

Confidentiality Agreement

Dated: _____

Parties:

**Richard & Jolanda Foale,
Heliview Taranaki Ltd & Coffee Afloat Ltd**

("Vendor")

("Purchaser")



Made this _____ day of _____ 20_____

Parties

1. Richard & Jolanda Foale, Heliview Taranaki Ltd & Coffee Afloat Ltd
(called the "Vendor")

2. _____
(called the "Purchaser")

Background

- A. The Purchaser wishes to evaluate a possible purchase of the Vendor's business ("the **Purpose**").

- B. In order to allow the Purpose to be achieved certain information which is the property of the Vendor and which is secret and of value to the Vendor will be provided to the Purchaser to enable it to make a due and diligent investigation into the Vendor's business.

- C. The Purchaser has agreed to be bound by certain duties of confidentiality and non-use in respect of the confidential information.

Agreed

1. **Definitions**

"**Confidential Information**" shall mean information disclosed by or on behalf of the Vendor to the Purchaser in connection with the Purpose including, without limitation:

- (a) the existence of this Agreement and its terms and the fact that the parties are involved in the Purpose;

- (b) data and know-how, whether technical or not, which is disclosed to the Purchaser, and which relates to suppliers, customers, financial information, marketing strategies, prices of materials and services,

business activities and other trade secrets and confidential know-how of the Vendor; and

(c) information regarding the Vendor's business;

and includes all copies, notes and records and all related information generated by the Purchaser based on or arising out of such disclosure or possession.

2. Duties of Confidence

2.1 Primary duty

In consideration for the Vendor disclosing the Confidential Information, the Purchaser agrees:

- (a) to use the Confidential Information solely for the Purpose; and
- (b) to keep confidential all Confidential Information and the existence of this Agreement (even in draft); and
- (c) to comply with the terms of this Agreement.

2. Specific duties

Without in any way limiting the generality of the duty of confidence set out in clause 2.1, unless the Purchaser has the prior written consent of the Vendor, the Purchaser must:

- (a) ensure that there is no direct or indirect distribution or disclosure of any part of the Confidential Information to any person (including, without limitation, the staff or clients of the Vendor). In particular, the Purchaser shall not contact any of the Vendor's clients/customers regarding the Purpose, the discussions between the Parties regarding the proposed sale and purchase of the Vendor's business or the existence of this Agreement without the prior written consent of the Vendor;
- (b) ensure that the Confidential Information and knowledge or information which may be acquired as a result of receiving the Confidential Information must not be used in any way directly or indirectly for any commercial purposes nor to gain any commercial advantage or in any other way which is or may be

directly or indirectly detrimental to the interests of the Vendor or for any purpose other than the Purpose of this Agreement;

- (c) not assert any rights over, or contest the Vendor's ownership of, the Confidential Information;
- (d) not disclose the Confidential Information to any of its officers, employees or advisers except to the extent that it is necessary to do so to enable such employees or advisers to perform their obligations to the Purchaser for the Purpose of this Agreement;
- (e) ensure that all its officers, employees and advisers are aware of the confidential nature of the Confidential Information, the existence of this Agreement and procure that such officers, employees and agents comply with the provisions of this Agreement as if they were a party to it;
- (f) implement security measures against unauthorised copying, use or disclosure of the Confidential Information and against damage to or destruction of the Confidential Information;
- (g) take reasonable steps to ensure, at all times, that each person to whom the Purchaser discloses Confidential Information complies with the Purchaser's confidentiality obligations;
- (h) immediately notify the Vendor of any actual or suspected unauthorised copying, use or disclosure of the Confidential Information and comply with any reasonable direction from the Vendor about the same;
- (i) provide such assistance, as reasonably requested by the Vendor, in relation to any proceedings that the Vendor may take against any person for unauthorised copying, use or disclosure of the Confidential Information.

3. **Use of/Liability for Information**

Use

The Purchaser agrees not to use the Confidential Information for any purpose other than that for which the information was provided. In the case of any uncertainty, the Purchaser agrees to obtain prior clearance from the Vendor.

Liability

Without limiting the obligations and responsibilities of the Purchaser of Confidential Information under this Agreement or otherwise, the Purchaser is liable to the Vendor for any misuse (including unauthorised disclosure) of the Confidential Information by the Purchaser or any of its employees, agents or contractors.

Indemnity

The Purchaser hereby indemnifies the Vendor against any loss, damage or claim arising as a result of any breach by the Purchaser of any term of this Agreement.

4. **Recipient Acknowledgment**

The Purchaser acknowledges and agrees that:

- (a) it will be solely responsible for making its own assessment and evaluation of the Confidential Information;
- (b) by providing the Confidential Information, the Vendor does not give any warranty, representation or undertaking as to the accuracy, adequacy or completeness of the Confidential Information, the materiality of the Confidential Information to any decision made or to be made in relation to the Purpose;
- (c) The Vendor will not be responsible for, and no person is authorised to make, any warranties, representations or undertakings of the kind referred to in this clause on behalf of the Vendor;
- (d) only those warranties, representations and undertakings (if any) which are included in a formal agreement (if and when

any such agreement is executed) will have any legal effect and the Purchaser will have no claim against the Vendor in relation to any transaction arising out of the Purpose other than pursuant to and in accordance with the terms of such a agreement embodying such transaction;

- (e) should any agreement come into existence arising out of the Purpose, it enters into such agreement on its own assessments and judgment and, except as expressly written in any formal agreement, not in reliance upon the Confidential Information or on anything that the Vendor has represented or provided to the Purchaser.

5. General

- a. A failure by a party to enforce a right under this Agreement is not a waiver of that right or any other right.
- b. If any provision of this Agreement is wholly or partly void, invalid, or otherwise unenforceable or judged to go beyond what is reasonable in the circumstances and necessary to protect the legitimate commercial interest of a person that provision or part will be deemed eliminated or modified to the extent necessary to make the balance of this document and that provision or part enforceable or reasonable, as the case may be.
- c. This Agreement is governed by the law in force in New Zealand.
- d. This document may be executed in counterparts.
- e. Each party acknowledges that in the event of any breach of this Agreement damages may not be an adequate remedy, and the other party shall be entitled to seek equitable relief (including an injunction) in addition to damages. In any proceeding brought by either party seeking equitable relief for a breach of this Agreement a party shall not claim that the breach is one which may not or ought not be the subject of equitable relief.

6. Term of Agreement

Except as otherwise provided for in this Agreement, the rights, obligations and liabilities of the parties under this Agreement continue for 24 months

from the date of execution of this Agreement unless before that date the parties enter into an agreement implementing any proposal for the Purchaser or its nominee to purchase the Vendor's business, in which case, the rights, obligations and liabilities of the parties under this Agreement will end upon such agreement becoming unconditional in all respects.

Executed

SIGNED by
[the Vendor]

SIGNED by
[the Purchaser]
