



Confidentiality Deed

Parties

1. **SUZANNA CALAVA** and **MICHAEL CALAVA** both c/- Unit 2, 42 Margaret Street, Southport QLD 4215 (**'the Disclosing Party'**)
2. The party whose name and address appears in Item 1 of the Schedule (**'the Recipient Party'**)

Background

- A. The Disclosing Party possesses the Confidential Information. The Recipient Party wishes to have access to the Confidential Information for the Specified Purpose.
- B. The Disclosing Party has agreed to disclose the Confidential Information to the Recipient Party subject to the terms and conditions of this Agreement.

The parties agree

1. Definitions

In this Agreement:

- 1.1 **'Confidential Information'** means all trade secrets, ideas, know-how, intellectual property, concepts and information whether in writing or otherwise relating in any way to the matters described in Item 2 of the Schedule, and all other information relating to the Disclosing Party and its affairs or businesses, sales, marketing or promotional information, which is not in the public domain and includes any such information in the Disclosing Party's power, possession or control concerning or belonging to any other person;
- 1.2 **'Ineffective'** means void, illegal or unenforceable; and
- 1.3 **'Specified Purpose'** means the purpose set out in Item 3 of the Schedule.

2. **Access**

The Recipient Party acknowledges that the Recipient Party may be given access to certain Confidential Information of the Disclosing Party for the Specified Purpose.

3. **Obligation of Confidentiality**

In consideration of the Disclosing Party allowing the Recipient Party to have access to the Confidential Information, the Recipient Party agrees that they will keep and will ensure that its employees keep confidential the Confidential Information unless and until the parties agree that the Confidential Information is in the public domain other than by a breach of this Agreement.

4. **Duties of Recipient Party**

4.1 **Non-Disclosure**

The Recipient Party will not and will ensure that its employees do not disclose any of the Confidential Information to any other person without the prior written consent of the Disclosing Party.

4.2 **Prohibition on Use**

The Recipient Party will not, and will ensure that its employees do not, use all or any of the Confidential Information otherwise than for the Specified Purpose.

4.3 **Uncertainty**

If the Recipient Party is uncertain as to whether any information is Confidential Information, the Recipient Party will treat the information as if it was Confidential Information and as not being in the public domain unless and until the Disclosing Party agrees in writing that the information is in the public domain.

4.4 **Precautions**

The Recipient Party will take all reasonable precautions to maintain the confidentiality of and to prevent the disclosure or use of the Confidential Information.

4.5 **Unauthorised Disclosure or Use**

The Recipient Party will immediately notify the Disclosing Party of any unauthorised disclosure or use of the Confidential Information of which the Recipient Party becomes aware and will take all steps which the Disclosing Party may reasonably require in relation to such unauthorised disclosure or use.

4.6 **Return of Confidential Information**

At the conclusion of the Specified Purpose or upon the written request of the Disclosing Party, at its own expense, the Recipient Party will immediately deliver to the Disclosing Party all records and materials (and copies of those records and materials) containing or embodying the Confidential Information that are in the possession of the Recipient Party, its employees and any person to whom the Recipient Party has disclosed all or any of the Confidential Information (whether or not with the consent of the Disclosing Party).

5. **Exceptions**

The Recipient Party will not be bound to keep confidential any information if and to the extent that:

- 5.1 the information is, or becomes part of the public domain otherwise than by breach of this Agreement by the Recipient Party;
- 5.2 the information is lawfully obtained by the Recipient Party from any other person without any restriction as to use and disclosure;
- 5.3 the information was in the Recipient Party's possession prior to disclosure to it by the Disclosing Party;
- 5.4 the information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency;
- 5.5 the Disclosing Party has authorised in writing the disclosure of the information; or the information is disclosed by the Recipient Party to its professional advisers who have agreed to keep confidential the Confidential Information.

6. **Return and Destruction of Confidential Information**

On demand by the Disclosing Party, the Recipient Party must immediately redeliver to the Disclosing Party (or delete or destroy, where delivery is not physically possible) all copies of Confidential Information held by the Recipient Party or which are under its control, and all notes, calculations or summaries or other material derived or produced partly or wholly from any of the Confidential Information and any or all computer records (including copies, reproductions and recordings of them) derived or produced partly or wholly from any of the Confidential Information, and the Recipient Party must provide to the Disclosing Party if required a statutory declaration from a duly authorised senior officer of the Recipient Party that to the officer's personal knowledge, having made reasonable inquiries, all such records have been delivered, erased or destroyed.

7. **Remedy**

The Recipient Party acknowledges and accepts that the Disclosing Party would suffer financial and other loss and damage if the Confidential Information were disclosed to any other person or used for any purpose other than the Specified Purpose and that monetary damages would be an insufficient remedy. The Recipient Party acknowledges and accepts that, in addition to any other remedy which may be available in law or equity, the Disclosing Party is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement. The Recipient Party will immediately reimburse the Disclosing Party for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of the Recipient Party under this Agreement.

8. **Indemnity**

8.1 **Indemnity for Costs**

The Recipient Party indemnifies the Disclosing Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Disclosing Party as a result of any breach of this Agreement by the Recipient Party.

8.2 **Scope of Indemnity**

The indemnity in clause 8.1 extends to and includes all costs, damages and expenses incurred by the Disclosing Party in defending and/or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

9. **Cumulative Rights**

The rights arising out of this Agreement do not exclude any other rights of either party.

10. **Enforceability**

10.1 **Effect of Ineffectiveness on Part of the Agreement**

Any clause or part of a clause of this Agreement which is Ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.

10.2 **Severance of Ineffective Parts of the Agreement**

Where any clause or part of a clause is Ineffective it may be severed without affecting any other part of this Agreement.

11. **Waiver**

11.1 **No Waiver Except by Notice in Writing**

No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

11.2 **No Waiver of Subsequent Breaches**

A waiver by one party under clause 11.1 does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.

11.3 **No Waiver by Extension or Forbearance**

A party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.

12. **Variation**

A variation of this Agreement will be in writing and signed by the parties.

13. **Governing Law and Jurisdiction**

13.1 **Governing Law**

This Agreement is governed by the laws of the place set out in Item 4 of the Schedule.

13.2 **Jurisdiction**

The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the place set out in Item 4 of the Schedule.

SCHEDULE

Item 1 Recipient Party

The person agreeing to the contents of this Confidentiality Deed.

Item 2 Confidential Information

All Confidential Information and know how which relates to the Peak Physique Hot Yoga business now existing or that may be subsequently designed, developed or owned by the Disclosing Party and/or the franchisor, whether in a tangible form or intangible form and including, but not limited to the Manuals, the system, the image, intellectual property, all technical, marketing and other information and records in electronic and hard copy formats, supplied by the Disclosing Party to the Recipient Party.

Item 3 Specified Purpose

For the consideration of purchasing of a Peak Physique Hot Yoga franchised business.

Item 4 South Australia