



# Legal Sense

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### CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under written by



RESOLUTION  
insurance

# Confidentiality and non-disclosure agreement

## MEMORANDUM OF AGREEMENT

Entered into between:

\_\_\_\_\_

**ID NO:**

(Hereinafter referred to as “the Discloser”)

and

\_\_\_\_\_

a close corporation duly incorporated under the laws of the Republic of South Africa, having its main place of business at \_\_\_\_\_, with registration number \_\_\_\_\_

(Hereinafter referred to as “the Recipient”)

The Discloser and the Recipient hereby agree to the following:

### **1 Definitions**

Unless the contrary is clearly indicated, the following words and/or phrases, when used in this Agreement, shall have the following meaning:

**1.1 “Agreement”** shall mean this written document together with all written appendices, annexures, exhibits or amendments attached to it from time to time;

**1.2 “Commencement Date”** shall mean \_\_\_\_\_;

**1.3 “Confidential or Disclosed Information”** shall mean:

**1.3.1** all information which pertains to the Disclosing Purpose, disclosed, revealed or exchanged by the Discloser to the Recipient, and which pertains to the book compiled and written by the Discloser and includes, but is not limited to all intellectual property rights, all trade secrets, the content of all possible future agreements which the Discloser intends to enter into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, intellectual property rights, business or financial aspects of the Discloser; and/or

**1.3.2** any information of whatever nature, which has been or may be obtained by the Recipient from the Discloser, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, know-how, copyright material, layouts, designs, translations; and/or

**1.3.3** concepts, compilations, studies and other material prepared by or in possession or control of the Recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition; and/or

**1.3.4** any dispute between the Parties resulting from this Agreement.

**1.4 “Disclosing Purpose”** means the possible **joint venture of or collaboration** between the Parties with respect to the Confidential or Disclosed Information;

**1.5 “Electronic Signature”** in relation to any Writing or written document communicated electronically shall include the scanned version of the hand signature of the author of the written document and any other method used to identify the author and to indicate his or her approval of the information communicated in a sufficiently reliable way at the time the communication was first made;

**1.6 “Notice”** shall mean a written document;

**1.7 “Parties”** shall mean both the Discloser and the Recipient.

**1.8 “Writing”** shall include any document whether available in print, on plain paper or in electronic format accessible in a manner usable for subsequent reference, and “written” shall have a corresponding meaning.

## **2 Obligations of the Recipient**

The Recipient shall:

**2.1** use the Confidential or Disclosed Information only for the Disclosing Purpose;

**2.2** treat and safeguard the Confidential or Disclosed Information as private and confidential;

**2.3** ensure proper and secure storage of all Confidential or Disclosed Information;

**2.4** not at any time without the prior written consent of the Discloser:

**2.4.1** disclose or reveal the Confidential or Disclosed Information to any other person or party whatsoever, other than employees of the Recipient who are in each case required in the course of their duties to receive and consider the same for the Disclosing Purpose and who shall be made aware of the obligations of the Recipient to observe the same restrictions on the use of the Confidential or Disclosed Information as are contained in this Agreement and in respect of whom the undertakings of the Recipient as contained in this Agreement shall apply and, if required by the Discloser, the Recipient shall take such steps as may be reasonably desirable to enforce such obligations on the part of its employees; or

**2.4.2** disclose or reveal to any person or party whatever either the fact that discussions or negotiations are taking, or have taken, place between the Recipient and the Discloser or the content of any such discussions or other facts relating to the Disclosing Purpose, except where required by law or any governmental, international or regulatory body;

**2.5** not at any time use the Confidential or Disclosed Information to solicit or entice away or endeavour to solicit or entice away any suppliers to, customers of or employees of the Discloser, either to join the Recipient or for any other purpose;

**2.6** notwithstanding any lesser degree of protection that may otherwise be permissible hereunder, where any Confidential or Disclosed Information may be subject of any National or Government Security Regulations, the Recipient shall, and hereby undertakes to, take such measures as may be required by such Regulations to protect such Confidential or Disclosed Information;

