

This Licence Agreement is made:

BETWEEN

("Licensor")

AND

The party specified in the Booking Form ("Licensee").

and sometimes individually referred to as a "Party" or collectively as "Parties"

WHEREAS:

- A. The Licensor is the exclusive owner of the Product and has the sole and exclusive right to exploit the Product throughout the World including in the Territory.
- B. The Licensor wishes to appoint the Licensee as a Subscription Partner to brand their company and goods or services on the Product.

AGREEMENT

1. Definitions

Where commencing with a capital letter:

"**Advance**" means as specified in the Booking Form;

"**Banking Details**" means the Licensor's banking details as specified in the Booking Form;

"**Channels of Distribution**" means the platforms carrying the Property as set out in the Booking Form;

"**Commencement Date**" means the delivery date of the Property onto the Channels of Distribution as set out in the Booking Form;

"**Exclusive / Non-Exclusive**" means the status of the Agreement in respect to exclusivity as specified in the Booking Form;

"**Intellectual Property Rights**" means any and all intellectual property rights relating to the Licensed Property including without limitation patents, trademarks and designs (whether registered or unregistered) including any applications for and rights to apply for any of the foregoing, copyrights, and rights to prevent passing off for unfair competition;

"**Monthly Licence Fee**" means the amount of money being charged each month as specified in the Booking Form.

“Monthly Payments” means the payment of the monthly licence fee as specified on the Booking Form;

“Option” means option period as specified in the Booking Form;

“Product” means The Baby Diaries App or The Pet Diaries App as specified in the Booking Form;

“Release Date” means the delivery date of the Product to market as specified in the Booking Form;

“Subscription Partnership Structure” means the “Standard”, “Plus”, or “Enterprise” as specified on the Booking Form;

“Territory” means the territory as specified in the Booking Form;

“Term” means the period specified in the Booking Form;

“Trade Marks” means any registered or unregistered trade marks relating to the Product;

“Training Portal” means an online training portal as specified in the Booking Form.

2. Grant of Rights

- 2.1** In consideration of the payment of the Monthly Fee by the Licensee, and subject to the Licensee complying with all its obligations expressed in or implied by this Agreement, the Licensor hereby appoints the Licensee as a Subscription Partner to promote their company, goods and services using the Product via the Channels of Distribution as specified in the Booking Form;
- 2.2** The Licensor agrees to deliver to the Licensee the Subscription Partnership Structure as set out in the Booking Form;
- 2.3** The Licensee acknowledges that the Licensor may grant permission to other companies to be Subscription Partners of The Baby Diaries App or The Pet Diaries App meaning the Agreement is non-exclusive as specified in the Booking Form.

3. Artwork

- 3.1** The Licensee shall create or furnish at its sole expense all artwork and related materials required for the promotion of the company and goods or services on the Splash page and the Marketplace page on the Product.
- 3.2** Such artwork and materials created by the Licensee and the copyright therein shall be owned by the Licensee.

4. Production and Quality

- 4.1** The Licensee agrees that all of the Licensee’s advertising materials contained on the Product and any point of sale, presentational or promotional material shall at all times be of the highest standard of such style, appearance and quality as to protect and enhance the reputation and goodwill of the Product and the Intellectual Property Rights and the Licensee shall meet the Licensor’s quality standards and specifications.
- 4.2** Prior to the commercial release of the Product via the Channels of Distribution, the Licensee shall upload onto the App the following elements:

- (a) Company logo in the space provided on the Splash page;
- (b) Advertisements with or without links to company websites in the 6 spaces provided on the Marketplace page;

- 4.3** The Licensee can change the advertisements on the Marketplace
- 4.4** The Licensor shall have the right to specify any mistakes or errors in the submitted elements of the Licensee's materials pursuant to clause 4.2. The Licensee shall correct promptly all mistakes or errors as specified by the Licensor.
- 4.5** Approval of any materials pursuant to this clause shall not waive any of the Licensor's rights or Licensee's duties pursuant to this Agreement.
- 4.6** The Licensee will ensure that the Licensee's name appears on all advertising materials promoting the Product identifying the Licensee as owner of the goods or services being advertised.
- 4.7** The Licensor will be responsible for all operational and technical aspects of the Product and if problems arise with the App that is with the control of the Licensor, the Licensor will use their best endeavours to remedy any problems within 24 hours of being notified of any such problem;
- 4.8** In circumstances where the iTunes (Apple) or Google Play (Android) platforms are not operating, the Licensee acknowledges that this is outside of the Licensor's control and does constitute a breach of this Agreement and the Licensor has no recourse to remedy this situation.

