



NON-DISCLOSURE AGREEMENT

(*Note that any changes made to this document will render it invalid)



Between:

(Hereinafter "**the Recipient** ")

Denka Design Consultancy cc
198 Buitengracht Street, Bo Kaap
Cape Town
8001

And:

(Hereinafter "**the Disclosing Party** ")

Name/ Company name: _____

ID / Company Registration number: _____

Company VAT number: _____

Physical Address: _____

Contact: Telephone number: _____

Email address: _____

Alternative contact: Name: _____

Relation: _____

Number: _____

The disclosed project relates to:

Project Title: _____

INTRODUCTION

In the course of discussions and correspondence between the parties relating to the exploitation of various commercial opportunities ("the **Proposals**") each of the parties will acquire or be informed of confidential details and information concerning the other, its Associated Companies (as defined below) and/or the Proposals. Each party recognises and acknowledges the competitive value and confidential nature of the same and that damage could result to the other if it is disclosed to any third party. The purpose of this Agreement is to set out the conditions on which each party makes confidential details and information available to the other.

THESE CONDITIONS ARE as follows:

1. Definitions and Interpretation

1.1 For the purposes of this Agreement

1.1.1 "**Associate**" means, in relation to each party, any holding company or subsidiary company of such party and any other subsidiary undertaking of any such holding company ("**an Associate Company**") and any director, officer, employee, consultant, representative, agent or adviser of such party or of any Associate Company of such party. For these purposes "holding company" and "subsidiary company" have the meanings given in the Companies Act 61 of 1973;

1.1.2 in relation to the obligations of each party "**Confidential Information**" includes -

(a) all information of whatever nature relating to the other party or any Associate Company of the other party or its or their business and/or to the Proposals provided in writing, orally, on disk or otherwise by or on behalf of the other party or any of its Associates to (or otherwise obtained by) such party or any of its Associates including but not limited to any information relating to the operations, plans, intentions, know-how, trade secrets, software, market opportunities, customers and potential customers, business and/or financial affairs of the other party or any of its Associate Companies or of any customer or potential customer of the other party or any of its Associate Companies;

(b) analyses, compilations, studies and other documents prepared by or for such party or any of its Associates which contain or otherwise reflect or are generated from any of the information in clause 1.1.2(a);

(c) this Agreement and its contents; and

(d) the fact that the parties are or were at any time in discussion in relation to the Proposals and the terms and other facts relating to, and the status of, the Proposals.

1.1.3 "**Disclosing Party**" means, in relation to any particular item of Confidential Information, the party which (or whose Associate) discloses such information.

1.1.4 "**Recipient**" means, in relation to any particular item of Confidential Information, the party which (or whose Associate) receives or otherwise



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obtains such information.

1.2 The headings to the clauses do not affect the interpretation of this Agreement.

2. Undertakings by the Recipient

In consideration of Confidential Information being made available to the Recipient or any of its Associates, the Recipient undertakes to the Disclosing Party that (in each case except with the prior written consent of a director of the Disclosing Party) -

- 2.1 it will keep all Confidential Information strictly confidential and except as permitted under clause 2.3, will not disclose any Confidential Information to any third party;
- 2.2 it will not copy or use in any manner (or authorise or permit the copying or use of) any Confidential Information for any purpose other than the Recipient's evaluation of the Proposals for internal purposes only;
- 2.3 it will restrict access to any Confidential Information to such of its directors, employees and advisers as need to know such information for the purpose set out in clause 2.2 and who shall first be informed of the terms of this Agreement;
- 2.4 it will not initiate or engage in any contact of any kind with any of the employees or (for a period of 12 (twelve) months from the date of this Agreement) the customers or suppliers of the Disclosing Party or any Associate Company of the Disclosing Party except in relation to matters that do not breach confidentiality and in the ordinary and proper course of business and without prejudice to the generality of clause 2.1 will not at any time discuss with any such person any Confidential Information or any other matter in connection with the Proposals;
- 2.5 it will procure that each of its Associates observes the terms of this Agreement as if it were a party to it, and be responsible for any action which would be a breach of any of the undertakings in this Agreement by any of its Associates or any other person to whom it discloses Confidential Information if such person were a party to this Agreement.

Further Undertakings

3.1 The Recipient undertakes that -

- 3.1.1 if the Disclosing Party so requests, it will immediately return to the Disclosing Party all Confidential Information in recorded form (together with all copies) in its possession or under its control, destroy all documents referred to in clause 1.1.2(b) (including any stored in an electronic database) together with all copies to the extent such documents contain or reflect any Confidential Information and delete all Confidential Information (and all copies) on any computer, word processor or other device containing such information in its possession or under its control (and such destruction and deletion shall be confirmed to the Disclosing Party in writing by an authorised officer of the Recipient supervising such destruction/deletion);
- 3.1.2 it will not without the prior written consent of a director of the Disclosing Party undertake any marketing activity or make any public announcement concerning products or services which have benefited from or make use of information provided pursuant to this Agreement.

3.2 Each party undertakes that it will not at any time during the period of 12 (twelve) months from the date of this Agreement, employ or attempt to employ (or grant or offer to grant any contract for services or solicit or endeavour to entice away any person who is employed by the other party or any of its Associated Companies in a senior management position.