**2.7** not in any way force the Discloser to be obliged to disclose, reveal or exchange any information to the Recipient;

**2.8** not create the impression with or lead any third party to interpret or construe any condition contained in this Agreement, that this Agreement is an Agency Agreement and/or Partnership Agreement and/or a Joint Venture and/or any other similar arrangement;

**2.9** not allege that this Agreement grants it, either directly, or by implication, or by estoppel or otherwise a license under any patent or patent application, or that it is entitled to utilise the Confidential or Disclosed Information in any way contrary to the stipulations contained in this Agreement;

**2.10** on termination of this Agreement, act with the Confidential or Disclosed Information, in accordance with a Notice delivered to it by the Discloser and if no such Notice was delivered to the Recipient it shall destroy the Confidential or Disclosed Information in a similar manner to which it would destroy information that it would consider to be its own Confidential or Disclosed Information.

### **3 Obligations of the Discloser**

The Discloser shall:

**3.1** in the event where Confidential or Disclosed Information has been orally disclosed, revealed or exchanged to the Recipient, in writing, within 30 calendar days after such disclosure, confirm to the Recipient that the Confidential or Disclosed Information is subject to this agreement;

**3.2** furnish the Recipient at least 7 (seven) calendar days prior to this Agreement being terminated, for whatever reason, with a Notice instructing the Recipient what it should do with the Confidential or Disclosed Information once the agreement has been terminated.

### **4 Exclusions**

Without prejudice to any obligations imposed on and assumed by the Recipient under any National or Government Security Regulations, the obligations of the Recipient contained herein shall not apply to any Confidential or Disclosed Information which the Recipient can show (and it shall be for the Recipient to prove this by documentary evidence):

**4.1** Is at the time of disclosure to the Recipient by the Discloser, within the public domain and could be obtained by any person with no more than reasonable diligence;

4.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement;

4.3 is, at the time of such disclosure, already within the possession of the Recipient, or it has been independently developed by the Recipient; or

4.4 is subsequently provided to the Recipient by a person who has not obtained such information from the Discloser, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality whether express or implied;

4.5 is disclosed with the written approval of the Discloser;

4.6 is or becomes available to a third party from the Discloser on an unrestricted basis;

4.7 is obliged to be reproduced Confidential or Disclosed Information under order of a court or government agency of competent jurisdiction.

## **5 Commencement and duration**

5.1 This Agreement shall commence on the Commencement Date.

5.2 This Agreement shall automatically terminate one year after the Commencement Date.

## **6 Breach**

Without prejudice to any other remedies which either of the Parties may otherwise have in terms of the Agreement or at law, the termination of the Agreement, for whatever reason, shall not affect the rights of either of the Parties:

6.1 that may have accrued before the termination of the Agreement; or

6.2 which specifically or by their nature survives the termination of the Agreement.

## **7 Interpretation**

7.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement.

7.2 Any reference in this Agreement to the singular includes the plural and *vice versa*.

7.3 Any reference in this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and *vice versa*.

## **8 Validity**

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

## **9 Dispute resolution**

**9.1** If the Parties are unable to resolve any dispute, resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement within one week after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute, within five (5) calendar days after it having been referred to them.

**9.2** Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions contained in this Agreement.

## **10 Arbitration**

**10.1** A dispute between the Parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration, by either of the Parties, by way of a Notice to the other party, in which Notice particulars of the dispute are set out.

**10.2** Such arbitration proceedings shall be held in Johannesburg and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:

**10.2.1** the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);

**10.2.2** the strict rules of evidence;

**10.2.3** immediately and with a view to its being completed within thirty calendar days after it is demanded.

**10.3** The arbitrator for such arbitration proceedings shall:

**10.3.1** if the matter in issue is primarily an accounting matter, be an independent auditor with at least 2 years experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Independent Regulatory Board for Auditors; or

**10.3.2** any other matter, be a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 5 years experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Law Society of the Northern Provinces; or

**10.3.3** in the event where the Parties are unable to agree whether the nature of a dispute is primarily of an accounting nature, technical nature, or any other nature, then the nature of that dispute shall be decided by a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 10 years experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Law Society of the Northern Provinces.

**10.4** The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.

**10.5** The “arbitration” clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has been terminated.

**10.6** No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

## **11 Domicilium**

The Parties elect the following addresses as their respective *domicilium citandi et executandi*:

**11.1** Discloser at \_\_\_\_\_.

**11.2** Recipient at \_\_\_\_\_.

**11.3** Either of the Parties may change its *domicilium citandi et executandi* to another address within the same country, by way of a notice to the other party to this Agreement, provided that such a notice is received by the addressee, at least 7 (seven) calendar days prior to such a change taking effect.

## **12 Notices**

The Parties elect the following addresses at which all notices and other communications must be delivered for the purposes of this Agreement:

**12.1** Discloser:

**12.1.1** by hand at \_\_\_\_\_ marked for the attention of \_\_\_\_\_.

**12.1.2** by post at \_\_\_\_\_ marked for the attention of \_\_\_\_\_;

**12.1.3** by telefax at \_\_\_\_\_ marked for the attention of \_\_\_\_\_.

**12.1.4** by email at \_\_\_\_\_ marked for the attention of \_\_\_\_\_.

**12.2** Recipient:

**12.2.1** by hand at \_\_\_\_\_ marked for the attention of \_\_\_\_\_;

**12.2.2** by post at \_\_\_\_\_ marked for the attention of \_\_\_\_\_;

**12.2.3** by telefax at \_\_\_\_\_ marked for the attention of \_\_\_\_\_.

**12.2.4** by email at \_\_\_\_\_ marked for the attention of \_\_\_\_\_.

**12.3** Any notice or communication required or permitted to be given in terms of this Agreement shall only be valid and effective if it is in writing.

**12.4** Any notice addressed to either of the Parties and contained in a correctly addressed envelope and sent by registered post to it at its chosen address or delivered by hand at its chosen address to a responsible person on any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and South African public holidays, shall be deemed to have been received, unless the contrary is proved, if sent by registered post, on the 14<sup>th</sup> (fourteenth) calendar day after posting and, in the case of hand delivery, on the day of delivery.

**12.5** Any notice sent by telefax or email to either of the Parties at its telefax number shall be deemed, unless the contrary is proved, to have been received:

**12.5.1** if it is transmitted on any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and South African public holidays, within 2 (two) hours of transmission;

**12.5.2** if it is transmitted outside of these times, within 2 (two) hours of the commencement any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and South African public holidays, after it has been transmitted.

### **13 Entire agreement and variations**

**13.1** This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

**13.2** No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

**13.3** Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.

### **14 Assignment, cession and delegation**

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed

### **15 Relaxation**

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from

exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

**16 Waiver**

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

**17 Severability**

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

**18 Drafting costs**

Each of the Parties shall bear its own cost incurred as a result of the negotiation, redrafting and finalisation of this Agreement, which shall include but not be limited to all legal fees.

**19 Governing law**

The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.

I, \_\_\_\_\_, with identity number, \_\_\_\_\_ the undersigned, herewith confirm that my position within the Discloser is that of \_\_\_\_\_ and state that I am duly authorised to enter into this Agreement, which I herewith do, on this the \_\_\_ day of \_\_\_\_\_ 2008 by signing this Agreement, for and on behalf of the Discloser.

Witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_  
(Signature of, or on behalf of discloser)

I \_\_\_\_\_, with identity number \_\_\_\_\_, the undersigned, herewith confirms that my position within the Recipient is that of \_\_\_\_\_ and state that I am duly authorised to enter into this Agreement, which I herewith do, on this the \_\_\_ day of \_\_\_\_\_ 2008 by signing this Agreement, for and on behalf of the Recipient.

Witnesses:

1

\_\_\_\_\_

2

\_\_\_\_\_

\_\_\_\_\_

*(Signature of, or on  
behalf of recipient)*

The logo for Legal Sense features a stylized 'S' shape formed by two thick, curved lines with a gradient from light yellow to brown. The text 'Legal Sense' is centered within this shape in a large, grey, sans-serif font.

Legal Sense