**MEMORANDUM OF AGREEMENT OF SECRECY AND RESTRAINT**

This Secrecy and Restraint Agreement (the "Agreement") is made and effective this [DATE],

BETWEEN: [EMPLOYEE NAME] (the "Employee"), an individual with his main address at:

 [COMPLETE ADDRESS]

AND: [YOUR COMPANY NAME] (the "Company"), an entity organised and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

 [YOUR COMPLETE ADDRESS]

PREAMBLE:

WHEREAS:

1. THE EMPLOYEE is employed by THE EMPLOYER as: [DESCRIBE]

B. THE EMPLOYER wishes to restrain THE EMPLOYEE from making use of any

 confidential information and/or entering into unfair competition with it, and THE

 EMPLOYEE has agreed to be so restrained: and

C. The parties are now desirous of recording their agreement in this regard in writing,

NOW THEREFORE THE PARTIES RECORD AND AGREE AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS:

1.1 The preamble hereto is incorporated in and shall form an integral part of this Agreement.

1.2 The headings hereto are for the purposes of convenience and reference only and shall not aid in the interpretation of or modify the provisions of this Agreement.

1.3 In this Agreement (unless the context clearly indicates to the contrary);

1.3.1 words importing any one gender shall include the other two genders;

1.3.2 words in the singular shall include the plural and *vice versa*; and

1.3.3 the following words shall have the meanings ascribed to them hereunder:

1.3.3.1 “customer” shall mean customer in the usual sense of the word but shall also included (but not be restricted to) prospective customer, being any person visited by THE EMPLOYER’S representatives and/or persons to whom THE EMPLOYER has prepared quotations and/or proposals relating to And/or *in re*spect of Products, during the period of THE EMPLOYEE’S Employment with THE EMPLOYER;

1.3.3.2 “person” shall mean any person, whether natural or juristic, and includes (but is not limited to) any firm, partnership, sole proprietorship or similar entity, whether incorporated or not:

1.3.3.3 “Products” shall mean those goods offered for sale to THE EMPLOYER which Products presently include (but are not restricted to [DESCRIBE] Equipment.

1.3.3.4 “the business” shall mean the business carried on by THE EMPLOYER and comprised of all the activities referred to in clause 2.1 hereof below, and any other activities that may become part of such business from time to time during THE EMPLOYEE’S employment with THE EMPLOYER;

1.3.3.5 “the confidential information” shall mean all the confidential information and trade secrets of THE EMPLOYER and includes (but is not limited to those aspects listed in clauses 2.2 and 2.3 below; and

1.3.3.6 “THE EMPLOYER” shall mean [COMPANY NAME] (PTY) LTD and any successor-in-title of the Business or part thereof.

2. ACKNOWLEDGEMENTS:

 THE EMPLOYEE acknowledges that:

2.1 the activities of the Business include (but are not limited to):

2.1.1 the sale and/or supply of Products (which Products include, but are not limited to photocopier machines, telefacsimile machines, computers and printers); and

2.1.2 the sale and/or supply of parts and consumables used in and/or ancillary to the Products (which parts and consumables include, but are not limited to, toner, drums, paper and cartridges)

2.2 during his employment with THE EMPLOYER, THE EMPLOYEE has received and will continue to receive from THE EMPLOYER: (as required by the employer)

2.2.1 specific training in Products and the marketing thereof:

2.2.2 specific training on rental and credit agreements, and/or other such agreements, used by THE EMPLOYER in its dealings with its customers and suppliers, as well as on vital and related financial aspects thereof; and

2.2.3 specific training on the Business and/or any aspect thereof.

