

NON-CIRCUMVENTION, NON-DISCLOSURE and CONFIDENTIALITY AGREEMENT

Between:

LIFTFILL SERVICES (PTY) LTD
(Registration Number: 2013/069404/07)

And

(Add detail & registration number)

Both of the above hereinafter collectively referred to as 'the Parties'

1. DEFINITIONS

In this agreement, unless the context indicates otherwise:

- 1.1 '*The Agreement*' means this confidentiality and non-disclosure agreement between the parties and all annexures thereto;
- 1.2 '*Confidential Information*' means that which is so defined in clause 4.1 to 4.4 of this Agreement;
- 1.3 '*the Discloser*' means any one of the Parties who makes Confidential Information available to the other;
- 1.4 '*Parties*' mean both the Discloser and the Receiving Party;
- 1.5 '*Receiving Party*' means any one of the Parties to whom the Confidential Information is being disclosed;
- 1.6 '*System*' means the replacement, and where possible, the re-gassing of all gas spring applications and consisting of the Confidential Information

and inclusive of all the Discloser's proprietary information, that the Discloser is of the intent to introduce to the Receiving Party.

2. INTERPRETATION

For the purposes of this agreement the following rules of construction shall apply, unless the context requires otherwise:

- 2.1 the singular shall include the plural and vice versa;
- 2.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 2.3 any reference to a person includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 2.4 any word or expression defined in, and for the purposes of, this agreement shall if expressed in the singular include the plural and vice versa, and a cognate word or expression shall have a corresponding meaning;
- 2.5 references in this agreement to "clauses", "sub-clauses" and "Annexures" are to clauses and sub-clauses of, and annexures to, this agreement; and
- 2.6 any reference in this agreement to this agreement or any other agreement, document or instrument shall be construed as a reference to this agreement or that other agreement, document or instrument as amended, varied, novated or substituted from time to time.
- 2.7 all the headings and sub-headings in this agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.
- 2.8 the *contra proferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;

3. INTRODUCTION

Whereas:

- 3.1 The Discloser possesses proprietary information and Confidential Information that relates to and comprises of the System.

- 3.2 The Discloser intends negotiating and contracting with the Receiving Party to the extent where the Parties will undertake to perform certain activities relating to the System.
- 3.3 For purposes hereof it is necessary for the Discloser to provide the Receiving Party with the Confidential Information, being information of a proprietary, secret and confidential nature.
- 3.4 The Discloser is willing, in accordance with the terms and conditions of this agreement, to disclose the Confidential Information to the Receiving Party in confidence.

The parties wish to record the terms and conditions of such disclosure.

4. **DEFINITION OF 'CONFIDENTIAL INFORMATION'**

- 4.1 The information that is intended to be covered by this agreement and that relates to the System in widest sense of the word and which include, without limitation (unless such information is part of the public domain) any identities, addresses, telephone numbers, telefax and/or facsimile numbers of clients, brokers, principals, suppliers, clients, contractors, subcontractors and any information relating to the Old Fashioned Fish & Chips franchise business including its technical information, designs, concepts, ideas, sketches, commercial information, know-how, trade secrets and processes, communicated to the Receiving Party by the Discloser or acquired by the Receiving Party from the Discloser, during the course of the negotiations and discussions referred to above, as well as in the conclusion or implementation of any agreement concluded between the parties.
- 4.2 Without limiting the generality of the above, Confidential Information shall in particular include information forming part, directly or indirectly, of any intellectual property and copyright of the Discloser.
- 4.3 Confidential Information shall include any information described above which at any stage prior to signing this Agreement that may have been provided to the Receiving Party by the Discloser.
- 4.4 In addition, Confidential Information as described above shall include any new additions or enhancements to the Confidential Information or value added information provided by the Receiving Party to the Discloser resulting from any services agreement which may regulate the relationship of the parties subsequent to signing such services or other business agreement.
- 4.5 All such information collectively shall be referred to in this Agreement as the 'Confidential Information' as referred to in paragraph 1.2 above.

- 4.6 The Parties undertake, as far as is both practical and realistically possible, to record the detail of Confidential Information disclosed and received in writing, signed by both Parties in acknowledgement of same which list shall be deemed to be part of this Agreement.

