

BUYER'S CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT



1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them hereunder:
- 1.1.1 "**Aldes**" – means and includes Aldes Business Brokers (Pty) Ltd (Registration Number: 2006/036900/07) and any and all of its subsidiaries, any and all of its holding companies, any other entities forming part of its group of companies and/or any and all of its agencies from time to time, or any one of them as the context may require;
- 1.1.2 "**Business/es**" – means such assets (whether tangible or intangible), business/es and/or entity/ies (albeit close corporations, partnerships, trusts, private companies, public companies, joint ventures, sole proprietors and/or otherwise) introduced by Aldes to the Buyer for sale (albeit as is listed for sale on the Aldes database or website or otherwise);
- 1.1.3 "**Buyer**" – means the person/entity described and identified as such in the Buyer's Profile on the face of this Agreement;
- 1.1.4 "**Confidential Information**" – means any and all information disclosed by Aldes, the Seller/s and/or the Business/es to the Buyer from time to time regarding, in respect of and/or related to the Business/es or Seller/s and/or for purposes of the possible acquisition of the Business/es by the Buyer;
- 1.1.5 "**Confidential Materials**" – means any materials and/or documents which contain Confidential Information;
- 1.1.6 "**Seller/s**" – means each of the owners, of each of the Business/es introduced by Aldes to the Buyer from time to time, independently and separately.
- 1.2 In this Agreement, unless the context clearly indicates a contrary intention, words in the singular shall include the plural and vice versa, words in the masculine gender shall include the feminine and neuter gender and *vice versa*, and a reference to natural persons shall include created entities (corporate and unincorporated) and *vice versa*.
- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.4 The terms of this Agreement, having been negotiated, shall not be interpreted against the person/entity who procured its preparation and drafting, nor shall exclusion clauses contained in this Agreement be construed against the person/entity relying on same.
- 1.5 This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.6 This Agreement constitutes a *stipulatio alteri* (namely, a benefit in favor of a third party which may be accepted by such third party) in favor of the Business/es and the Seller/s, the benefits of which may be accepted by them at any time.

2 BACKGROUND

- 2.1 The Buyer records that it is (and/or has been and/or will be) partaking in investigations of (and/or negotiations with) various Seller/s and/or Business/es, with a view towards potentially acquiring such Business/es. The Buyer further acknowledges that it is serious in its investigations towards potentially acquiring a Business.
- 2.2 The Buyer realises that, in the course of its investigations (and/or negotiations), Aldes, the Business/es and/or the Seller/s will be required to disclose Confidential Information and/or Confidential Material to the Buyer, albeit for the purposes of assisting the Buyer in determining whether or not it wishes to acquire any Business/es or otherwise.
- 2.3 The Buyer acknowledges and agrees that the sole reason for, and the sole purpose of, any disclosures of Confidential Information and/or Confidential Material by Aldes, the Business/es and/or the Seller/s is strictly limited to that stated in clauses 2.1 and 2.2 above (the "**Purpose**").

3 PERIOD

- 3.1 This Agreement shall be taken to have commenced, notwithstanding the signature date hereof, on the earliest of:
- 3.1.1 the date of signature of this agreement by the Buyer; *or*
- 3.1.2 the date of the first meeting or correspondence between Aldes and the Buyer regarding any Business/es and/or Seller/s; and shall continue in perpetuity thereafter.

4 UNDERTAKING OF CONFIDENTIALITY

- 4.1 The Buyer undertakes, towards and in favour of each of Aldes, the Business/es and the Seller/s (jointly and severally), with regard to and in respect of any and all of the Confidential Information and/or Confidential Materials, that it will keep same (irrespective of how same was disclosed to the Buyer) strictly confidential and secret and that it will hold same in absolute trust and confidence.
- 4.2 The Seller/s and/or the Business/es shall retain ownership of all their Confidential Information and/or Confidential Materials, which shall be deemed to be lent to the Buyer for the Purpose only.

5 LIABILITY

- 5.1 The Buyer acknowledges that it will be liable, responsible and accountable to each of Aldes, the Business/es and the Seller/s (jointly and severally) for a breach of this Agreement by itself or any of its related or inter related parties, employees, consultants, advisers and/or agents.

