

RECIPROCAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

between
Mr Seller Trading as
FIRST PARTY
(hereafter referred to as "FP")

a close corporation incorporated in South Africa
trading from
Coachmans Centre
Nomansland, Republic of South Africa

and

_____SECOND PARTY_____

(here in after referred jointly and severally referred to as "the SP")

with domicilium citandi et executandi at

1. **INTERPRETATION**

In this agreement -

1.1 **"confidential information" –**

is information which is confidential to FP and includes but is not limited to:

- 1.1.1 any information in respect of know-how, formulae, statistics, processes, systems, business methods, marketing, trading and merchandising methods and information, promotional and advertising plans and strategies, financial plans and models, inventions, long-term plans, research and development data, user or consumer data and profiles, ideas, computer programmes, drawings and any other information of a confidential nature of FP, in whatever form it may be;
- 1.1.2 the contractual business and financial arrangements between FP and other Parties with whom it has business arrangements of whatever nature;
- 1.1.3 all information peculiar to FP that is not readily available to a competitor of FP in the ordinary course of business;
- 1.1.4 the fact of and content of the discussions between the Parties referred to in 2.1 below as well as the existence and content of this agreement and any other agreement that the Parties hereto might conclude;
- 1.1.5 all other matters of a confidential nature that relate to FP's business;

1.1.6 generally, information that is disclosed in circumstances of confidence or would be understood by the Parties, exercising reasonable business judgement, to be confidential;

but does not include information that

1.1.7 is or hereafter becomes part of the public domain, otherwise than as a result of a breach or default of the SP or of a representative or affiliate of the SP;

1.1.8 can be shown to have been lawfully in the possession of the SP or its affiliates prior to its disclosure and is not subject to an existing agreement between the Parties or any of its affiliates;

1.1.9 is acquired by a party or its affiliates independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the confidential information directly or indirectly under a confidentiality obligation from FP or its affiliates;

1.1.10 is acquired or developed by a party or its affiliates independently of the other party and in circumstances which do not amount to a breach of the provisions of this agreement;

1.1.11 is disclosed or released by the SP to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at the time or the requirements of any recognised stock exchange; provided that, in these circumstances, the SP shall advise FP to take whatever steps it deems necessary to protect its interests in this regard and provided further that the SP will disclose only that portion of the confidential information which it is legally required to so disclose; and the SP will use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances (and the SP shall co-operate with FP if FP elects to contest any such disclosure);

1.2 “**FP**” –
the party disclosing confidential information in terms of this agreement;

1.3 “**SP**” –
the party receiving confidential information in terms of this agreement;

1.4 “**the Parties**” –
FP and the SP.

2. **PREAMBLE**

The parties hereby declare that:

2.1 The Parties are conducting discussions with a view to concluding one or various agreements relative to the sale of FP to the SP.

2.2 The Parties anticipate that FP will disclose confidential information to the SP in the course of their discussions.

2.3 If the confidential information so disclosed is used by the SP for any purpose other than that for which its use is authorised in terms of this agreement or is

disclosed or disseminated by the SP to another person or entity which is not a party to this agreement, this may cause FP to suffer damages and material financial loss.

- 2.4 The Parties have agreed to enter into this confidentiality and non-disclosure agreement, in the absence of which neither party would have disclosed any of its confidential information to the other.

3. **USE OF CONFIDENTIAL INFORMATION**

Any confidential information disclosed by a FP shall be received and used by the SP only for the limited purpose described in 2.1 above and for no other purpose.

4. **NON-DISCLOSURE**

- 4.1 The SP undertakes to FP that -
- 4.1.1 the SP will treat FP's confidential information as private and confidential and safeguard it accordingly;
 - 4.1.2 the SP will not use (except as permitted in 3 above) or disclose or divulge or copy or reproduce or publish or circulate or reverse or engineer and/or decompile or otherwise transfer, whether directly or indirectly, the confidential information of the other party to any other person or entity; and the SP shall take all such steps as may be reasonably necessary to prevent FP's confidential information falling into the hands of unauthorised persons or entities;
 - 4.1.3 the SP shall not disclose the confidential information of FP to any employee, consultant, professional adviser, contractor or sub-contractor or agent of the SP (collectively referred to herein as "representative") of the SP or an affiliate of the SP, nor shall they be given access thereto by the SP
 - 4.1.3.1 unless it is strictly necessary for the purposes referred to in 2.1 above; and
 - 4.1.3.2 the SP shall have procured that the representative or affiliate to whom or to which such information is disclosed or made available shall have agreed to be bound by all the terms of this agreement,

and, in such event, the SP hereby indemnifies FP against any loss, harm or damage which FP may suffer as a result of the unauthorised disclosure of confidential information by a representative or affiliate.