5. **CONFIDENTIALITY UNDERTAKING**

The Receiving Party acknowledges that the Confidential Information is a valuable, special and unique asset belonging to the Discloser, and which also consist of the Discloser's intellectual property and accordingly, that it is of the utmost importance to the Discloser that the Confidential Information not be used to advance the interests of any persons, entities, corporations, associations, firms or institutions of whatsoever nature, other than the Discloser. In view thereof the Receiving Party undertakes that –

- 5.1 it will not, without prior written consent of the Discloser, during the course of the negotiations and discussions referred to in this Agreement or at any time thereafter, directly or indirectly, use any of the Confidential Information, otherwise than for the purpose of such negotiations and discussions or for the implementation of any agreement resulting therefrom; and
- 5.2 it will not divulge, discuss with, disclose, copy, or reveal the Confidential Information of the Discloser to any person, firm, corporation, association or any other entity, whatsoever, for any reason or purpose whatsoever (other than its employees and agents and only to the extent that such employees and agents require such information in the implementation of any agreement concluded between the parties); and
- 5.3 it will procure that its shareholders, directors, employees, consultants, agents or any other party to whom the Confidential Information is disclosed as provided for in terms of clause 5.2 above, are informed of the confidential nature of the Confidential Information; and prior to such disclosure, undertake to be bound by the terms of this Agreement in the manner in which the Receiving Party is bound and in the manner set out in paragraph 6 below. Any breach of this confidentiality undertaking by any of the Receiving Party's employees and agents shall be deemed to be a breach of this Agreement by the Receiving Party.

6. **UNDERTAKINGS BY DIRECTORS, OFFICERS AND EMPLOYEES**

- 6.1 The Receiving Party shall be entitled to disclose the Confidential Information to its responsible directors, shareholders, officers, employees, professional advisers, consultants and agents (each of whom is hereinafter referred to in this clause 6 as an "employee"), subject to the following provisions:

- 6.1.1 The Receiving Party may disclose the Confidential Information to an employee only in the event that, and to the extent that, such disclosure is necessary; and
 - 6.1.2 Before the Receiving Party discloses any Confidential Information to any employee, the Receiving Party shall inform the employee of the existence of this Agreement and shall obtain an undertaking from him in the form of Annexure "A" attached hereto.
 - 6.1.3 The Receiving Party shall use its best endeavours to ensure that each employee complies with the aforesaid undertaking, and the Receiving Party indemnifies Discloser in respect of any loss suffered by the Discloser arising out of any breach by any employee of such undertaking.
- 6.2 Each acknowledgement or undertaking made or given in terms of the provisions of this Agreement is a separate acknowledgement or undertaking and:
- 6.2.1 is made separately of each other;
 - 6.2.2 is severable from other such acknowledgement or undertaking;
 - 6.2.3 the validity or invalidity of any such separate acknowledgement and undertaking shall not affect the validity of any other; and
 - 6.2.4 is in no manner limited or restricted by reference to or inference from any other separate acknowledgement or undertaking.

7. RETURN OF CONFIDENTIAL INFORMATION

The Discloser may request in writing or otherwise at any time that any Confidential Information or any documents containing such Confidential Information, disclosed pursuant to the terms of this Agreement and any copies thereof be returned with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any such Confidential Information or any documents containing such Confidential Information or any copies thereof and the Receiving Party shall comply with any such request within seven days of receipt of such request.

8. EXCLUDED INFORMATION

- 8.1 The obligations pursuant to this Agreement shall not apply to any Confidential Information that –

8.1.1 is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;

8.1.2 is received from a third party without similar restrictions and without breach of this Agreement;

8.2 It is agreed that any Confidential Information received by the Receiving Party referred to in this paragraph shall be disclosed to the Discloser in writing as soon as such information is received with full detail of the source of such information and the nature thereof.

8.3 If the Receiving Party is confronted with legal action to disclose the information received under this Agreement, the Receiving Party shall promptly notify the Discloser. The Receiving Party shall reasonably assist the Discloser in obtaining a protective order to ensure that any portion of the information required to be disclosed be used only for the purpose for which a court issues an order, or for such other purposes as required by law. Each party shall bear its own legal expenses.

9. ACKNOWLEDGMENTS AND UNDERTAKINGS

9.1 The Receiving Party acknowledges that the undertakings contained herein are fair and reasonable, and are reasonably required by the Discloser to protect the Discloser's Confidential Information.

