**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement ("Agreement") is made and effective the [DATE],

**BETWEEN**: [YOUR COMPANY NAME] (the "Disclosing Party"), a company organised and existing under the laws of the Province of [PROVINCE], with its head office located at: [YOUR COMPLETE ADDRESS]

**AND**: [RECEIVING PARTY NAME] (the "Receiving Party"), an individual with his main address located at OR a company organised and existing under the laws of the Province of [PROVINCE], with its head office located at: [COMPLETE ADDRESS]

**RECITALS**  
**WHEREAS**, Disclosing Party is an establishment that provides [SERVICE DESCRIPTION] to the general public.

**WHEREAS,** Disclosing Party and Receiving Partner are going to engage each other for the purpose of a business relationship.

**WHEREAS,** in order for Receiving Party to effectively perform the services or obligations as may be applicable, Disclosing Party shall have to provide the Receiving Party with certain confidential , important, and/or proprietary trade secret information concerning Disclosing Party and its activities

**WHEREAS,** the Receiving Party expressly agrees to keep any and all information provided by the Disclosing Party in strict confidence.

**NOW THEREFORE,** the parties agree to enter into a confidential relationship with respect to the disclosure by Disclosing Party to Receiving Party of certain information.  
  
In consideration of the terms and covenants of this agreement, and other valuable consideration, the parties agree as follows:

# CONFIDENTIAL INFORMATION

Disclosing Party shall disclose certain confidential and proprietary information (the Confidential Information") to Receiving Party. Confidential Information shall include all data, materials, products, technology, computer programmes, specifications, manuals, business plans, software, marketing plans, financial information.

Confidential information shall also include all information orally provided, or submitted in writing, or by any other media, to Receiving Party by Disclosing Party. Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure.

For purposes of this Agreement, the term "Receiving Party" shall include Receiving Party, the company he or she represents, and all affiliates, subsidiaries, and related companies of Receiving Party. For purposes of this Agreement, the term "Representative" shall include Receiving Party's directors, officers, employees, agents, and financial, legal, and other advisors.  
  
**Exclusions** Confidential Information shall not include information that Receiving Party can prove that: (a) it was *in Re*ceiving Party's possession prior to its being furnished to Receiving Party under the terms of this Agreement, provided the source of that information was not known by Receiving Party to be bound by a confidentiality agreement with or other continual, legal or fiduciary obligation of confidentiality to Disclosing Party; (b) is now, or hereafter becomes, through no act or failure to act on the part of Receiving Party, generally known to the public; (c) is rightfully obtained by Receiving Party from a third party, without breach of any obligation to Disclosing Party; or (d) is independently developed by Receiving Party without use of or reference to the Confidential Information.

# RECEIVING PARTY'S OBLIGATIONS

## Receiving Party agrees that the Confidential Information is to be considered confidential and proprietary to Disclosing Party and Receiving Party shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Disclosing Party, and shall disclose it only to its officers, directors, or employees with a specific need to know. Receiving Party will not disclose, publish or otherwise reveal any of the Confidential Information received from Disclosing Party to any other party whatsoever except with the specific prior written authorisation of Disclosing Party.

## Confidential Information furnished in tangible form shall not be duplicated by Receiving Party except for purposes of this Agreement. Upon the request of Disclosing Party, Receiving Party shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within [NUMBER] days of such request. At Receiving Party's option, any documents or other media developed by the Receiving Party containing Confidential Information may be destroyed by Receiving Party. Receiving Party shall provide a written certificate to Disclosing Party regarding destruction within [NUMBER] days thereafter.

# TERM

The obligations of Receiving Party herein shall be effective for the duration of \_\_\_\_\_ years from the date Disclosing Party last discloses any Confidential Information to Receiving Party pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Receiving Party, nor by the rejection of any agreement between Disclosing Party and Receiving Party, by a trustee of Receiving Party in bankruptcy, or by the Receiving Party as a debtor-in-possession or the equivalent of any of the foregoing under local law.

# CONFIDENTIALITY

Receiving Party and its Representatives shall hold the confidential information in strict confidence at all times and shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in **Sections 5** of this Agreement, and shall hold and maintain the Confidential Information in strictest confidence. Receiving Party hereby agrees to indemnify Disclosing Party against any and all losses, damages, claims, expenses, and attorneys' fees incurred or suffered by Disclosing Party as a result of a breach of this Agreement by Receiving Party or its Representatives.

# PERMITTED DISCLOSURES

Receiving Party may disclose Disclosing Party's Confidential Information to Receiving Party's responsible Representatives who need to know about such Confidential Information, but only to the extent necessary to evaluate or carry out a proposed transaction or relationship with Disclosing Party. The if such employees are advised of the confidential nature of such Confidential Information and the terms of this Agreement and are bound by a written agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information.