- 4.2 Any documentation or written record or other material containing confidential information (in whatsoever form) that comes into the possession of the SP shall itself be deemed to form part of the confidential information of FP. The SP shall, on request, and in any event if the discussions referred to in 2.1 above should not result in an agreement, return to FP all of FP's confidential information which is in physical form (including all copies) and shall destroy any other records (including, without limitation, those in machine readable form) as far as they contain FP's confidential information.

5. **DURATION**

This agreement shall commence on the date of signature of this agreement by the last party to sign the agreement and shall remain in force indefinitely thereafter (and, in any event, beyond the term of this agreement).

6. **RELATIONSHIP OF THE PARTIES**

- 6.1 FP shall not be obliged, by reason of this agreement, to disclose any of its confidential information to the SP or to enter into any further agreement or business relationship with the other party.
- 6.2 Each party shall retain the sole and exclusive ownership of intellectual property rights to its respective confidential information and no license or any other interest in such confidential information is granted in terms hereof or by reason of its disclosure.
- 6.3 Other than the obligations set out in this agreement, no legal obligation shall arise between the Parties until signature of legal agreements between them in regard to the transaction envisaged in 2.1 above.
- 6.4 The termination of discussions without entering into an agreement in regard to the transaction envisaged in 2.1 above shall not release the Parties from the obligations set out in this agreement.

7. **ENFORCEMENT, GOVERNING LAWS AND JURISDICTION**

- 7.1 This agreement shall be governed by and interpreted according to the laws of the Republic of South Africa, without reference to the choice of laws' provisions of the Republic of South Africa.
- 7.2
- 7.3 The Parties irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, in respect of any action or proceeding arising from this agreement.
- 7.4 The Parties agree that, in the event of a breach of this agreement, monetary damages would not be an adequate remedy and that the plaintiff part shall be entitled to injunctive relief in any court of competent jurisdiction and be reimbursed for any costs, claims, demands or liabilities arising directly or indirectly out of a breach. Nothing contained in this agreement shall be construed as prohibiting a party or its affiliate from pursuing any other remedies available to it for a breach or threatened breach.

8. **DOMICILIUM**

- 8.1 The Parties choose as their *domiciliae* the addresses indicated in the heading to this agreement for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement.

- 8.2 Each of the Parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a post office box or poste restante.
- 8.3 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 8.4 Any notice given and any payment made by one party to the other ("the addressee") which –
- 8.4.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
 - 8.4.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee on the fourth day after the date of posting;
 - 8.4.3 is transmitted by facsimile to the addressee's receiving machine shall be presumed, until the contrary is proved, to have been received within one (1) hour of transmission where it is transmitted during normal business hours or, if transmitted outside normal business hours, within one (1) hour of the resumption of normal business hours on the next normal business day.

9. **GENERAL**

- 9.1 No party shall be bound by any representation, warranty, undertaking, promise or the like not recorded in this agreement.
- 9.2 No addition to, variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 9.3 Any indulgence which either party may show to the other in terms of or pursuant to the provisions contained in this agreement shall not constitute a waiver of any of the rights of the party which granted such indulgence.
- 9.4 The Parties acknowledge that this agreement and the undertakings given by it in terms hereof are fair and reasonable in regard to their nature, extent and period and go no further than is reasonably necessary to protect the interests of the Parties.
- 9.5 The Parties agree that, if any provision of this agreement is found by a court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.
- 9.6 The Parties hereby confirm that they have entered into this agreement with full and clear understanding of the nature, significance and effect thereof and freely and voluntarily and without duress.
- 9.7 Neither party shall have the right to assign or otherwise transfer any of its rights or obligations under this agreement.

9.8 This agreement may be executed in several counterparts that together shall constitute one and the same instrument.

9.9 In this agreement, clause headings are for convenience and shall not be used in its interpretation.

9.10 The Parties are each legally entitled to enter into this agreement, while the signatory on behalf of FP has been duly authorised by resolution to bind FP in this matter.

10 EXECUTION

10.1 SIGNED ON BEHALF OF FP

BY.....

(FULL NAMES AND JOB TITLE)

AT.....

ON..... (DAY).....(MONTH).....(YEAR)

WITNESSES

1. 2.

10.2 SIGNED BY THE SP

1..... 2.....

(FULL NAMES)

AT.....AT.....

DAY MONTH YEAR DAY MONTH YEAR

AS WITNESSES

1.2.....