9.2 It is further acknowledged and undertaken that should any Confidential Information provided by the Discloser to the Receiving Party, directly or indirectly, conflict in any way with the business of the Receiving Party, the Receiving Party shall in writing and in detail advise the Discloser of such conflict of interest upon which the Discloser shall have all the rights and remedies afforded it in terms of this Agreement or any other business or co-operation agreement flowing from or being an integral part of such agreement.

10. NON-CIRCUMVENTION AND DISCLOSURE

10.1 The Receiving Party acknowledges that the Discloser is the proprietor of the System and the Discloser introduced, disclosed and acquainted the Receiving Party with the System and that the Receiving Party would not have become acquainted with the System but for the Discloser having provided it to the Receiving Party.

10.2 The Receiving Party accordingly hereby agrees that the Receiving Party will not endeavour to acquire the System, either directly or indirectly, from any source other than from the Discloser and if the Receiving Party shall be offered the System, or any concept that is associated with or similar to

the System, by any other source, then the Receiving Party shall forthwith notify the Discloser of such fact and shall divulge the identity of the person making available such information to the Receiving Party.

10.3 The Receiving Party agrees that in relation to any potential investment, joint venture and/ or business opportunity, of any nature whatever, disclosed by the Discloser during the course of the negotiations and discussions referred to in Clause 1, it will not –

10.3.1 either directly or indirectly whether alone or with others, negotiate or participate in any transaction or series of transactions or related transactions of any nature which circumvents the Discloser; and/or

10.3.2 in any way whatsoever circumvent or attempt to circumvent the Discloser by directly or indirectly dealing with any party which, the identity of which would fall within the definition of Confidential Information, in any present or future transactions; and/or

10.3.3 In any other way, directly or indirectly, use any of the Confidential Information to benefit or advance the business of the Receiving Party or any of its clients other than in terms of any written agreement between the parties according to which the Receiving Party has obtained the contractual rights to such Confidential Information.

11. **INJUNCTIVE RELIEF**

11.1 The Receiving Party acknowledges that damages are not a sufficient remedy for any breach of this Agreement and that the Discloser is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party in addition to any other remedies available to them at law or in equity.

11.2 Before the Receiving Party discloses any Confidential Information under any law or order of the kind referred to in clause 6.1, it must provide the Discloser with sufficient notice to enable the Discloser to seek a protective order or other remedy.

11.3 The Receiving Party must provide the Discloser with all assistance and co-operation which it considers necessary to prevent that disclosure of the Confidential Information.

12. **ACCEPTANCE OF LIABILITY**

12.1 The Receiving Party acknowledges and agrees that the unauthorised disclosure or use, or negligent disclosure or use, of any of the

Confidential Information by it, or a third party may cause irreparable loss, harm or damage, and accordingly the Receiving Party indemnifies and holds the Discloser harmless against any damages, loss, costs, expense, claim or liability, of whatsoever nature, suffered by the Discloser and that arose directly or indirectly as a result of a breach hereof by the Receiving Party or its directors, officers, employees, professional advisers and agents.

12.2 The Receiving Party hereby expressly and irrevocably accepts liability for any acts of its directors, officers, employees, professional advisers and agents who have gained or will gain access to the Confidential Information.

13. **SURVIVAL OF INDEMNITIES**

13.1 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations and survives termination of this Agreement.

13.2 The confidentiality obligations contained in this Agreement will commence on the date of signature hereof and shall survive the termination of any current or future agreement.

14. **WARRANTIES**

Notwithstanding the disclosure of any of the Confidential Information to the Receiving Party, the Discloser makes no warranty as to the value or accuracy thereof. The Discloser shall not be liable for any loss or damage, claim or demand incurred or received by the Receiving Party in relying upon the Confidential Information disclosed to it.

15. **STANDARD OF CARE**

The Receiving Party agrees that it will protect the Confidential Information disclosed, communicated or acquired pursuant to the provisions of this Agreement using the same standard of care that it 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.

16. **GENERAL**

16.1 Any failure or delay by the Discloser in exercising any right, power or privilege in relation to any Confidential Information and / or pursuant to

this Agreement will not constitute a waiver of that right, power or privilege, nor will any single or partial exercise thereof preclude any further exercise of that right, power or privilege.