2.3 As a result of the aforegoing, and during the course of his employment with THE EMPLOYER, THE EMPLOYEE has been privy to and has had access to, and will continue to be privy to and have access to, confidential information of and relating to THE EMPLOYER and suppliers and customers of THE EMPLOYER, as well as of and relating to THE EMPLOYER’S and marketing, sales, servicing, commercial, technical, financial and other business affairs, know-how, systems and interests. Such confidential information includes (but is not limited to);

2.3.1 lists and/or details of customers, suppliers, contact persons, and their particular requirements;

2.3.2 agreements with customers, suppliers and employees;

2.3.3 quotations and/or proposals to customers and suppliers, and their particular requirements;

2.3.4 lists and/or details of Products, parts, consumables and prices;

2.3.5 calculations and formulae used for quotations, tendering, financing and discounting to, for and/or with customers and/or suppliers;

2.3.6 commencement and termination dates of transactions concluded with customers and/or suppliers as well as amounts paid and/or payable by such customers and/or suppliers *in re*spect of such transactions;

2.3.7 details of transactions concluded by THE EMPLOYER (and/or by finance houses used by THE EMPLOYER) with end users of Products, including (but not restricted to) details of rental, service and related agreements concluded by such end users *in re*spect of Products; and

2.3.8 reports, findings, recommendations, data, memoranda, specifications, computer programs, computer-stored information, knowledge and/or information relating to THE EMPLOYER’S customer base, as well as relating to the Business and to marketing, research, development, planning, strategy and general know-how in connection with the business policies, methods, products and strategies of THE EMPLOYER.

2.4 The confidential information will be harmful to the interests of THE EMPLOYER if divulged to competitors or if otherwise misused.

2.5 The protection of the confidential information is necessary for the development, preservation and viability of THE EMPLOYER’S business and the goodwill therein.

2.6 If any of the confidential information is necessary for the development, preservation and viability of THE EMPLOYEE breaches any one or more of the restraints recorded in this Agreement, then THE EMPLOYER will suffer loss and such loss will not be capable quantification in Rands.

3. EMPLOYEE’S AGREEMENT

 THE EMPLOYEE accordingly agrees and undertakes that:

3.1 the restraints recorded in this Agreement are fair and reasonable as to the activities concerned, the area in which those activities are restrained and the time periods for which such activities are restrained;

3.2 THE EMPLOYEE has received employment, remuneration and training from THE EMPLOYER in consideration for the restraints and is not entitled to further remuneration or compensation *in re*spect thereof;

3.3 should THE EMPLOYEE at any time dispute the reasonableness of this Agreement, the onus of proving such unreasonableness shall be upon him;

3.4 without derogating in any way from THE EMPLOYER’S right to seek and obtain an interdict, whether interim or final, and/or seek any other relief, THE EMPLOYEE agrees that in the event that he breaches any of the provisions of the restraint of this Agreement, he shall become liable forthwith to pay to THE EMPLOYER an amount calculated in accordance with the table below, which amount he agrees is a genuine pre-estimate of the damages which THE EMPLOYER will suffer as a result of such breach and which, but for the provisions of this clause, would otherwise be incapable of ascertainment:

|  |  |
| --- | --- |
| Position in which employed | Amount payable |
|  SALES EXECUTIVE | R8000.00 |

4. THE RESTRAINTS:

 THE EMPLOYEE agrees and undertakes that:

4.1 he shall never, directly himself or indirectly through any other person, utilise or divulge or disclose to any third party (except as may be necessary in accordance with the nature of his employment with THE EMPLOYER and in furtherance of the best interests of THE EMPLOYER) any of the confidential information;

4.2 for the period and in the area specified in clause 4.3 hereof below:

4.2.1 he shall not, directly or indirectly, solicit or attempt to solicit the custom of the customers of THE EMPLOYER *in re*spect of the Business or any part thereof;

4.2.2 he shall not, directly or indirectly, supply or attempt to supply Products and/or parts and/or consumables relating thereto, to any customer of THE EMPLOYER.

4.3 The restraints recorded in clause 4.2 hereof above:

4.3.1 shall apply and endure for a period of 24 (TWENTY FOUR) months from the date upon which THE EMPLOYEE ceases to be an employee of THE EMPLOYER for whatever reason; and

4.3.2 shall apply in every city, town, suburb and area within a radius of 100 (ONE HUNDRED) kms of the physical address of THE EMPLOYER specified in clause 6.5.1 hereof below.

