

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

Entered into between

WILKEN DEVELOPMENT (PTY) LTD

Description and Registration Number	A Company duly registered as such in terms of the Laws of the Republic of South Africa, bearing registration number 2016/460099/07 and duly represented herein by Pieter Barendse Wilken in his capacity as a Director of the company
Registered Address	Unit 9, Inospace Wadeville Works 7 Crocker Rd, Wadeville Germiston 1428
Postal Address	PO Box 5911 Meyersdal 1447
Email	pieter@wilkendevlop.com

From hereinafter referred to as "**THE COMPANY**"

AND

Description	
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Registered or Physical Address	
Postal Address	
Email of authorised representative	

From hereinafter referred to as **"THE CONTRACTING PARTY"**

Hereinafter collectively referred to as **"THE PARTIES"** to this Agreement.

1. DEFINITIONS

In this Agreement, unless the context clearly indicates a contrary intention, the following words and phrases shall have the following meanings:

- 1.1. **"the Company"** shall mean **Wilken Development (Pty) Ltd** and as more fully captioned above;
- 1.2. **"Confidential Information"** means any information of whatsoever nature including (but not limited to) all information relating to technical, business or commercial information, accounting and financial

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information, information relating to creditors, debtors and clients, as well as any Party's technical knowledge and trade secrets, specifications, drawings, sketches, models, samples, data, documentation, concepts, ideas, business plans, methods, methodologies, procedures, processes, know-how (as defined), techniques, templates, software (both source and object code), software tools, utilities and routines contained in written, electronic or any other format and any other information listed in clause 3 below in this Agreement and owned by any one of **the parties**;

1.3. **"the Contracting Party"**

shall mean the Party to this Agreement who will engage with **the Company** and as more fully captioned above, the purpose of which engagement is more fully set out herein below;

1.4. **"Effective Date"**

shall mean the last date on which this Agreement is signed by the last and final Party hereto;

1.5. **"IP"**

means Intellectual Property of whatsoever nature and includes (but is not limited to) all patents, patented processes, registered and unregistered trademarks, copyright, designs and applications or any of the foregoing in any part of the world, and any know-how, trade secrets and data associated with any of the foregoing owned by any of **the parties**;

1.6. **"know-how"**

shall mean any and all information and confidential processes, developed by **the Company** in its industry, which can be said to be

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a form of precursor to other intellectual property rights and which information, processes and developments (whether in the form of unpatented inventions, formulae, designs, drawings, procedures, methods or otherwise) have been developed specifically by **the Company** and for **the Company** business including, but not limited to, any and all specialised knowledge in the production processes of **the Company** and inherent to **the Company's** business and business dealings;

1.7. "Parties"

shall mean **the Company** and **the Contracting Party** collectively and "**Party**" shall mean *either the Company or the Contracting Party* in isolation as the context of this Agreement shall indicate;

1.8. "this Agreement"

shall mean this Confidentiality and Non-disclosure Agreement as evidenced by those present, together with all Annexures, Addenda and Supplements hereto and including any amendments hereto.

2. EXPRESS RECORDALS

2.1. **The parties** specifically agree that they are desirous to enter into negotiations in order that they may conclude a/an _____ (**or similar commercial business arrangement/transaction**) between them.

2.2. **The parties** further specifically agree that such negotiations will be initiated for the purpose of a/an _____ (**or similar commercial business arrangement/transaction**) between them and which arrangement may be further recorded in writing in the future in terms of an Agreement to be reached/negotiated between **the parties** and reduced to writing (the "Further Agreement").

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- 2.3. It is further specifically agreed between **the parties** that any further dealings and/or negotiations concluded between **the parties** will be governed by the **Further Agreement** (whatever form such Agreement may take) and which **Further Agreement** will be reduced to writing between **the parties**.
- 2.4. **The parties** also specifically agree that should such a **Further Agreement** be entered into in consequence of the negotiations referred to above, that this Agreement shall supersede any term and condition contained therein and relating to any material aspect as contained in this Agreement indefinitely or until such time as it is agreed by **the parties**, in writing, to allow a clause from the **Further Agreement** to supersede any part of this Agreement or to terminate this Agreement by mutual assent.
- 2.5. **The parties** also specifically agree that should no **Further Agreement** come into existence between **the parties**, that this Agreement shall remain in full force and effect for a period of five (5) calendar years calculated from the date of the last signature of this Agreement.
- 2.6. In light of the foregoing and in view of the desire of **the parties** to enter into negotiations, **the parties** hereby now agree as more fully set out hereunder in this Agreement.