- 16.2 This Agreement, together with any other agreement between the parties to which Confidential Information as defined have a bearing, shall constitute the sole record of the agreement between the parties in regard to the subject matter hereof.
- 16.3 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or in such other agreement referred to in 16.4.
- 16.4 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

17. **PENALTY**

- 17.1 The Receiving Party hereby expressly acknowledges that any breach of this Agreement will prejudice the Discloser and cause it to suffer extensive damages that will be difficult to quantify and which damages will also exceed the Discloser's proprietary interest.
- 17.2 The Receiving Party hereby expressly agrees that it will be liable for a fine of R10,000 (Ten Thousand Rand) should it be determined that the Receiving Party materially breached the provisions of this Agreement in as far as it pertains to the Receiving Party's obligation of confidentiality.
- 17.3 The Receiving Party expressly agrees that the Discloser will be entitled to recover any and all damages over and above and in lieu of the penalty and as contemplated by section 2 of Act 15 of 1962.
- 17.4 In as far as it may be necessary the Receiving Party hereby expressly acknowledges that the penalty hereby imposed is reasonable for all purposes of Act 15 of 1962.

18. **DOMICILIUM AND NOTICES**

- 18.1 The parties choose as their domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement the following addresses:

18.1.1 LIFTFILL FIELD SERVICES (PTY) LTD
649 Swemmer Street, Rietfontein, Pretoria, Gauteng

18.1.2 _____

18.2 Any party shall be entitled from time to time, by written notice to the other party, to vary its domicilium to any other address.

18.3 Any notice given by a party to the other delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the Receiving Party at the time of delivery.

18.4 Any notice given by telefacsimile during the normal business hours of the addressee to the addressee's domicilium for the time being shall be presumed to have been received on the first business day succeeding the day on which the telefacsimile is transmitted.

18.5 No notice or payments may be made by post.

19. **GOVERNING LAW**

Regardless of the place of execution, performance or domicile of the parties, this Agreement shall be governed according to the laws of the Republic of South Africa.

SIGNED at _____ ON THIS _____ day of _____ 2018, by the representatives of the Parties who warrant their authority to do so.

Witnesses:

1. _____
Signature
.....
Name of witness (print)

4. _____
Signature
.....
Name of witness (print)

Signature of person authorised to sign on behalf of who signs for and on behalf of _____ and who hereby warrants that he/she is duly and properly authorised thereto.

.....
Name of signatory (print)

Witnesses:

1. _____
Signature
.....
Name of witness (print)

4. _____
Signature
.....
Name of witness (print)

Signature of person authorised to sign on behalf of who signs for and on behalf of _____ and who hereby warrants that he/she is duly and properly authorised thereto.

.....
Name of signatory (print)

UNDERTAKING BY DIRECTORS, OFFICERS AND EMPLOYEES

I, _____

the undersigned, and being a [director/officer/employee] of _____ ('the Company') bind myself expressly and irrevocably to the Company and the Discloser, on the basis that each of them may enforce the provisions of this undertaking separately from, or jointly with, the other of them, as follows:

1. I have read the Non-Circumvention, Non-Disclosure and Confidentiality Agreement ('the Agreement') between the Company and the Discloser and to which a form of this undertaking is attached as Annexure A. Unless the context indicates otherwise, words and expressions defined in this undertaking shall have the same meanings in this undertaking as those ascribed to them in the Agreement.

2. I acknowledge that the Confidential Information (as defined in paragraph 1.2 of the Agreement) which the Company discloses to me:
 - 2.1 is the exclusive property of the Discloser; and
 - 2.2 is strictly confidential.

3. I undertake that:
 - 3.1 I shall be bound by all the terms of the agreement insofar as they are relevant to me and are capable of being applied to me; and
 - 3.2 without derogation from the provisions of paragraph 3.1 above, for the duration of the agreement, I shall –
 - 3.2.1 keep all the Confidential Information strictly confidential and shall not disclose it to anyone; and
 - 3.2.2 not, directly or indirectly, make use of any of the Confidential Information

other than the use as required by the Company to be made thereof.

DATED at _____ this _____ day of _____ 2018.

Signature of Director/Officer/Employee