6 NON-CIRCUMVENT

- 6.1 The Buyer acknowledges that Aldes will be deemed and regarded (and will be) the effective cause of any transaction which may transpire and/or materialise between the Buyer and any Business/es and/or Seller/s.
- 6.2 The Buyer warrants and guarantees that it will never circumvent Aldes (albeit directly itself or indirectly through any of its subsidiaries, holding companies, group companies, related parties and/or inter-related parties or otherwise indirectly), in negotiating or concluding any transactions, arrangements and/or agreements contemplated in clauses 2.1 and/or 2.2 above with (or with regard to) any Seller/s and/or Business/es. For avoidance of doubt, the Buyer will at all times act in good faith and will only transact and deal with Seller/s and/or Business/es, via the brokerage, intervention and mediation of Aldes.
- 6.3 The Buyer acknowledges and agrees that Aldes is, will be and will remain entitled to receipt of its agreed brokerage commission (albeit due and payable by the Seller/s, the Business/es, the Buyer or any of them), should the Buyer (albeit directly itself or indirectly through any of its subsidiaries, holding companies, group companies, related parties and/or inter-related parties or otherwise indirectly) or anyone else the Buyer may have introduced to the Business/es and/or Seller/s, conclude any agreements and/or transactions contemplated in clauses 2.1 and/or 2.2 above with (or with regard to) any Business/es and/or Seller/s.

7 GENERAL

- 7.1 No alteration or variation to or of this Agreement shall be of any force or effect unless it is recorded in writing and signed by the Buyer and Aldes.
- 7.2 Any indulgence, latitude or extension of time which may be allowed by either of Aldes, the Seller/s and/or the Business/es shall not under any circumstances be taken as preventing any of them from exercising their rights contained in this Agreement.

8 BUYER'S INFORMATION

- 8.1 The Buyer notes that Aldes' decision to introduce any Business/es for sale to the Buyer (and the Seller/s and/or Business/es decision to enter into discussions with the Buyer) is, in part, based on the information presented by the Buyer under and in terms of the Buyer's Profile on the face of this Agreement. As such, the Buyer warrants and guarantees that all information presented and provided via and in terms of the Buyer's Profile was, is and will remain true, complete and accurate and that it will immediately inform Aldes should there be any change in the information provided/presented.
- 8.2 The Buyer consents to and hereby authorises Aldes to conduct credit inquiries and/or obtain Credit Reports in respect of its credit profile with the Credit Bureau of its choice and to verify the personal information provided and assess relevant information presented by the Buyer.

9 FURTHER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENTS

- 9.1 Aldes may from time to time, dependent on the nature, scope and extent of information to be provided to the Buyer, require that the Buyer enter into and conclude further and/or additional confidentiality and non-disclosure agreements. Should the Buyer fail and/or refuse to enter into and conclude such further agreements, Aldes may, in its sole and absolute discretion, refuse to disclose further information to the Buyer regarding any and/or all Seller/s and/or Business/es.

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- 9.2 It is noted and agreed that the Buyer and certain of the Seller/s and/or Business/es may from time to time enter into and conclude one or more confidentiality and/or non-disclosure agreements amongst, by and between themselves. It is noted and agreed that those agreements will be in addition to, and not in substitution of/for, this Agreement. Those Agreements will in no way, manner or form detract from, limit, terminate and/or negate any of the terms, conditions and provisions of this Agreement, unless Aldes has given its specific prior written consent to the contrary.

10 ALDES ACTING AS AGENT FOR SELLER

- 10.1 In all its dealings with the Buyer, Aldes acts as the appointed agent of the Seller/s. When providing information about a Business/es to the Purchaser, Aldes performs such task in accordance with its mandate with the Seller/s. Aldes does not warrant the correctness / accuracy / extent of the information supplied. The Purchaser shall be entitled to instruct auditors, financials advisors or attorneys to conduct full legal and financial checks and investigations into the affairs of the Business/es at its own cost.

Aldes is not a Financial Service Provider (FSP) and does not provide financial advice. No information / document / report or marketing material supplied by Aldes can be interpreted as an invitation to invest and no interaction between Aldes and the Buyer can be construed as the rendering of financial advice.

Dated and signed this _____ day of _____

Signature: _____

Name and Surname: _____

Identity Number: _____

He/She being duly authorised thereto for and on behalf of the Buyer