidential Information to do likewise.
  - (b) Delete all the Confidential Information held electronically in any medium which is in the Potential Purchaser's possession, custody or control and cause any other person to whom the Potential Purchaser has disclosed Confidential Information to do likewise.
  - (c) Securely destroy all documents, including analyses, compilations, reports and
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memoranda, which were prepared by or for the Potential Purchaser and which were based wholly or partly on the Confidential Information, and delete documents held electronically in any medium in the Potential Purchaser's possession, custody or control and cause any other person to whom the Potential Purchaser has disclosed Confidential Information to do likewise.

6. Unauthorised Use of Confidential Information

(a) The Potential Purchaser must immediately report to the Agent or the Vendor any known or suspected unauthorised use, disclosure, copy or printing of the Confidential Information.

(b) The Potential Purchaser must, at its cost:

- (i) Use best efforts to obtain the return or organise the destruction or deletion of any unauthorised copy or print-out of the Confidential Information; and
  - (ii) Provide the Agent or the Vendor with all assistance it requires to prevent any further disclosure of the Confidential Information.
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## **8. Breach of Confidentiality**

### **1. Indemnity by the Potential Purchaser**

The Potential Purchaser acknowledges and agrees to indemnify and keep indemnified the Agent and the Vendor against all Claims, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges, liabilities and expenses in respect of:

- (a) Any breach or alleged breach of this Agreement by the Potential Purchaser.
- (b) Any act or omission by a person to whom the Potential Purchaser disclosed the Confidential Information, which if done or omitted by the Potential Purchaser, would be a breach of this Agreement by the Potential Purchaser.

### **2. Injunctive Relief**

On breach of this Agreement, the Agent and the Vendor are entitled to injunctive relief in addition to any other remedies available at law or in equity ,including but not limited to damages.

## **9. No Warranties**

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- (a) The Potential Purchaser acknowledges and agrees that the Agent and the Vendor make no representation as to the accuracy, currency or completeness of the Confidential Information.
- (b) The Potential Purchaser will make its own independent enquiries and and conduct its own due diligence in relation to the Confidential Information and will seek professional advice in relation to the Approved Purpose prior to entering into any binding legal arrangements to give effect to the transactions contemplated by the Approved Purpose.

#### **10. Limitation of Liability and Exclusion of Liability**

- (a) The Agent and the Vendor are not liable to the Potential Purchaser for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, except to the extent that such liability may not lawfully be limited or excluded. For the avoidance of doubt, this extends to any employees, representatives, officers, contractors, agents, advisers,
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licensees or permitted assigns of the Agent and/or the Vendor.

- (b) Notwithstanding the generality of clause 10(a), the Agent and the Vendor expressly exclude liability for consequential loss or damage which may arise in respect of the Confidential Information or loss of, or Claim for, revenue, profits, actual or potential business opportunities or anticipated savings or profit, whether direct, indirect, economic, consequential howsoever arising by way of act or omission in contract, tort, negligence, equity, statute or otherwise. The Potential Purchaser agrees to release and indemnify and keep indemnified the Agent and the Vendor to that extent.

## **11. Survival and Merger**

- (a) This Agreement survives:
    - (i) The completion of the Approved Purpose; and
    - (ii) The termination, rescission or completion of any agreement in relation to the Approved Purpose, except as otherwise provided by such an agreement.
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- (b) No term, condition or obligation under this Agreement merges on completion of any transaction contemplated by this Agreement.

## **12. Assignment**

- (a) The Potential Purchaser must not assign all or any of its rights or obligations under this Agreement without the prior written consent of the Agent or the Vendor.
- (b) The Agent and the Vendor may assign any of their rights or obligations under this Agreement without the consent of the Potential Purchaser.

## **13. Entire Agreement**

Each party has relied entirely on its own enquiries in entering into this Agreement. This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement, and supersedes any prior oral and written understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this Agreement.

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#### **14. Amendment or Variation**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by all of the parties.

#### **15. Dispute Resolution**

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

##### **(a) Notification**

The complainant must inform the respondent in writing of the following:

- (i) The nature of the dispute;
- (ii) The outcome the complainant desires,  
and
- (iii) The action the complainant believes will settle the dispute.

##### **(b) Endeavour to Resolve Dispute**

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On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

(c) Mediation

Any unresolved dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation under the The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

(d).Survival of this Clause

This clause survives termination of this Agreement.

## **16. Waiver**

Any waiver by any party to a breach of this Agreement will not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

## **17. Severability**

If any provision of this Agreement is unenforceable, illegal, invalid, void or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so that the enforceability and validity of the

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remaining provisions of this Agreement are not affected.

## **18. Notices**

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally.
- (b) Posted to their address when it will be treated as having been received on the second business day after posting.
- (c) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

## **19.**

The Potential purchaser agrees to enter into this agreement by way of electronic execution, or by execution of a hardcopy agreement and return such document to Palladium Business Broking as Palladium Business Broking may reasonably require from time to time.

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## **20. Governing Law**

This Agreement and any obligation arising out of or in relation to this Agreement is governed by the laws of the Australian State or Territory in which the Agent's registered office is located, and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory

### **21.**

In this Agreement, the singular shall also include the plural. In particular, a reference to "Business" shall also include "Businesses", and the Recipient shall be bound in relation to any and all businesses introduced to them by medical dental business brokers

### **22**

If the Potential Purchaser is a corporation, trust, joint venture or partnership, the signatory and all the trustees, directors and shareholders of the Potential Purchaser shall be bound by this non-disclosure undertaking and will be personally liable to the Vendor and Medical Dental Business Brokers for its breach.

I/We acknowledge that I /We have read and understood the above conditions

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I/We agree and confirm and accept the above Terms & Conditions by completing this form.

I/We agree by typing my name here and submitting the below form that I agree to terms and conditions and accept they are legally binding

prospective purchaser

full name.

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address\_\_\_\_\_

suburb\_\_\_\_\_

mobile\_\_\_\_\_

email\_\_\_\_\_

send

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