

**Company A**

**and**

**(Name of Employee)**

**Non-Compete , Intellectual Property and  
Confidentiality Agreement**

**[Date]**

DO NOT COPY

**DATED [\*]**

**PARTIES**

1. Party 1 Company A , a \_\_\_\_\_ corporation with office address at \_\_\_\_\_.

Represented by: [ ]

Position: [ ]

2. Party 2 Given Name:

Surname:

Gender:

Nationality:

Place of Birth:

Passport Number:

Profession:

Current Permanent Residential Address:

**BACKGROUND**

A. Party 1 carries on the business of \_\_\_\_\_.

B. Party 2 is the person who shall be permitted by Party 1 to access, obtain and use the Confidential Information, Intellectual Property as defined in this Agreement.

Therefore, Party 1 and Party 2 agree to enter into this Agreement with the terms and conditions as follows

## OPERATIVE PROVISIONS

### 1. Definitions and interpretation

#### 1.1. The following terms shall have the following meanings:

1.1.1. *Agreement*: this agreement, its Schedules and all documents, statutes, enactments or statutory provisions referenced in it;

1.1.2. *Applicable Law*: all laws of any jurisdiction that are applicable to this Agreement, as amended and in force from time to time, and the rules, regulations, orders, licenses or permits issued thereunder, including, without limitation, any rules, regulations, orders, licenses and permits of any Competent Authority;

1.1.3. *Associated Company*: in relation to any company, a "Holding Company" or a "Subsidiary" of such company or a company of which more than 20% but less than 50% of the equity is beneficially owned by one or more member of its Group;

1.1.4. *Board*: the board of directors of Party 1 (or any director or committee of directors authorised by the Board);

1.1.5. *Client Business*: **means** \_\_\_\_\_.

1.1.6. *Commencement Date*: the date first stated at the beginning of this Agreement;

1.1.7. *Competent Authority*: means any governmental, judicial or regulatory authority having jurisdiction over this Agreement;

1.1.8. *Confidential Information*: : any information, data or materials (whether or not and howsoever recorded) of a proprietary or confidential nature, whether in oral, written, graphic, machine-readable form, or in any other form ("Materials"), relating to the Parties or its Group, their past, present or future products or services, including but not limited to: any Materials which a Party or its Group treats or marks as confidential or in respect of which it owes an obligation of confidentiality to any third person; any trade secrets; secret formulae, processes; techniques; Intellectual Property; documentation, files, graphics, surveys, plans, drawings, presentations, reports, charts, lists, and tables; conversations or expressions; samples, models or prototypes, or parts thereof (when appropriate); information or data of a business, company,

clients, including but not limited to corporate, financial, technical, scientific, legal, operational, proprietary, developmental, marketing, sales, price, operating, performance, cost, know-how, and/or process information; information about the directors, officers, key personnel, agents and representatives; computer programming techniques, and all record bearing media containing or disclosing such information and techniques; any or all which is disclosed whether in writing, orally or by any other means by one Party ("Discloser") or by a third person acting on behalf of the Discloser, to the other Party ("Recipient") whether before or after the date of this Agreement;

1.1.9. *Group*: with respect to Party 1, any holding company of Party 1, together with the subsidiaries of Party 1 or of any such holding company;

1.1.10. *Group Company*: a member of the Group;

1.1.11. *Intellectual Property*: all rights including those in the nature of copyrights and neighbouring rights, design rights, patents, trademarks, logos, service marks, trade dress, data base rights, applications for any of the above, website "look and feel", moral rights, know-how, domain names, or any other intellectual or industrial property rights and rights of a similar nature arising or subsisting in any part of the world, whether or not registered or capable of registration and applications for registration for any of the foregoing and the right to apply for them;

1.1.12. *Materials*: Intellectual Property and Confidential Information considered collectively;

1.1.13. *Party or Parties*: a Party to this Agreement and all Parties to this Agreement respectively;

1.1.14. *Press Release*: any public announcement, statement, release or distribution of information in written or oral form to any person with regard to any of the Parties or this Agreement;

1.1.15. *Term*: means the term of this Agreement;

1.1.16. *Termination Date*: the date on which this Agreement terminates, howsoever occurring.

## 2. Term

2.1. *This Agreement shall commence* from the Commencement Date and continue in force and effect till to be terminated by written mutual agreement between the Parties, except otherwise provided in this Agreement.

2.2. Party 2 acknowledges that Clauses on Confidentiality and Intellectual Property shall survive even

after the termination of all contractual relations between Party 1 and Party 2.

