

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

ENTERED INTO

BETWEEN

..... (Pty) Ltd  
(Reg. No.....)

“.....”

AND

**National Credit Regulator**

Herein after referred to as

“The Parties”

**1 BACKGROUND**

- 1.1 It is recorded that the parties are investigating the possibility of concluding a transaction(s) between the parties, and or their nominees and the parties envisage that during the discussions between the parties as a consequence, proprietary confidential information will be disclosed between the parties, the disclosure of which will be regulated by the terms and conditions of this agreement.
- 1.2 Each party represents that it is the owner of the confidential proprietary information and makes the proprietary confidential information available to the other party strictly on the terms and conditions as set out in this agreement.

**2 CONFIDENTIALITY**

- 2.1 For the purposes of this agreement, unless inconsistent with or otherwise indicated by the context, "proprietary confidential information" means any party's trade, commercial, financial and management secrets and confidential information, directly or indirectly obtained, including, but not limited to -

- 2.1.1 operating know-how, processes and techniques used by a party in the conduct of its business;
- 2.1.2 trade secrets, know-how, inventions, technical data, product or process specifications, exclusivity arrangements, designs formulations, computer programmes and all other technical, mechanical and computer information, belonging to or in the possession of a party and used by its business operations;
- 2.1.3 knowledge of details and particulars in regard to a party's suppliers, customers and business associates;
- 2.1.4 a party's method of conducting business, management, costs and source of material;
- 2.1.5 the contractual, financial management and supply arrangements between a party and its clients and business associates;
- 2.1.6 names, addresses and requirements of clients and potential clients of a party (including potential clients of a party whom a party has not yet contracted, but intends contracting for purposes of doing business); and/or
- 2.1.7 any other matter which relates to the business of a party in respect of which information is not readily available in the normal course of business and which may come to the knowledge of the other party.
- 2.2 The parties respectively hereby irrevocably agrees -
  - 2.2.1 not to divulge or disclose to any person whatsoever in any form or manner whatsoever, either directly or indirectly, any of the proprietary confidential information without the prior written consent of the other party;
  - 2.2.2 not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the proprietary confidential information disclosed to it pursuant to the provisions of this agreement for any purpose whatsoever other than for the purpose for which it was disclosed and otherwise than in accordance with the provisions of this agreement, and more specifically explicitly not to use, exploit, permit the use of, directly or indirectly the proprietary confidential information.
  - 2.2.3 to maintain in secrecy any and all proprietary confidential information of a party which may be acquired by or disclosed to it;
  - 2.2.4 not directly or indirectly at any time after the coming into force and effect of this agreement and irrespective of its termination for any cause at any time subsequent to the coming into force and effect of this agreement:-
    - 2.2.4.1 do or purport to do anything or assist any other person in doing anything which may or could impair, prejudice or interfere with the other party's vested rights, title and interest in and pertaining to the proprietary confidential information; and
    - 2.2.4.2 represent that a party has any right, title or interest in and pertaining to the other

party's proprietary confidential information; and

- 2.2.5 not, under any circumstances, disclose to any publishing or news media (such as newspapers, magazines, radio or television) any proprietary confidential information or any information of any nature whatever with regard to the products, services or activities of the other party, which such party has not already made known to the public at large, without the prior written consent of the other party.
- 2.3 The undertakings referred to in 2.2 shall bind a party whether or not a further agreement is reached between the parties as envisaged in clause 1 above, it being agreed that one of the main reasons for the parties wishing to obtain the undertakings set out in clause 2.2 above, is to prevent the disclosure or use by the other party of the information obtained in the course of the discussions and the proprietary confidential information which has or may be disclosed to it, in the event of no further agreement being reached between the parties which replaces and supersedes this agreement.
- 2.4 Should no further agreement be reached between the parties in respect of the business dealings as contemplated herein, the parties respectively agrees to forthwith hand back to the other all documents and other proprietary confidential information handed or made available to such party for the purposes envisaged in this agreement together with all copies, notes and reproductions of such documents and proprietary confidential information.
- 2.5 In order to further protect the proprietary confidential information, a party hereby undertakes that -
- 2.5.1 it will claim confidentiality undertakings from those of its, or its associated entity's(ies'), subsidiary's(ies') or holding company's(ies') employees, officers, agents, directors, representatives, associates, advisors and consultants who have a reasonable need to know and will come into contact with any proprietary confidential information, on terms similar to those contained in this agreement; and
- 2.5.2 it will, in order to preclude other persons having access to the proprietary confidential information, allow only the aforesaid category of persons to come into contact with such proprietary confidential information.
- 2.6 A party hereby accepts liability for all acts of its employees, officers, agents, directors, representatives, consultants and associates who have access to the proprietary confidential information or who will or are handling the same.
- 2.7 The parties acknowledge and agree that the unauthorised disclosure or use of the proprietary confidential information by a party or a third party may cause irreparable loss, harm and damage to the party and accordingly the parties respectively indemnifies and holds the other party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature, suffered or sustained by a party pursuant to a breach by the other party or the other party's representatives (as set out in clause 2.5.1 above), of any of the provisions of the undertakings set out in this agreement.