3. **CONFIDENTIALITY, CONFIDENTIAL INFORMATION, KNOW-HOW AND IP**

- 3.1. For the purposes of this Agreement, unless inconsistent with or contrarily indicated by the context, "proprietary confidential information" means any party's trade, commercial, industrial, financial, financing and management secrets and which term shall be deemed to include (but not be limited to) all Confidential Information (as defined above), all Know-How (as defined) and IP of any party, directly or indirectly obtained, including, but not limited to:
- 3.1.1. Any Patents and patented processes of any of **the parties**;
- 3.1.2. The methodologies, technologies and processes of **the Company**;
- 3.1.3. the financial statements and accounts of any of **the parties**;

- 3.1.4. operating know-how (as defined), processes, techniques and expertise used by **the Company** in the conducting of its business;
- 3.1.5. trade secrets, know-how (as defined), 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 **the Company** and used in its business operations and by its employees;
- 3.1.6. knowledge of details and particulars in regard to any of **the parties'** suppliers, customers, business associates and financial resources;
- 3.1.7. knowledge of details and particulars in regard to any lease agreements for offices or premises and any rental agreements for equipment or otherwise entered into by any of **the parties**;
- 3.1.8. a party's method of conducting business, management, costs and source of material;
- 3.1.9. the contractual, financial management and supply arrangements between a party and its clients and business associates and any other arrangements struck between the parties or individuals;
- 3.1.10. the financial know-how, structure and financial status of either party whether such information is reduced to writing in financial statements (audited or unaudited) or in any other manner or not;
- 3.1.11. any and all names, addresses and requirements of clients and potential clients of **the Company** (including potential clients that **the Company** has not yet contacted, but intends contacting for purposes of doing business); and / or
- 3.1.12. 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 events or within the public domain and which will not normally come to the knowledge of the other party.

3.2. **The parties** individually and collectively hereby agree irrevocably:

3.2.1. not to divulge or disclose to any person whosoever 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;

3.2.2. 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;

3.2.3. to maintain in secrecy all proprietary confidential information of a party which may be acquired by, or disclosed to, any of **the parties**;

3.2.4. 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:

3.2.4.1. purport to do anything or to 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 whatever that interest may be;

3.2.4.2. represent that a party has any right, title or interest in or pertaining to the other party's proprietary confidential information; and

3.2.4.3. a party will not, under any circumstances, disclose to any publishing or news media (such as newspapers, magazines, radio or television, or electronic media (including internet, internet search engines and / or any

web-sites or web-pages) any proprietary confidential information or any information of any nature whatsoever 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.

- 3.3. The undertakings referred to in Clause 3 (and its sub-clauses) shall bind both parties, it being agreed that the main reason for **the parties** wishing to obtain the undertakings set out in Clause 3 (and its sub-clauses) is to prevent the disclosure or use by the other party of the information obtained in the course of their negotiations, or thereafter, and the proprietary confidential information which has been, or may be, disclosed to either party being utilised by the other party and for its own gain during the 5 calendar year period commencing from signature of this Agreement.
- 3.4. Should it be necessary for one party to request another to do so, the parties respectively agree to forthwith return to the other all documents and all proprietary confidential information provided or made available to such party for the purposes envisaged in this agreement together with all copies, notes and reproductions (whether made electronically or in hard-copy format) of such documents and proprietary confidential information.
- 3.5. In order to further protect the proprietary confidential information, **the parties** hereby undertake that: -
- 3.5.1. they will obtain confidentiality undertakings from their associated entity(ies), subsidiary(ies), holding company(ies), employers, employees, officers, agents, directors, representatives, associates, advisors, consultants and any other related or involved person not falling into one of the categories above, 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
- 3.5.2. they 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 after an agreement materially similar to this Agreement has

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been entered.