5. SEPARATE AND DIVISIBLE RESTRAINTS:

 THE EMPLOYEE further agrees that:

Each restraint provision of this Agreement is separate and divisible from each and every other restraint provision hereof;

5.1 each designated area comprising a part of the area specified in clause 4.3.2 hereof above is separate and divisible from each and every other area designated as part thereof;

5.2 each month of the period referred to in clause 4.3 hereof above, particularly in their application to each of the restraints in clause 4.2, is separate and divisible from each and every other month *in re*spect of each and every separate restraint;

5.3 if one or more of the separate and divisible restraints recorded in clause 4.2 hereof above and/or areas and/or periods specified in clause 4.3 hereof above or parts thereof, are invalid and/or unenforceable for any reason whatsoever, the validity of the other restraints, areas and/or periods and/or provisions generally of the Agreement shall not be affected thereby; and

5.4 each of the separate restraints, areas and periods set out in this Agreement may be enforced to such lesser extent as may reasonably be required by THE EMPLOYER to protect its proprietary interests in the Business, the goodwill thereof and the confidential information generally.

6. GENERAL

6.1 The rights conferred by THE EMPLOYEE on THE EMPLOYER in terms of this Agreement may be ceded by THE EMPLOYER. In such event written notice of cession shall be given by THE EMPLOYER to THE EMPLOYEE.

6.2 This Agreement constitutes the entire agreement, insofar as the subject matter hereof is concerned, between THE EMPLOYER and THE EMPLOYEE and upon its signature by the last signing party hereto, this Agreement shall supersede all/any prior agreements between the parties *in re*lation to the subject matter hereof.

6.3 No variation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties hereto.

6.4 The applicable area/s referred to in clause 4.3.2 above may be provide in any legal proceedings by a certificate signed by a Director of THE EMPLOYER in which it is certified that:

6.4.1 such person is a Director of THE EMPLOYER;

6.4.2 the applicable area/s *in re*spect of THE EMPLOYEE in terms of clause 4.3.2 hereof above is/are as described herein, and such certificate, upon its mere production, shall be prima facie proof of the contents thereof and it shall not be necessary to prove the authority of the person certifying same.

6.5 The parties choose as their respective *domiciliary citandi et executandi* for all purposes arising out of and/or connected with this Agreement, the following addresses and telefacsimile numbers at which all notices and communications pertaining to this Agreement may be addressed, delivered, served, posted and/or transmitted via telefacsimile to them;

6.5.1 THE EMPLOYER: For purposes of hand delivery and/or physical service:

 \_\_\_\_\_\_\_\_\_\_

 For the purposes of registered post:

 For the purposes of transmission via telefacsimile:

6.5.2 THE EMPLOYEE: For purposes of hand delivery and/or physical service:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 For the purposes of registered post:

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 For the purpose of transmission via telefacsimile:

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6.6 Any notices and communications addressed to either party hereto at either their aforesaid physical or postal addresses or telefacsimile numbers shall be deemed to have been received by such party as follows:

6.6.1 if delivered by hand to or served at such party’s aforesaid physical address, same shall be deemed to have been received by such party on the actual date of delivery and/or service;

6.6.2 if posted to such party by prepaid registered post at such party’s aforesaid postal address, same shall be deemed to have been received by such party 4 (FOUR) days after such posting thereof;

6.6.3 if transmitted via telefacsimile to such party’s aforesaid telefacsimile number, same shall be deemed to have been received by such party on the first working day immediately following the date of transmission of such telefacsimile.

6.7 Either party hereto shall be entitled to change its *domiculium citandi et executandi* by giving 30 (THIRTY) days notice thereof in writing to the other party hereto of its intention to do so, and provided that such altered physical and/or postal addresses and/or telefacsimile number (as the case may be) is/are within the Republic of South Africa.

6.8 THE EMPLOYEE has read and considered each and every provision of this Agreement and, by his signature hereto, freely and voluntarily agrees to be bound by the terms hereof.

IN WITNESS HEREOF, each party to this Agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated below.

EMPLOYEE COMPANY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title