3. No Representations of Warranties

Except as may subsequently be agreed in writing between the parties neither the Disclosing Party nor any of its Associates makes any representation or warranty (express or implied) about or shall have any responsibility or liability whatsoever or howsoever arising in respect of, or resulting from the use of, any Confidential Information or any other information supplied to the Recipient or its Associates or to any third party on their behalf or in respect of its accuracy or completeness or any change in any such information or any other matter concerning the Disclosing Party, its Associates or the Proposals.

4. Ownership

All Confidential Information shall remain the property of the party which supplies it and except as expressly provided in this Agreement, neither party grants any licence in respect of any Confidential Information. For the avoidance of doubt neither party shall be under any obligation to disclose any information.

6. Duration

Subject as expressly provided to the contrary in clauses 2.4 and 3.2, the undertakings in this Agreement will continue in full force and effect indefinitely (and for the avoidance of doubt whether or not the parties reach an agreement on the Proposals) subject only to the exclusions set out in clause 7.

7. Exclusions

The obligations set out in this Agreement will not apply to information which:

- 7.1 at or after the time of disclosure to or acquisition by the Recipient or its Associates is in the public domain in the form supplied otherwise than through a breach of this Agreement; or
- 7.2 was lawfully known to the Recipient or any of its Associates prior to its disclosure to the Recipient or such Associate by or on behalf of the Disclosing Party or its Associates provided that the source of such information was not subject to a confidentiality agreement with the Disclosing Party or any of its Associates in respect thereof or fiduciary or other similar duties of confidentiality in respect thereof; or



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- 7.3 the Recipient is required to disclose by law, any court of competent jurisdiction, any government agency or regulatory body lawfully requesting the same or by the regulations of any recognised stock exchange provided that the Recipient promptly notifies the Disclosing Party and consults with the Disclosing Party in advance in relation to the timing and content of such disclosure; or
- 7.4 was independently developed by the Recipient or any of its Associates without reference to or use of any Confidential Information; or
- 7.5 is required for legal proceedings relating to this Agreement or the Proposals.

8. Consequences of Breach

- 8.1 Each party acknowledges and agrees that in the event that the terms of this Agreement are breached by it, damages may be an inadequate remedy and other reliefs including interdicts and specific performance may be appropriate remedies for the enforcement of this Agreement.
- 8.2 The Recipient undertakes to indemnify and keep indemnified the Disclosing Party and the Disclosing Party's Associates from and against all losses, damages, costs, expenses, claims, demands and other liabilities of whatsoever nature arising as a direct result of any use or disclosure of Confidential Information in breach of this Agreement or any other breach of this Agreement provided that in no circumstances shall either party be liable for any loss of profit or other indirect or consequential loss suffered by the other or the Associates of the other.

9. Rights

- 9.1 All rights granted to either party shall be cumulative and not exhaustive of any rights and remedies provided by law; any failure or delay by either party in exercising any right, power or privilege under this Agreement shall not act as a waiver nor shall any single or partial exercise preclude any further exercise of any right, power or privilege by such party.
- 9.2 No variation of this Agreement shall be effective unless in writing, signed by a director on behalf of each party.

10. Domicilia and Notices

- 10.1 The parties choose *domicilia citandi et executandi* ("domicilium address") for all purposes arising from or pursuant to this agreement, as set out in the heading to this agreement.
- 10.2 Any party shall be entitled from time to time, by written notice to the other(s), to vary its domicilium address to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 10.3 All notices given in terms of this agreement shall be in writing and any notice given by any party to another ("the addressee") which:
 - 10.3.1 is delivered by hand or transmitted by telefax shall be deemed to have been received by the addressee on the first business day after the date of delivery or transmission, as the case may be; and
 - 10.3.2 if posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 14th (fourteenth) day after the date of such posting.
- 10.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another, including by way of telefax transmission, shall be adequate written notice or communication to such party.

11. Governing Law and Dispute Resolution

- 11.1 The parties agree that they shall endeavour to resolve all disputes between them and if not resolved, the parties agree that such dispute shall be resolved and determined by a single referee who shall not be an arbitrator nor be subject to the rules of arbitration;
 - 11.2 Any dispute arising from or in connection with this agreement shall be finally resolved in accordance with the rules determined by the referee and which may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings or the strict rules of evidence;
 - 11.3 In the event of a dispute arising, the referee shall be appointed by the parties and failing agreement on the person of such referee, within three days from the dispute being declared, by the chairperson of the Cape Law Society;
 - 11.4 Nothing contained in this clause will preclude either party from obtaining intermediate relief on an urgent or other basis from a court of competent jurisdiction, pending the decision of the referee;
 - 11.5 The existence of a dispute shall not afford any party the right to terminate or reduce the extent of any of their activities in respect of this agreement, which are not materially affected by the dispute;
- 11.6 The parties shall be bound by the award or decision made by the referee and either party may apply for the same to be made an order of court under South African law.

SIGNED at _____

SIGNED at _____

on this ___ day of _____ 20___.

on this ___ day of _____ 20___.

for and on behalf of the
DISCLOSING PARTY
who warrants his/her authority hereto

for and on behalf of the
RECIPIENT
who warrants his/her authority hereto

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