5. Intellectual Property Rights

- 5.1** The Licensee hereby acknowledges that neither its Company being named on the Product or promotion of the Product confers upon it any right, title or interest in the Product, its trade marks or the Intellectual Property Rights.
- 5.2** The Licensee further acknowledges that this Agreement only authorises the Licensee to brand its company and its goods or services on the Product on terms as provided herein and the Licensee hereby covenants that it will not at any time during or after the Term challenge, dispute or contest the ownership by the Licensor of the Product, its trade marks, artworks or other material, or the Intellectual Property Rights.
- 5.3** In connection with any promotion of the Product by the Licensee, the Licensee shall at all times indicate that the Licensor (or such other person or entity as the Licensor may notify the Licensee in writing) is the proprietor of the Product by including the Licensor's copyright line on all promotional materials.
- 5.4** The Licensee will promptly inform the Licensor of any actual or suspected infringement of the Intellectual Property Rights and shall assist the Licensor (at the expense of the Licensor) in taking all necessary steps to protect the rights. Any damages or other monies received as a result of action taken to protect the Intellectual Property Rights shall be the property of the Licensor.

6. Subscription Partnership Structure

- 6.1** The Licensor agrees to deliver the Subscription Partnership Structure to the Licensee as specified in the Booking Form.
- 6.2** The Licensor agrees to provide access to the Licensee's user statistics as specified in the Booking Form.
- 6.3** The Licensor will provide the Licensee access to a 24 hour help desk to provide assistance with the Licensee's use of the Product;
- 6.4** The Licensor will provide the Licensee access to a training portal that shows Subscription Partners how to set up their information on the Product, acquire and retain users, market the Product and use the Product to drive customers to their eCommerce or physical outlets.

7. Public and Products Liability Insurance

- 7.1** The Licensee will procure and maintain, at the Licensee's sole cost and expense, comprehensive Public and Products Liability insurance with an insurer satisfactory to the Licensor. The insurance cover shall be for a sum of not less than ten million dollars (\$10,000,000.00) for any one occurrence and in the aggregate of any one period of insurance in respect of Products Liability.
- 7.2** The Licensee shall provide to the Licensor, an original certificate of currency for all policies of insurance and receipts for the premium last paid within (10) Business Days of signing this Agreement, if so requested. Upon request the Licensor will also be supplied with a complete copy of the said Public and Products Liability policy. The Licensee shall also ensure that any goods or services advertised on the Product are not distributed or sold during any period in which the insurance required by this Agreement is not current and in full force and effect.

8. Payments

- 8.1** The Licensee shall pay to the Licensor the first monthly payment in Advance on execution of this Agreement as specified in the Booking Form.
- 8.2** The Licensee shall pay the Monthly Licence Fee as specified in the Booking Form and payment will be made in monthly payments in advance as specified in the Booking Form.

9. Warranties, Undertakings and Indemnities

- 9.1** The Licensee warrants that:
 - 9.1.1** it has the right to enter into this Agreement;
 - 9.1.2** all right, title and interest in and to the Product shall at all times be the property of and belong to the Licensor.
 - 9.1.3** that it shall not do anything which might prejudice the Product, or the Intellectual Property Rights or do such other acts in respect of the Product that have not been directly authorised pursuant to the terms of this Agreement.

- 9.2** The Licensee agrees to indemnify and keep indemnified the Licensor and its officers, directors, employees and agents from and against any loss, injury or damage (including any and all legal costs and expenses properly incurred) occasioned to the Licensor as a consequence of any breach by the Licensee of these warranties or any other terms and conditions of this Agreement.
- 9.3** The Licensor warrants, covenants and undertakes with and to the Licensee that it has the right to enter into this Agreement and to grant to the Licensee the rights herein.
- 9.4** The Licensor agrees to indemnify and keep indemnified the Licensee from and against any loss, injury or damage (including any and all reasonable legal costs and expenses properly incurred with the consent of the Licensor) occasioned to the Licensee as a consequence of any breach of this warranty provided that the Licensee is not in breach of a material term or condition of this Agreement and provided that:
- 9.4.1 prompt notice is given to the Licensor of any such claims or suits;
- 9.4.2 Licensor shall have the option to undertake and conduct the defence and/or settlement of any such claims or suits;
- 9.4.3 Licensee cooperates with Licensor in the defence of any such claims or suits;
- 9.4.4 Licensee acts to mitigate any damages arising out of or related to such claims or suits; and
- 9.4.5 no settlement of any such claims or suits is made without the express prior written consent of Licensor.
- 9.5** The Licensor does not warrant any present or future commercial value of the Intellectual Property Rights.

