

Dated:

THE WHEEL MAGICIAN LIMITED

[ ] and [ ]

CONFIDENTIALITY AGREEMENT



**AGREEMENT** dated:

## **PARTIES**

1. **THE WHEEL MAGICIAN LIMITED** at Wellington (the “Company”)
2. [ ] and [ ] [both] of [ ] (the “Recipient”)

## **BACKGROUND**

- A. The Company has the sole and exclusive licence to grant to franchisees the rights to set up, establish and operate a franchise business in a defined territory using a unique business system for a mobile alloy wheel repair service (the “The Wheel Magician System”).
- B. The Recipient has requested that the Company disclose and the Company has agreed to disclose to the Recipient the Confidential Information for the purpose of assessing and reviewing the opportunity to purchase from the Company the rights to set up, establish and operate a franchise business in a defined territory using the The Wheel Magician System (the “Approved Purpose”).
- C. As a condition of disclosure of the Confidential Information to the Recipient, the Company requires the Recipient to enter into this Agreement.

## **OPERATIVE PROVISIONS**

In consideration of the Company agreeing to disclose the Confidential Information to the Recipient for the Approved Purpose, the Recipient hereby agrees as follows:

### **1. INTERPRETATION**

1.1 In this Agreement, unless the context requires otherwise:

1.1.1 “Confidential Information” includes:

- (a) all information which may be supplied to or for the benefit of the Recipient by the Company or on behalf of the Company or any of its related companies, or any of their employees, contractors or agents;
- (b) all information that the Recipient becomes aware of from its dealings with the Company or any of its related companies; and
- (c) the fact that the Recipient is considering purchasing from the Company the rights to set up, establish and operate a franchise business in a defined territory using the The Wheel Magician System, and/or the Company is considering granting to the Recipient the rights to set up, establish and operate a franchise business in a defined territory using the The Wheel Magician System;

but does not include any information which:

- (d) is independently acquired or developed by the Recipient without the benefit or use of any of the Confidential Information;
- (e) was at the time of disclosure or subsequently became, through no act or omission of the Recipient, known to the general public through publication or otherwise; or
- (f) was, subsequent to disclosure by the Company or on behalf of the Company or any of its related companies, or any of their employees, contractors or agents, lawfully and independently received by the Recipient from a third party not subject to any restriction on disclosure, provided that such information was not directly or indirectly derived by such third party from the Company or on behalf of the Company or any of its related companies, or any of their employees, contractors or agents.

1.1.2 “related company” (and “related companies”) has the meaning given to that term in section 2(3) of the Companies Act 1993, but also includes for the purposes of this Agreement the legal and/or beneficial owner(s) of all of the intellectual property relating or pertaining to the The Wheel Magician System.

1.2 For the purposes of the Contracts (Privacy) Act 1982, the parties acknowledge that this Agreement is to enure for the benefit of, and be enforceable by, each of the related companies of the Company and any assignees of the Company’s proprietary interest in and/or other rights to the Confidential Information.

## **2. CONFIDENTIAL INFORMATION PROPRIETARY**

2.1 The Recipient acknowledges that all Confidential Information is the property of the Company and/or a related company or related companies of the Company, and the Recipient shall not at any time assert any rights of any nature in respect of or contest ownership of the Confidential Information or the Company’s rights to the Confidential Information.

## **3. TREATMENT OF CONFIDENTIAL INFORMATION**

3.1 The Recipient shall receive the Confidential Information in good faith, treat the Confidential Information as strictly confidential and:

3.1.1 subject to clause 3.1.2, not directly or indirectly disclose or permit to be disclosed any Confidential Information to any person, firm, company or other entity;

3.1.2 be entitled to disclose the Confidential Information to such of its officers, employees and advisors, and to such extent, as is absolutely necessary to enable such persons to evaluate the Approved Purpose, provided that prior to and as a condition of the Recipient making such disclosure, the Recipient shall, if so required by the Company, cause each such person to give a written confidentiality undertaking to the Company in such form as the Company may require;

3.1.3 take all measures necessary to prevent any unauthorised use or disclosure of the Confidential Information by the persons referred to in clause 3.1.2;

3.1.4 without limiting the generality of the obligation in clause 3.1.3, take such precautions to prevent disclosure or unauthorised use of the Confidential Information as it employs to protect its own confidential information; and

3.1.5 not use the Confidential Information or any knowledge or information which it may acquire as a result of receiving the Confidential Information in any way which is in furtherance of competition with the Company or any of the Company’s related companies or which is otherwise directly or indirectly detrimental to the interests of the Company or any of the Company’s related companies.

3.2 The Recipient shall not make or attempt to make use of any of the Confidential Information except for the Approved Purpose.

3.3 The Recipient shall not make any copies or records of any of the Confidential Information except as expressly permitted in writing by the Company and shall, when demanded by the Company, return to the Company all material supplied by or belonging to the Company or containing Confidential Information (including all copies thereof).

## **4. INDEMNITY AND LIABILITY**

4.1 The Recipient shall indemnify and keep indemnified the Company and all of its related companies from and against all actions, claims, costs, demands, expenses, liabilities, losses, payments and proceedings whatsoever incurred or suffered by the Company or any of its related companies from or by virtue of:

4.1.1 the unauthorised disclosure or use of the Confidential Information by the Recipient or by any of the Recipient’s related companies or any of their respective officers, employees, agents or advisors; or

4.1.2 the Recipient otherwise being in breach of any of the provisions of this Agreement.

4.2 All sums payable by the Recipient under clause 4.1 shall be payable upon demand.

4.3 Where the Recipient comprises more than one person, each such person is jointly and severally responsible and liable for each agreement or obligation on the part of the Recipient under this Agreement.

## 5. DURATION

5.1 This Agreement shall continue in full force and effect without limitation in point of time whether or not the Approved Purpose is fulfilled.

## EXECUTED AS AN AGREEMENT

**SIGNED** for and on behalf of **THE WHEEL  
MAGICIAN LIMITED** by its 2 directors:

\_\_\_\_\_  
Lisa Thomas

\_\_\_\_\_  
Alan Thomas

**SIGNED** by [ ] as a Recipient  
in the presence of:

\_\_\_\_\_  
[ ]

Witness signature:

Witness name:

Occupation:

Address:

**SIGNED** by [ ] as a Recipient  
in the presence of:

\_\_\_\_\_  
[ ]

Witness signature:

Witness name:

Occupation:

Address: