



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

between

KM PRODUCT DESIGN

Registration No: 2019/239495/07

and

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Registration No:

1. INTRODUCTION

- 1.1 The parties are discussing certain ideas, concepts, drawings, designs, methods, client and supplier information, which will require the disclosure to one another of information of a proprietary, secret and confidential nature.
- 1.2 The parties will, subject to successful conclusion of such investigation and discussions, enter into a services agreement.
- 1.3 Pending investigation the parties wish to maintain confidentiality regarding the information disclosed by them respectively.
- 1.4 For the purposes of this agreement, the party disclosing, such information shall be referred to as "the disclosing party" and the party receiving such information shall be referred to as "the receiving party".
- 1.5 The parties wish to record the terms and conditions upon which they are prepared to disclose such information to one another.

2. THE INFORMATION

"Information" shall for the purpose of this agreement include, without limitation, any technical, commercial, scientific information, know-how, trade secrets, processes, machinery, concepts, designs, drawings, technical specifications, client information, supplier information, and data in whatever form and information referred to in 1.1 hereinabove communicated to the receiving party or acquired by the receiving party from the disclosing party during the course of the parties' association with one another.

3. **DISCLOSURE OF INFORMATION**

- 3.1 The parties agree to disclose the information to one another.
- 3.2 The parties acknowledge that the information is a valuable, special and a unique asset proprietary to the disclosing party.
- 3.3 The parties agree that they will not, during the course of their association with one another or, thereafter, disclose the information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement.
- 3.4 Notwithstanding anything to the contrary contained, in this agreement the parties agree that the information may be disclosed by the receiving party to its professional advisors, agents, consultants, officers and employees for the purposes of evaluating the investigation and entering into an agreement as contemplated in clause 1, provided that the receiving party takes whatever steps are necessary to procure that such professional advisors, agents, consultants, officers and employees agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the information to third parties.
- 3.5 The receiving party agrees:
- 3.5.1 not to utilise, employ, exploit or in any other manner whatsoever use the information disclosed pursuant to the provisions of this agreement for any purpose without the prior express written consent of the disclosing party.
- 3.5.2 that the unauthorised disclosure of the information to a third party may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, claim, harm or damage, of whatever nature, suffered by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement,

4. **TITLE**

All information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:

- 4.1 to be proprietary to the disclosing party; and
- 4.2 not to confer any rights of whatever nature in such information to the receiving party.

5. **STANDARD OF CARE**

The parties agree that they shall protect the information disclosed pursuant to the provisions of this agreement using the same standard of care that each party applies to its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

6. **RETURN OF INFORMATION**

- 6.1 The disclosing party may at any time, request the receiving party to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this agreement and may, in addition request the receiving party to furnish a written statement

to the effect that, upon such return, the receiving party has not retained in possession, or under its control, either directly or indirectly, any such material.

- 6.2 As an alternative to the return of the material contemplated in 6.1 above, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.
- 6.3 The receiving party shall comply with a request, in terms of this clause 6, within 7 days of receipt of such a request,

7. **EXCLUDED INFORMATION**

The obligations of the parties pursuant to the provisions of this agreement shall not apply to any information that:

- 7.1 is known to or in possession of the receiving party prior to disclosure thereof by the disclosing party;
- 7.2 is or becomes publicly known, otherwise than pursuant to a breach of this agreement;
- 7.3 is developed independently of the disclosing party by the receiving party;
- 7.4 is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interests in this regard, provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 7.5 is disclosed to a third party pursuant to the prior written authorization from the disclosing party;
- 7.6 is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

8. **TERM**

This agreement shall be deemed to have commenced upon the date of last signing hereof and it shall continue to bind the parties for 10 (ten) years after its termination. This clause shall succeed the termination of this agreement.

9. **REPRESENTATIONS AND WARRANTIES**

- 9.1 Each party represents and warrants that it has the authority necessary to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.
- 9.2 The disclosing party warrants that:

- 9.2.1 disclosure of the information to the receiving party will not result in a breach of any other agreement to which it is a party;
- 9.2.2 will, to the best of its knowledge and belief, not infringe the rights of any third party and the disclosing party hereby indemnifies and holds the receiving party harmless against any liability for third party claims on such a basis.

10. **ADDITIONAL ACTION**

Each party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

11. **AMENDMENTS**

No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by both the parties.

12. **ENFORCEMENT**

The failure to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of any party to enforce the provisions of this agreement.

13. **HEADINGS**

The headings of the clauses in this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement.

14. **ENTIRE AGREEMENT**

This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral with respect to the subject matter of this agreement.

15. **GOVERNING LAW**

This agreement and the relationship of the parties in connection with the subject matter of this agreement shall be governed and determined in accordance with the laws of **South Africa**.

16. **ADDRESS FOR SERVICE OF LEGAL DOCUMENTS**

16.1 The parties choose the following physical addresses at which documents in legal proceedings in connection with this agreement may be served (being their domicilium citandi executandi)

16.1.1 **KM PRODUCT DESIGN**

1050 LINER AVENUE, LASER PARK, HONEYDEW, GAUTENG, SOUTH AFRICA.
e-mail: travis@kmdesign.co.za

16.1.2
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17.1 A party may change that party's address for this purpose to another physical address in the Republic of South Africa, by notice in writing, to the other party.

17. **COSTS**

17.1 Each party shall bear their own legal costs of and incidental to the negotiation, preparation, setting, signing and implementation of this agreement.

17.2 Any costs, including attorney and own client costs, incurred by either party arising out of the breach by the other party of any of the provisions of this agreement shall be borne by the party in breach.

18. **SEVERABILITY**

In the event that any one or more of the provisions of this agreement are held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement and this agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

19. **EXCLUSIVITY**

For as long as the parties comply with their respective obligations in terms of this agreement and the agreement contemplated in 1.2, the parties agree as follows:

19.1 Neither of them shall without the previous written consent of the other, directly or indirectly tender for or attempt to procure an agreement for its own benefit for the execution or carrying out of the activities or any part thereof, forming the subject matter of this agreement and the agreement contemplated in 1.2.

19.2 Each party shall do all in its power to procure the observance of this prohibition by all persons from time to time in its employment and all companies and firms over which it may from time to time exercise control or in which it may participate.

19.3 The parties undertake to use their respective best endeavours to procure the agreement referred to in 1.2 and shall in all respects safeguard and work to further the interest of their relationship.

19.4 Neither of the parties shall have the right to assign the whole or any part of their rights, benefits or liabilities under this agreement or sub-let any of their obligations to any other company, firm, person or entity without first having obtained the consent in writing of the other party.

THUS agreed to and signed at on in the presence of the undersigned witnesses.

As Witnesses:

1. _____
For and on behalf of **KM PRODUCT DESIGN**

Name: _____

Name: _____

Capacity: _____

THUS agreed to and signed at on in the presence of the undersigned witnesses.

As Witnesses:

1. _____
For and on behalf of

Name: _____

Name: _____

Capacity: _____