confidentiality and non-circumvention AGREEMENT

Between

**MLM BUSINESS DEVELOPMENT LTD**

(Company Registration No.: 177706)

 (Duly represented and authorised by: Aslam Lallmahomed

PASSPORT NO.: MUS 1754486)

**AND**

**XXX (PTY) LTD**

(Company Registration No.: XXX)

 (Duly represented and authorised by: XXX

PASSPORT NO.: XXX)

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CONFIDENTIALITY AGREEMENT

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CONFIDENTIALITY and non-circumvention AGREEMent

1. PARTIES
	1. The parties to this agreement are –
		* 1. MLM BUSINESS DEVELOPMENT LTD (Company Registration No.: 177706); and
			2. XXX (PTY) LTD (Company Registration No.: XXX).

**The parties agree as set out below:**

1. INTERPRETATION
	1. In this agreement, unless inconsistent with or otherwise indicated by the context ‑
		1. "**the/this agreement**" means the agreement as set out herein;
		2. "**confidential information**" means the parties' trade, analysis, production, financial, marketing, management and customer names and customer liaison information and all other confidential information, including, but not limited to -
			1. operating know-how, processes and techniques used by the parties in the conduct of its business and in particular its business and client contacts;
			2. trade secrets, know-how, technical data, exclusivity arrangements, computer programmes and all other technical, mechanical and computer information, belonging to or in the possession of the parties and used by it in its business operations;
			3. knowledge of details and particulars in regard to the parties' clients, customers, business associates and the like;
			4. the parties' method of conducting business, management, costs and sources of material and/or labour;
			5. the contractual, financial, management and supply arrangements between the parties and its clients and/or business associates;
			6. details of the parties' financial structure and operating results;
			7. names, addresses and requirements of clients and potential clients of the parties', sources of labour and the like;
			8. details of the parties' share structure, the shareholders of the parties and the like, and
			9. any other matter which relates to the business of the parties in respect of which information is not readily publicly available in the normal course of business and which may come to the knowledge of a party during its negotiations with the shareholders of the parties with a view to acquire the interest in the parties;
		3. "**the effective date**" means the date upon which this agreement is signed by the party signing last in time;
		4. "**the parties**" means the parties recorded in heading 1;
		5. “**MLMBD**” means MLM BUSINESS DEVELOPMENT LTD (Company Registration No.: 177706);

“**XXX**” means XXX (PTY) LTD (Company Registration No.: XXX).

* + 1. any reference to the singular includes the plural and *vice versa*;
		2. any reference to natural persons includes legal persons and *vice versa*;
		3. any reference to a gender includes the other genders.
	1. The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
	2. This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
1. INTRODUCTION
	1. It is recorded that ‑
		1. the parties are involved in sensitive negotiations;
		2. during such negotiations, the parties will become aware of the confidential information and other trade secrets of the parties which, if disclosed or used by it, would cause substantial damage and/or prejudice to the parties;
		3. the parties wish to protect the confidentiality of, and their proprietary interest in, the confidential information and other trade secrets and require certain undertakings from each other.
	2. The parties record and agree as set out herein.
2. UNDERTAKING
	1. Each party hereby undertakes in favour of the other parties, which undertaking is accepted, in order to protect the propriety interest of each party in the confidential information, that -
		1. it shall not divulge or disclose to any person whatsoever in any form or manner whatsoever, either directly or indirectly, any of the confidential information without the prior written consent of each other;
		2. it shall maintain in secrecy any and all confidential information of the parties which may be acquired by or disclosed to it;
		3. it shall not implement, market or cause to be implemented or marketed, any of the goods and services offered by the parties by making use of the confidential information;
		4. it shall not use, exploit or permit the use or in any other manner whatsoever apply the 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 in accordance with the provisions of this agreement;
		5. it agrees that the unauthorised disclosure of the confidential information of the parties to a third party may cause irreparable loss, harm and damage to the parties and accordingly it hereby indemnifies and holds each other harmless against any loss, action, expense, claim, harm or damage, of whatsoever nature, suffered or sustained by a party pursuant to a breach by a party or any of its employees, agents and/or representatives of the provisions of this agreement;
		6. it shall not use for its own benefit, or for the benefit of any person whatsoever in any form or manner whatsoever, directly or indirectly, any of the confidential information other than to conclude the negotiations.
	2. Any documentation or records relating to or arising from the confidential information which comes into the possession of a party during the negotiations or at any time thereafter -
		1. shall be deemed to form part of the confidential information;
		2. shall not be copied, reproduced, published or circulated by a party unless agreed to in writing by the other party; and
		3. shall be surrendered to a party on demand and, in any event, upon termination of the negotiations should this occur;

unless the parties otherwise agree in writing.