- 3.6. Each party hereby accepts liability for any and all acts of its employees, officers, agents, directors, representatives, consultants and associates who have access to the proprietary confidential information and/or who will or are handling same, and/or who have access to this information whether they are aware of this handling / access or not.
- 3.7. **The parties** acknowledge and agree that the unauthorised disclosure or use of the proprietary confidential information by one party may cause irreparable loss, harm and damage to the other party. Accordingly, **the parties** respectively indemnify other party 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 breaching party's representatives (as set out in Clause 3.5.1 above), of any of the provisions of the undertakings set out in this Agreement.
- 3.8. The confidentiality obligations set out in this Agreement shall not apply to any information which:
- 3.8.1. 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 3.5.1 above;
 - 3.8.2. was rightfully in a party's possession without breach of the obligation of confidentiality prior to receipt from the other party as proven by its written records;
 - 3.8.3. can be proved to have been rightfully received by a party from a third party without breach of the obligation of confidentiality;
 - 3.8.4. is independently developed by that party as proven by its written or electronic records;
 - 3.8.5. is approved for release with the prior written consent of the other party;
or
 - 3.8.6. is required to be disclosed in order to comply with a 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.

4. **NON-VARIATION**

This Agreement constitutes the entire agreement between **the parties** and no modification, variation, alteration or consensual cancellation shall be of any force and effect, unless reduced to writing, and signed by **the parties** and further made an annexure hereto before any variation / alteration / modification or cancellation takes place.

5. **ANCILLARY PROVISIONS**

5.1. Each acknowledgement or undertaking made or given by either of **the parties** pursuant to the provisions of this agreement is a separate acknowledgement and undertaking and:

5.1.1. is made separately from each other;

5.1.2. 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;

5.1.3. is severable from every other such acknowledgement and undertaking;

5.1.4. the validity or invalidity of any one such separate acknowledgement and undertaking shall not affect the validity of any other; and

5.1.5. is in no manner limited or restricted by reference to or inference from any other separate acknowledgement and undertaking.

5.2. Should any provision of this Agreement be held invalid due to changed or amended legislation or any other law, it should be construed and interpreted in such a manner (as far as possible) to bring it in harmony with such changed or amended legislation or law, so as to render same valid.

- 5.3. Should any provision of this Agreement, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 5.4. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require performance from the other party at any time thereafter, nor shall the waiver by either party of a breach of any provision thereof be held to be a waiver of the provision itself.

6. 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 **5 calendar years** thereafter notwithstanding that the negotiations entered into between **the parties** have finalised or whether any such negotiations are no longer being undertaken between **the parties**.

7. BREACH

- 7.1. 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 remedy available to it, enforce all remedies or rights it may have under this Agreement, including the following:
- 7.1.1. without notice to the defaulting party, 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
- 7.1.2. on notice to the defaulting party, claim specific performance if such performance is still possible; and / or
- 7.1.3. claim damages as surrogate for performance as will be determined by an appropriate court with relevant standing and jurisdiction.

8. GOVERNING LAW

- 8.1. This Agreement shall be governed by, and interpreted in terms of, the laws of the Republic of South Africa and notwithstanding that same is signed in any jurisdiction other than that of the Republic of South Africa (by either party hereto) alternatively that same is negotiated in any jurisdiction (whether in part or in full) other than that of the Republic of South Africa.
- 8.2. Subject to the remaining provisions of this agreement, **the parties** hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa in regard to any dispute arising from or in connection with this agreement, including the enforcement of any award made **in terms of this Agreement**.

9. **DOMICILIUM**

- 9.1. **The parties** each choose as their *domicilium citandi et executandi* for all purposes set out in this Agreement as per the details recorded on the first page (page 1) of this Agreement.
- 9.2. Any formal notice to be given or to be made for any purpose under this Agreement shall be in writing and shall:
- 9.2.1. be delivered to the addressee's physical address, in which event it shall be deemed to have been received when so delivered; or
 - 9.2.2. sent by registered post to the addressee's postal address, in which event it shall be deemed to have been received 4 (four) days after it has been posted; or
 - 9.2.3. sent by telefax, in which event it shall be deemed to have been received on the day it was sent, provided a valid transmission report to this effect can be produced by the transmitting party;
 - 9.2.4. sent by email, in which event it shall be deemed to have been received on the day it was sent, provided a valid electronically produced delivery report to this effect can be produced by the transmitting party;
 - 9.2.5. 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.

10. SIGNATURE

10.1. This Agreement is signed by **the parties** on the dates and at the places indicated below.

10.2. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement, as at the date of signature of the Party last signing one of the counterparts. For the purpose of transmission of the Counterparts, **the parties** record that they shall make use of electronic mail (email) and accordingly renounce any interpretive laws that may affect the validity of this Agreement if signed in counterparts.

10.3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

Signed at		Date	
Signature:			
Name	PIETER BARENDSE WILKEN		
Designation	DIRECTOR		
For and on behalf of:	WILKEN DEVELOPMENT (PTY) LTD		

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