### 3. Non-Competition

#### 3.1. Party 2 hereby acknowledges the following:

3.1.1. The Party 1's Materials are secret, confidential, and distinctive constituting a sole and exclusive property of the Party 1.

3.1.2. The Materials are trade secrets of Party 1.

3.1.3. Any direct or indirect misappropriation, misuse or disclosure to any third person of the Party 1's Materials is wrongful, improper and damaging to the Party 1 and shall constitute a breach of this Agreement.

3.2. In view of Clause 3.1, Party 2 unconditionally and irrevocably agrees that it shall not directly or indirectly, whether individually or as a syndicate, director, stockholder, owner, partner, employee, principal or agent or any other capacity, as of the Commencement Date and until after two years from the termination of this Agreement:

3.2.1 For its own benefit or that of a third person, be employed by or act as consultant, lender to, or be a director, officer, employee, principal, licensor, trustee, broker, agent, stockholder, member, owner, joint venturer, or enter into a partnership, or have any sort of remunerated or unremunerated relationship of any nature, or permit his name to be used in connection with, any of the activities of any other business, or person which is engaged in the same business as Party 1 or any other business or person which is engaged in the same business as the Client Business as the same shall be constituted at any time, within the period mentioned in Clause 3.2, "Competing Persons"; PROVIDED THAT, it shall not be a violation of this Agreement for Party 2 to (i) become the registered or beneficial owner of less than five percent (5 %) of any class of the capital stock of a Competing Person registered under a major securities exchange or (ii) be engaged by a Competing Person, so long as the Party 2 obtains prior written consent from Party 1 ;

3.2.2. For its own benefit or for the benefit of any other person (i) solicit from any customer and/or supplier who as of the termination of the Agreement is doing business with Party 1 which is of similar nature to the Business conducted between the Party 1 or the Client's businesses and such customer and/or supplier (ii) solicit the employment or services of any person who by the termination of the Agreement is employed by, servicing, or a consultant to, Party 1 or the Client Businesses or; (iii)

make any Press Releases, statements or comments of a defamatory or disparaging nature to the public regarding Party 1 or the Client Businesses or its officers, directors, personnel, products or services.

#### 4. Intellectual Property

4.1. Party 2 acknowledges and agrees that the Party 1 owns all the rights, title and interest in its Intellectual Property (IP), and shall continue to be vested in, and owned by Party 1 ("IP Holder"). Nothing in this Agreement, shall be construed to confer unto Party 2 or any person any rights by implication, estoppel, or otherwise in the IP Holder's IP. If Party 2 does acquire any rights, those rights will be automatically assigned to Party 1. Party 2 hereby constitutes the director of Party 1 as his Attorney-in-fact to sign for and on his behalf any documents required for the transfer of IP and to process, transact and coordinate with relevant government agencies in order to facilitate the transfer of IP to Party 1. The appointment of Party 1 and/or any director or officer thereof, pursuant to this Clause shall survive the termination of this Agreement.

4.2. Party 2 hereby acknowledges and agrees:

4.2.1. not to modify the IP Holder's IP without prior written consent or instruction of the IP Holder.

4.2.2. not copy or disclose the IP Holder's Intellectual Property to third persons except with the prior written consent of the IP Holder.

4.2.3. to comply with any reasonable directions made by the IP Holder from time to time relating to use of its IP.

4.2.4. to grant the IP Holder access to, and shall provide copies of, any of its IP upon request to surrender the IP to the IP Holder at any time at the request of the IP Holder and in any event upon the termination of the Agreement.

4.3 IP which is created by Party 2 during the Term shall be the property of Party 2. If Party 2 acquires any rights that belong to Party 1, the same shall be automatically assigned to Party 1, in accordance with Clause 4.1. Party 2 hereby acknowledges that part of its duty is to develop IP for and on behalf of Party 1 whose IP rights shall inure to the benefit of Party 1.

4.4. Both Parties shall comply with the governing intellectual property laws and data protection laws and shall not, as far as practicable, knowingly do anything and permit anybody to do anything which may

lead to a breach by either party of any of the abovementioned laws.