Receiving Party may disclose Disclosing Party's Confidential Information if and to the extent that such disclosure is required by court order, provided that Receiving Party provides Disclosing Party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.

# USE

Receiving Party and its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible transaction or relationship with Disclosing Party and shall not in any way use the Confidential Information to the detriment of Disclosing Party.

# NO LICENSE

Nothing herein shall be construed as granting or conferring any rights by licence or otherwise in any Confidential Information. It is understood and agreed that neither party shall solicit any change in the organisation, business practise, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Receiving Party agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

# OTHER INFORMATION

Receiving Party shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Receiving Party; is rightfully received by Receiving Party without obligations of confidentiality; or is developed by Receiving Party without breach of this Agreement; provided, however, such Confidential Information shall not be disclosed until [NUMBER] days after written notice of intent to disclose is given to Disclosing Party along with the asserted grounds for disclosure.

# RETURN OF INFORMATION

If Receiving Party does not proceed with the possible transaction with Disclosing Party, Receiving Party shall notify Disclosing Party of that decision and shall, at that time or at any time upon the request of Disclosing Party for any reason, return to Disclosing Party any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information immediately on the written request of Disclosing Party. The returning of materials shall not relieve Receiving Party from compliance with other terms and conditions of this Agreement.

# NO ADDITIONAL AGREEMENTS

Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of Disclosing Party to enter into any other agreement with Receiving Party or prohibit Disclosing Party from providing the same or similar information to other parties and entering into agreements with other parties. Disclosing Party reserves the right, in its sole discretion, to reject any and all proposals made by Receiving Party or its Representatives with regard to a transaction between Receiving Party and Disclosing Party and to terminate discussions and negotiations with Receiving Party at any time. Additional agreements of the parties, if any, shall be in writing signed by Disclosing Party and Receiving Party.

# BREACH AND REMEDY

Receiving Party understands and acknowledges that any breach of this Agreement or disclosure of any of the Confidential Information may cause Disclosing Party an irreparable damage, the amount of which may be difficult to ascertain, and therefore agrees that Disclosing Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Disclosing Party shall deem appropriate. Such right of Disclosing Party is to be in addition to the remedies otherwise available to Disclosing Party at law or in equity. 

# NO PUBLICITY

Receiving Party agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Disclosing Party to any entity or be involved in an press release, news, interview which may result in the disclosure of such information.

# GOVERNING LAW AND EQUITABLE RELIEF

This Agreement shall be governed and construed in accordance with the laws of South Africa and the province of \_\_\_\_\_\_\_\_\_\_\_\_[PROVINCE] and Receiving Party consents to the exclusive jurisdiction of the state courts and federal courts located there for any dispute arising out of this Agreement. Receiving Party agrees that in the event of any breach or threatened breach by Receiving Party, Disclosing Party may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Disclosing Party against any such breach or threatened breach.

# FINAL AGREEMENT

This Agreement constitutes and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

# SURVIVAL

This Agreement shall survive and continue in full force upon the termination of the engagement between the Disclosing Party and the Receiving Party.

# SUCCESSORS AND ASSIGNS

This Agreement and each party's obligations hereunder shall be binding on the representatives, assigns, and successors of such party and shall inure to the benefit of the assigns and successors of such party; provided, however, that the rights and obligations of Receiving Party hereunder are not assignable.

# SEVERABILITY

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

# NOTICES

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognised overnight delivery services.  
  
If to Disclosing Party:  
ATTN. [NAME],

[YOUR COMPANY NAME],

[YOUR COMPLETE ADDRESS],

[YOUR FAX NUMBER].  
  
If to Receiving Party:   
ATTN. [NAME],

[COMPANY NAME],

[COMPLETE ADDRESS],

[FAX NUMBER].

# NO IMPLIED WAIVER

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

# HEADINGS

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

# ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its attorneys' fees and costs incurred.

# COUNTERPARTS AND RIGHT

This Agreement may be signed in counterparts, which together shall constitute one agreement. The person signing on behalf of Receiving Party represents that he or she has the right and power to execute this Agreement.

# ENTIRE AGREEMENT

This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement is not, however, to limit any rights that Disclosing Party may have under trade secret, copyright, patent or other laws that may be available to Disclosing Party. This Agreement may not be amended or modified except in writing signed by each of the parties to the Agreement.

This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**DISCLOSING PARTY RECEIVING PARTY**

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Authorised Signature Authorised Signature

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