

# **NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**



## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

**Dated:**

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**Parties:**

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1. **COAST2COAST (2007) LIMITED** trading as Room2Rent (“**Room2Rent**”)
2. (“**the Recipient**”).

**Background:**

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- A. Room2Rent has developed a system for the construction and rental of portable cabins (“**the System**”).
- B. Room2Rent has agreed to disclose Confidential Information about the System to the Recipient for the purposes of the Recipient undertaking an evaluation as to whether it will become a franchisee of Room2Rent (“**the Due Diligence**”).
- C. Room2Rent considers the Confidential Information to be valuable and, in consideration of receiving the Confidential Information for the Due Diligence, the Recipient has agreed to enter into this Agreement.

**This Agreement Records:**

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### 1. Definitions and Interpretation

- 1.1 References in the singular shall, where necessary, be taken to include the plural and the plural of the singular.
- 1.2 **Definitions**

The following definitions apply unless the context requires otherwise:

**"Confidential Information"** means all information of whatever nature directly or indirectly concerning the System, or related to, the affairs, business, finances, assets, transactions or trade secrets of Room2Rent or any of its Related Companies (as defined in section 2(3) of the Companies Act 1993) which Room2Rent discloses to the Recipient or which the Recipient may acquire from Room2Rent or any of its Related Companies including, without limitation:

- (a) Any intellectual property, including any opinion, projection, idea, concept, process, procedure, plan, design, programme, study, data, report, know-how, expertise or other such property;
- (b) Any document, data, statement, analysis, opinion, projection, forecast, report, note, notebook, drawing, manual, letter or such other material whether in a permanently visible form or not; and
- (c) Trade Secrets as defined in this Agreement;
- (d) Any of the foregoing disclosed to the Recipient before the execution date of this Agreement.

**"Representative"** means any officer or employee of the Recipient, or any adviser engaged by the Recipient in connection with the Due Diligence and to whom the Recipient is permitted to disclose the Confidential Information under Clause 3.1.

**"Trade Secrets"** means any information held by Room2Rent that is or could be used industrially or commercially, is not generally available, has potential economic value, and is the subject of reasonable efforts by Room2Rent to preserve its secrecy.

## **2. Confidentiality**

- 2.1 The Recipient will hold all Confidential Information in strict confidence and will not disclose any Confidential Information to any person, except in accordance with the explicit provisions of this Agreement or, in any other case, only on receiving the prior written consent of Room2Rent.
- 2.2 The Recipient shall not make any use of any Confidential Information or any part of the same except as is strictly necessary for the Due Diligence.
- 2.3 The Recipient shall not without the prior written consent of Room2Rent copy or duplicate any Confidential Information or any part of the same except to the extent necessary to provide a reasonable number of copies to its Representatives in the course of the Due Diligence.
- 2.4 The Recipient shall not make or permit or cause to be made any notes or memoranda based on or relating to Confidential Information or any part of the same for any purpose other than the Due Diligence.
- 2.5 The provisions of Clauses 2.1, 2.2, 2.3 and 2.4 and 4.1(c) of this Agreement do not apply to:
  - (a) Information after it becomes generally available to the public other than due to a breach of any of the clauses of this Agreement.
  - (b) The use or disclosure of information after the Recipient has received or receives it from a third person legally entitled to possess the information and provide it to the Recipient; or
  - (c) The disclosure of information in order to comply with any applicable law or legally binding order of any court or government or judicial body, in which case the Recipient will follow Room2Rent's reasonable directions in order to limit the disclosure to the minimum extent possible and permitted by law.

## **3. Disclosure to Representatives**

- 3.1 The Recipient may disclose the Confidential Information to its Representatives if:
  - (a) The disclosure is strictly necessary in the course of the Due Diligence; and
  - (b) The Representatives are identified in writing to Room2Rent prior to any such disclosure and Room2Rent consents to the disclosure.
- 3.2 The Recipient will be liable for any act of any Representative which, if done by the Recipient, would constitute a breach of its obligations under this Agreement.

## **4. Return and Destruction of Information**

- 4.1 The Recipient will, immediately on demand by Room2Rent:
  - (a) Return to Room2Rent all documents, reports, notes, memoranda, computer media and other material, which record, contain or relate in any way to Confidential Information (including all copies of the same).
  - (b) Delete all Confidential Information from electronic storage facilities of any type owned or used by the Recipient or its Representatives.
  - (c) Despite anything else in this Agreement, cease to make use of the Confidential Information, or any part of the same for any purpose.

and will confirm in writing promptly when it has complied with these obligations.

## **5. Indemnity and Breach**

- 5.1 The Recipient will indemnify and keep indemnified Room2Rent against any and all reasonable and foreseeable claims, demands, losses, damages and costs (including legal costs on an indemnity basis) that Room2Rent incurs as a result of a breach of the Recipient's obligations under this Agreement.
- 5.2 The Recipient acknowledges that damages alone may not be sufficient legal remedy for breach of the Recipient's obligations and an injunction order may be obtained in the case of breach, to prevent further breaches.
- 5.3 The Recipient further agrees that breach of this Agreement shall give Room2Rent the right to cancel any existing or future agreements between the parties.

## **6. Disclaimer and Acknowledgments**

- 6.1 The Recipient acknowledges that any inventions, improvements, discoveries, programs or other form of intellectual property related to the System that are developed by the Recipient will be disclosed to, and become the exclusive property of, Room2Rent.
- 6.2 Room2Rent reserves all of its rights in law and equity, including in respect of the areas of Confidential Information and Trade Secrets. The Recipient acknowledges that the Confidential Information and Trade Secrets, and any intellectual property rights in the same (including copyright, design and patent rights) are the exclusive property of and will remain the exclusive property of Room2Rent.
- 6.3 The Recipient acknowledges that Room2Rent makes no representation or warranty as to the accuracy or completeness of the Confidential Information except that the Confidential Information has been disclosed by Room2Rent to the Recipient in good faith.
- 6.4 The Recipient acknowledges that it understands that theft of Trade Secrets is an offence under section 230 of the Crimes Act 1961, and can be punishable by a term of up to five years imprisonment.
- 6.5 The Recipient acknowledges that it understands that theft of intellectual property, including of Confidential Information, is an offence under the Crimes Act 1961 and can be punishable by a term of up to seven years imprisonment.

## **7. Miscellaneous**

- 7.1 Room2Rent may notify third parties about the existence and contents of this Agreement.
- 7.2 No amendment or variation of this Agreement is valid or binding on a party unless made in writing and executed by all parties. No failure to exercise or delay in exercising any right, power or remedy by a party operates as a waiver.
- 7.3 The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement and will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the transaction.
- 7.4 The laws of New Zealand govern this Agreement. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

- 7.5 Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect.
- 7.6 The terms of this Agreement shall inure to the benefit of and be binding upon each party's successors and assigns.
- 7.7 This Agreement will remain in full force and effect and will continue to bind the Recipient notwithstanding any term of any other agreement, or any cessation or termination of the relationship between Room2Rent or any of its Related Companies.
- 7.8 For the purposes of the Contracts (Privity) Act 1982 the obligations of each party to this Agreement, including any indemnity by the Recipient, are given for the other party and its Related Companies and are enforceable by them under that Act.

**SIGNED** by or on behalf of Room2Rent

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Signature

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Full Name of Signatory

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Title

**SIGNED** by or on behalf of the Recipient:

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Signature

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Full Name of Signatory

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Title