4.5. Clause 4 on Intellectual Property shall continue to be in force even after the Termination Date.

## 5. Confidentiality

5.1. In addition to the definition provided in this Agreement, *Confidential Information* includes:

5.1.1. Intellectual Property of any of the Parties;

5.1.2. the terms of this Agreement and/or the appointment letter;

5.1.3. the negotiations leading to or relating to this Agreement;

5.1.4. the details, process, content and decision of any judicial or arbitration procedure and/or termination circumstances related in any way to this Agreement and/or the appointment letter;

5.1.5. trade secrets, customer lists, trading details, Intellectual Property Rights of any of the Parties, technical information, marketing information, corporate information, personal data or other information of a confidential nature relating to an Associated Company or a Group Company (including without limitation details of activities, businesses, strategies, plans, or finances of an Associated Company or a Group Company);

5.1.6 any other information treated or designated by an Associated Company, the Group, or any Group Company as confidential; and

5.1.7. any information in relation to which an Associated Company, the Group or any Group Company owes a duty of confidentiality to any third party (including without limitation, any client, customer and/or supplier of Associated Company, the Group or any Group Company);

5.1.8. any and all information pertaining to Party 1, including but not limited to its customers, clients and business partners, furnished, communicated or made available to, or obtained or accessed by Party 2 in any manner and / or through any form and / or medium in connection with this Agreement.

5.2. Party 2, during this Agreement and thereafter:

5.2.1. shall not under any circumstances and even as will of necessity during the Term under this Agreement and/or subsequently, without the prior consent in writing of the other Party, divulge to any person or otherwise make use of Confidential Information;

5.2.2. shall, during the period of this Agreement and/or subsequently, use its best endeavours to prevent the publication, disclosure or divulgence of any Confidential Information through any form or medium whatsoever to a third person, other than in direct connection or relation to the performance under this Agreement and only as will of necessity in the proper discharge of its obligations under

this Agreement and in such circumstances, provided that the relevant person shall ensure to keep such Confidential Information confidential; and

5.2.3. shall use Confidential Information disclosed to it only in connection with the proper performance of its obligations under this Agreement and/or other agreements between Party 1 and Party 2.

5.3. Clause 5.2 shall not apply to any Confidential Information to the extent that it:

5.3.1. comes within the public domain other than through breach of clause 5.2, that is, via wrongful disclosure by Party 2 or any other person or which Party 2 was lawfully aware of prior to the Commencement Date of this Agreement as a result of his expertise and knowledge of industry in which the Group Company is involved in;

5.3.2. is required or requested to be divulged by any Competent Authority to which any Party is subject, wherever situated. In this event, the Recipient, upon being served with a notice to divulge Confidential Information, shall immediately provide a copy of such notice to the Discloser and shall assist as reasonably possible in exercising any right or action intended to prevent the divulging of Confidential Information;

5.3.3. is disclosed on a confidential basis for the purposes of obtaining professional advice;

5.3.4. is known to the Recipient other than through breach of clause 5.2, before the disclosure to it; or

5.3.5. is disclosed with the Discloser's prior written approval to the disclosure.

5.4. The Parties expressly and specifically stipulate that, as between them, the matters stated in Clause 5.1 are important, material and confidential and shall gravely affect the effective and successful conduct of the business of Party 1, Associated Company, the Group, Group Company, or any customer or client of Party 1. Accordingly, Party 2 will hold all Confidential Information in confidence and is hereby prohibited from making disclosures of any kind in any manner or of publishing through any medium or form whatsoever, any Confidential Information, unless otherwise authorized by Party 1 in writing. In which case, any party to whom or to which any disclosure is made shall likewise be bound by the terms hereof. Party 2 shall immediately give notice to Party 1 of any unauthorized use, copying or disclosure of any Confidential Information as defined herein.

Party 1 warrants and represents that it will advise each of the persons to whom it provides access to any



of the Confidential Information under the foregoing paragraphs that such person is strictly prohibited from making any use, publishing, or otherwise disclosing to others, or permitting others to use for its benefit or to the detriment of the Party 1, Associated Company, the Group, any Group Company, or any customer or client of Party 1 any of the Confidential Information. Party 2 shall take all necessary action to protect the confidentiality of the Confidential Information, except for its disclosure as stated in this Agreement, and agrees to indemnify Party 1, Associated Company, the Group, any Group Company, or any customer or client of Party 1 against any and all losses, damages, claims, or expenses incurred or suffered by it as a result of Party 2's breach of this Agreement. In the event of termination (voluntary or otherwise) of this Agreement, Party 2 agrees that it will protect the value of the Confidential Information as defined herein and will prevent misappropriation of disclosure.

5.5. The obligation of confidentiality shall also apply to the immediate family of Party 2. Party 2 further agrees to treat all Confidential Information of Party 1, Associated Company, Group, any Group Company, or any customer or client of Party 1 with no less than extraordinary care.