* 1. Each party shall use its best endeavours to prevent the confidential information falling into the hands of unauthorised third parties.
	2. Information which is acquired pursuant to the negotiations shall be deemed to be confidential information and shall be subject to the provisions contained herein.
	3. Each party hereby accepts responsibility for all acts of its staff, directors, consultants, attorneys, accountants and associates who have access to the confidential information. To the extent that a party suffers any damage as a result of any publication or use in whatsoever way of the confidential information to any unauthorised person by any of its staff, directors, consultants, attorneys, accountants and/or associates -
		1. the onus shall be on a party to show that the publication or use was not due as a result of such conduct; and
		2. a party shall be liable for any damages suffered by the other party as a result of such illegal publication or use.
	4. Whenever consent or authority to be granted by the parties to disclose confidential information is required, the said consent or authority shall be in writing. Should a party have been granted the necessary authority, it shall only disclose the confidential information to individuals (including staff, directors, associates, professional advisors or consultants of a party) who ‑
		1. have a need to know (and then only to the extent that each such person has a need to know);
		2. are aware that the confidential information should be kept confidential; and
		3. have signed a similar confidential undertaking in favour of the parties.
1. Non-circumvention

The undersigned parties, intending to be legally bound, hereby irrevocably agree not to circumvent, avoid, bypass or obviate each other, directly or indirectly, in the implementation and participation of the proposed project forming the subject of the negotiations between the parties.

1. DURATION

This agreement shall commence on the effective date and shall continue for a period of five calendar years thereafter, but shall not apply to any confidential information which at the time it is received, is in the public domain or was known to a party prior to disclosure to a party during the negotiations, as can be determined by competent written evidence in possession of a party.

1. PROPERTY OF COMPANY

Each party hereby agrees and undertakes that any documentation of whatsoever nature or description relating to the confidential information which it acquired or may acquire or which may come into its possession pursuant to the negotiations, shall remain the property of the other party and shall be surrendered by a party together with all copies thereof of whatsoever nature, forthwith on demand.

1. BREACH
	1. Should a party or any of its staff, consultants, professional advisors, directors, associates and/or representatives breach any of the terms and/or conditions of this agreement, the other party is entitled, without any notice to the other party, to seek whatever remedy may be available to it in the circumstances, including to obtain an interdict and/or to claim damages, in addition to whatever remedy may be available to it in terms of this agreement or in law.
	2. In the case of 8.1, a party shall furthermore return to the other party forthwith on demand all documentation, notes, memoranda, discs or records or other documentation of whatsoever nature or description relating to the confidential information which it acquired or may acquire or came into may come into its possession pursuant to the negotiations.
	3. A party shall forthwith cease to use directly or indirectly any of the information disclosed or divulged by the other party to such party or generally anything made from or with the confidential information.
2. SECRECY

Each party hereby specifically undertakes that it will hold secret and keep confidential the fact that negotiations are taking place and it will furthermore not disclose under any circumstances whatsoever the contents of these negotiations except as may be required by law.

1. AGREEMENT

The parties agree that, under no circumstances shall a binding agreement in regard to the proposed joining of the interests of the parties become final and/or binding unless it is reduced to writing and signed by all relevant parties thereto.

1. NOTICES AND DOMICILIUM
	1. The parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
	2. For purposes of this agreement the parties' respective addresses shall be ‑
		1. “MLMBD” at 23 Rue Labourdonnais, Port Louis, Mauritius.

Tel number: +230 214 2117 / +230 212 8026

Email: aslam@mlmbusinessdevelopments.com

* + 1. “XXX” at XXX

Tel number: XXX

Email: XXX

 or at such other address, not being a post office box or poste restante, of which the party concerned may notify the other in writing.

* 1. Any notice given in terms of this agreement shall be in writing and shall ‑
		1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
		2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;
		3. if given by telegram be deemed to have been received by the addressee 1 (one) day after despatch;
		4. if transmitted by facsimile be deemed to have been received by the addressee 1 (one) day after despatch.
	2. Notwithstanding anything to the contrary contained in this agreement, a written notice or communication actually received by one of the parties from another including by way of telex or email transmission shall be adequate written notice or communication to such party.
1. SEVERABILITY

If any provision of this agreement is found to be unlawful, unenforceable or invalid, it shall be deemed to be severable from the remaining provisions of this agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.

1. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

1. VARIATION

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

1. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

**Agreed and accepted by MLMBD:**

Date: \_\_\_\_\_

Place:

………………………………………………………………….

**Company Name: MLM BUSINESS DEVELOPMENT LTD**

**Name: ASLAM LALLMAHOMED**

**Passport No.: MUS 1754486**

who warrants his authority

**Agreed and accepted by XXX**

Date: \_\_\_\_ of

Place:

………………………………………………………………

**Company Name: XXX**

**Name: XXX**

**Passport No.: XXX**

who warrants his authority

…………………………………… ……………………………………

As Witness As Witness

**END OF DOCUMENT**