- 2.8 The confidentiality obligations set out in this agreement shall not apply to any information which -
- 2.8.1 a party can demonstrate is already in the public domain or becomes available to the public through no breach by any of the parties hereto or the persons contemplated in clause 2.5.1 above;
  - 2.8.2 was rightfully in a party's possession without obligation of confidence prior to receipt from the other party as proven by its written records;
  - 2.8.3 can be proved to have been rightfully received by a party from a third party without obligation of confidence;
  - 2.8.4 is independently developed by a party as proven by its written records;
  - 2.8.5 is approved for release with the prior written consent of the other party; and
  - 2.8.6 is required to be disclosed in order to comply with its judicial order or decree, provided that a party has given the other party sufficient prior written notice of such request to enable such other party to defend or protect such disclosure.

### 3 **NON-CIRCUMVENTION**

- 3.1 Receiving Party hereby agrees that the names and personnel of the potential new clients, which the Disclosing Party will be providing, are highly confidential information and Receiving Party agrees that they shall not contact the client directly unless authorized to do so in writing by the Disclosing Party. Such authorization shall be given only after all necessary agreements are in place securing the agreed amount of commission payment, which Receiving Party shall collect on behalf of the Disclosing Party.
- 3.2 It is anticipated that during the course of dealings between the Parties, each may reveal to the other certain names, client lists, networks, service providers etc. ("Designated Parties"), which is the proprietary confidential information of the respective Party. The Parties each agree not to circumvent, or permit any other party or persons on their respective behalf to circumvent each other in any way, manner, or form regarding any transactions during the term of this Agreement. The parties agree to notify each other in writing of all inquiries about proposed transactions from a Designated Party of the other. Any and all introductions or approaches to either Parties; Designated Party shall be made through or with written consent of the Disclosing Party. Each shall recognize and acknowledge the other Party as the source of such business shall be made through or with written consent of the disclosing opportunity, sales opportunity, marketing strategy, or the business relationship.
- 3.3 No Party shall exploit any such introduction of such introduction of such Party to a prospective new client, business opportunity, sales opportunity, marketing strategy, source of new business or other business relationship without reasonable compensation to the Party providing such introduction. No Party shall circumvent the interests or efforts of the other Party in any exploitation of information provided to such

Party by the other Party. The terms and conditions of this Agreement shall apply to any existing relationship between the Parties and their Service Providers if disclosing Party introduces a prospective new client, product, service, rate, program or any business opportunity currently not known or in use by the receiving Party. It is further agreed that this non-circumvention language shall survive for as long the client and or their successors or assigns are engaged in business with the receiving party or their affiliates.

#### **4 ANCILLARY PROVISIONS**

- 4.1 Each acknowledgement or undertaking made or given by either party pursuant to the provisions of this agreement is a separate acknowledgement and undertaking and:-
- 4.1.1 is made separately from each other;
  - 4.1.2 is made separately in respect of each proprietary right of the disclosing party as set out herein and in respect of each element of such proprietary information;
  - 4.1.3 is severable from every other such acknowledgement and undertaking;
  - 4.1.4 the validity or invalidity of any one such separate acknowledgement and undertaking shall not affect the validity of any other; and
  - 4.1.5 is in no manner limited or restricted by reference to or inference from any other separate acknowledgement and undertaking.

#### **5 DURATION**

This agreement shall be of force and effect from the date of last signature hereof and shall remain in force and effect for a period of six (6) months from the date of last signature hereof or until a further agreement, replacing and superseding this agreement, is concluded between the parties, whichever event occurs first.

#### **6 BREACH**

- 6.1 Should any party (the “defaulting party”) commit a breach of any of the provisions of this agreement, then the other party (the “aggrieved party”) shall be entitled to, in addition to any other common law or statutory remedies it may have (including the right to claim damages):-
- i. without notice to the defaulting party, to bring an application in any Court of competent jurisdiction, whether on an urgent basis or not, for the granting of an interdict against the defaulting party to prevent any further breach of the terms of this agreement; and/or
  - ii. without notice to the defaulting party, to claim specific performance from the defaulting party of all the defaulting party’s obligations whether or not the due date for performance has arrived.

7 **DOMICILIUM**

7.1 The parties choose their domicilium citandi et executandi for all purposes:

For .....(Pty) Ltd at:  
Physical Address                      Postal Address                      Telefax.....

For  
**National Credit Regulator**  
Physical Address                      Postal Address                      Telefax  
127 – 15<sup>th</sup> Road                      P.O. Box 902                      011 554 - 2871  
Randjiespark                      Halfwayhouse  
Halfwayhouse                      1685  
Midrand  
1685

7.2 Any formal notice to be given or to be made for any purpose under this agreement shall be in writing and shall -

7.2.1 be delivered to the addressee's physical address in which event it shall be deemed to have been received when so delivered; or

7.2.2 sent by registered post to the addressee's postal address, in which event it shall be deemed to have been received 7 (seven) days after it has been posted; or

7.2.3 sent by telefax in which event it shall be deemed to have been received on the day it was sent.

7.3 Any of the parties shall be entitled to change its respective domicilium and any other address, as the case may be, on 14 (fourteen) days' notice to the other, provided such address is within the Republic of South Africa.

SIGNED AT .....ON THIS THE .....DAY OF..... 2010

AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

ON BEHALF OF ..... (PTY) LTD

AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

ON BEHALF OF **National Credit Regulator**