5.6. Confidential Information which is made or received by either Party during the Term of this Agreement shall be the property of the respective Party who made it and all such Confidential Information and copies thereof and any other property of the respective Party and/or its Associated Parties shall be surrendered to said respective Party at the termination of this Agreement (howsoever occasioned) without need of demand or at the request of said respective Party at any time during the course of the Term.

5.7. This clause 5 shall continue in force after and despite the expiry or termination of this Agreement, whatever the reason for termination.

## 6. Remedies

6.1 The failure of Party 2 or other parties to whom this Agreement applies to comply with their obligations herein stated shall constitute a material breach of this Agreement and shall grant Party 1 the right to exercise all rights and remedies available to it provided for in this Agreement or in law. In such event, Party 2 acknowledges and agrees that money damages may not be a sufficient remedy for any breach of this provision and that Party 1, Associated Company, the Group, any Group Company, or any customer or client of Party 1 may seek equitable relief, including but not limited to an injunction or specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other rights, remedies or relief otherwise provided in this Agreement, or provided by law or equity.

6.2 This clause 6 shall continue in force after and despite the expiry or termination of this Agreement,

whatever the reason for termination.

## **7. Dispute Resolution**

Any dispute arising out of this Agreement shall first be attempted to be resolved through amicable settlement between the Parties. If no resolution of the dispute could be reached within thirty (30) days from the date on which the dispute arises, either Party may refer the dispute to appropriate court.

## **8. Notices**

8.1. Notices between the Parties relating to this Agreement must be in writing and must be delivered personally or sent by prepaid first class post, pre-paid air mail post or facsimile transmission to the address or fax number set out in clause 8.2. Alternative details may be notified by a Party for the purposes of this clause.

8.2. Notices shall be treated as received as follows: if delivered by hand, when delivered; if sent by first class post, forty-eight (48) hours after posting; if sent by air mail post, seventy-two (72) hours after posting; if sent by fax, upon sending. Any notices that would be treated as received out of Business Hours shall be deemed given on the next Business Day.

### **Party 1:**

Address:

### **Fax Number:**

Party 2:

Address: as specified in the Current Permanent Residential Address of Party 2 indicated above

Fax Number: as specified above.

## **9. General**

9.1. This Agreement shall take effect from the Commencement Date, from which date all other Agreements or arrangements, whether written or oral, express or implied (including any usage or custom and any terms arising through any course of dealing), between the Parties relating to the subject matter of this Agreement shall be deemed to have been superseded, cancelled, null and void.

9.2. Neither party shall assign, transfer, charge, create a trust over or otherwise deal in its rights and/or

obligations under this Agreement (or purport to do so) without the other party's prior written consent; Provided that Party 1 shall be able to assign, transfer, charge, create a trust over or otherwise deal in its rights and/or obligations under this Agreement (or purport to do so) without the Party 2's prior written consent only in the event of amalgamation or restructuring.

9.3. This Agreement may only be amended, superseded, or cancelled (or any of its terms and conditions waived) only by written instrument signed by or on behalf of both Parties, or in the case of waiver, of the party waiving compliance.

9.4. Neither Party shall be liable for any breach of this Agreement directly or indirectly caused by circumstances beyond its reasonable control and which prevent that Party from performing its obligations to the other.

9.5. A failure or delay by any Party to exercise any right or remedy under this Agreement shall not be construed to operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy.

9.6. Each of the provisions contained in this Agreement shall be construed as independent of every other provision, so that if any provision of this Agreement shall be determined by any court or Competent Authority to be illegal, invalid and/or unenforceable then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect.

9.7. The contents of any Press Release to be issued by either Party in relation to this Agreement shall be subject to the prior written authorisation of the other Party.

9.8. Both Parties acknowledge and warrant to each other that each independently has sought and received independent and competent legal counsel with respect to the rights, obligations, terms, conditions and consequences acquired by this Agreement, all have been explained and have been completely understood.

9.9. This Agreement shall be governed by and construed in accordance with laws of \_\_\_\_\_.

9.10. Language. This Agreement is written in \_\_\_\_\_ and English in two (02) original copies in each language. Each Party acknowledges that it has reviewed both language versions of this Agreement and that they are substantially the same in all material respects but, if any discrepancy between the two versions shall subsequently be discovered, the English language version shall prevail.

Signed by the Parties on the date of this Agreement first above written.

Signed by )  
on behalf of Party 1: )

Signed by Party 2: )  
)

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