10. Termination

- 10.1** This Agreement may be terminated by either Party ("**Terminating Party**") without prejudice to any of the Terminating Party's rights at law at any time should there be a material breach of this Agreement by the other Party ("**Defaulting Party**") which is not rectified within thirty (30) calendar days of the receipt by the Defaulting Party of a written notice from the Terminating Party specifying details of the breach.
- 10.2** Further, the Licensor may terminate this Agreement immediately upon the occurrence of any of the following events:
- 10.2.1 the Licensee shall be or become unable to pay its debts as they fall due; or
- 10.2.2 the Licensee convenes any meeting of creditors, makes any assignment, seeks an arrangement for the benefit of creditors generally or convenes a meeting for a winding up (except in the course of an amalgamation or reconstruction on terms approved in advance by the other Party hereto) or a petition is issued for an order to wind up or any application for the appointment of an administrator shall be made or a receiver shall be appointed over all or any part of its respective undertakings or assets; or

- 10.2.3 the Licensee has any distress or execution levied or sued out upon or against any part of its property which is not discharged within ten (10) Business Days of such occurrence and such proceedings will, in the reasonable opinion of the other Party hereto, have a materially adverse effect on the ability of the relevant Party to perform its obligations under this Agreement; or
- 10.2.4 the Licensee has a third party take possession of the whole, or in the opinion of the Licensor, of any material part of its property or assets and such encumbrance or taking into possession is not removed or released within thirty (30) calendar days of its first occurring; or
- 10.2.5 the Licensee shall cease or threaten to cease to carry on its business or shall transfer or dispose of all or (without the prior written consent of the other Party hereto) a substantial part of its assets or has all, or a substantial part, of its assets appropriated by any governmental authority acting properly; or
- 10.2.6 the sale or transfer of a substantial portion of the assets of the Licensee's business;
or
- 10.2.7 a change in the controlling interest in the Licensee's business; or
- 10.2.8 the merger or consolidation of the Licensee's business with any other entity.

11. General

- 11.1 Each Party must maintain in confidence all confidential information and ensure that such information is kept confidential other than to professional advisers or unless required by law.
- 11.2 This Agreement constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the Parties, whether orally or in writing.
- 11.3 This Agreement must not be varied except by a later written document executed by all Parties.
- 11.4 A right created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.
- 11.5 Each Party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement.
- 11.6 If:
 - 11.6.1 the time for doing any act or thing required to be done; or
 - 11.6.2 a notice period specified in this Agreement, expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
 - 11.6.3 If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

- 11.7** This Agreement is to be governed by and construed in accordance with the governing law of New South Wales, Australia.
- 11.8** If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

The expiration or termination of this Agreement does not affect any right that has accrued to a Party before the expiration or termination date.

- 11.9** Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.
- 11.10** This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- 11.11** If an attorney executes this Agreement on behalf of any Party, the attorney declares that it has no notice of the revocation of that power of attorney.
- 11.12** Unless otherwise stated:
- 11.12.1 nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
 - 11.12.2 no Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.
- 11.13** Any notice, demand, consent, approval, request or other communication to be given under this Agreement must be in writing and must be given to the recipient at the address of the recipient at the commencement of this Agreement by being:
- 11.13.1 hand delivered;
 - 11.13.2 sent by email transmission;
 - 11.13.3 sent by prepaid ordinary mail within the Territory; or
 - 11.13.4 sent by prepaid Express Post International airmail between countries; and is given if:
 - 11.13.5 hand delivered, on the date of delivery;
 - 11.13.6 sent by email transmission during any Business Day, on the date that the sending Party's email records that the email has been successfully transmitted;
 - 11.13.7 sent by prepaid ordinary mail within the Territory, on the date that is two (2) Business Days after the date of posting; or
 - 11.13.8 if sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date.

11.14 This Agreement may not be assigned by the Licensee without the prior written consent of the Licensor. The Licensor shall be able to assign this Agreement without restriction.

SIGNED BY the duly authorised representatives of the parties on the date stated at the beginning of this Agreement.

For and on behalf of The Baby Diaries Pty Ltd

Signed by:  _____

Name: Tara O'Connell

Title: Chief Executive Officer

The Licensee acknowledges that it has read, understood and agreed to these Terms and Conditions prior to entering the Diary Apps Client Portal, and/or paying their monthly Licence Fee.