

# BUYER'S NDA (NON-SOLICITATION & NON-CIRCUMVENT)



|                                                                         |                  |                    |
|-------------------------------------------------------------------------|------------------|--------------------|
| Buyer / Company Name:                                                   |                  |                    |
| Buyer / Company Registration Number:                                    |                  |                    |
| Buyer / Company Physical Address:                                       |                  |                    |
| Buyer's Duly Authorised Representative:                                 | Name:            |                    |
|                                                                         | Identity Number: |                    |
| Buyer Contact Information:                                              | Cell:            |                    |
|                                                                         | Email:           |                    |
| Have you owned a business before?                                       |                  | If yes, what type: |
| Brief description of buyer's qualifications, expertise, and experience: |                  |                    |
| What type of business/es are you enquiring about?                       |                  |                    |
| Geographical area of business/es that you might be interested in:       |                  |                    |
| Maximum purchase price of business?                                     | R                |                    |

**We will need further information on how you intend financing the acquisition. It is a requirement of our agreement with our seller/client that we obtain this information.**

|                |   |
|----------------|---|
| Cash available | R |
|----------------|---|

**If you do not have the full cash amount available for the acquisitions, kindly explain/indicate your intended method of funding the acquisition:**

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Initial

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context clearly indicates otherwise, the under mentioned terms shall have the meanings assigned to them hereunder:
- 1.1.1 **"Act"** – means the Companies Act, Act 71 of 2008;
- 1.1.2 **"Aldes"** – means and includes Aldes Business Brokers (Pty) Ltd (Registration Number: 2006/036900/07), a company duly incorporated under and in accordance with the laws of the Republic of South Africa and any and all of its subsidiaries, any and all of its holding companies, any other entities forming part of its group of companies and/or any and all of its agents from time to time, or any one of them as the context may require;
- 1.1.3 **"Business/es"** – means such assets (whether tangible or intangible), business/es and/or entity/ies (albeit close corporations, partnerships, trusts, private companies, public companies, joint ventures, sole proprietors and/or otherwise) introduced by Aldes to the Buyer for sale (albeit as is listed for sale on the Aldes database or website or otherwise);
- 1.1.4 **"Buyer"** – means the person/entity described and identified as such in the *Buyer's Profile* on the face of this Agreement;
- 1.1.5 **"Confidential Information"** – means any and all information disclosed by Aldes, the Seller/s and/or the Business/es to the Buyer from time to time regarding, in respect of and/or related to the Business/es or Seller/s and/or for purposes of the possible acquisition of the Business/es by the Buyer;
- 1.1.6 **"Confidential Materials"** – means any materials and/or documents which contain Confidential Information;
- 1.1.7 **"Negotiations"** – means discussions entered into (or to be entered into) by and between Aldes, the Seller/s, the Business/es and the Buyer (or any two or more of them) in respect of the Buyer investigating and evaluating: i) the acquisition of any ownership interest (and/or other interest) in, ii) the acquisition of the business and/or assets of, iii) a merger and/or amalgamation with, iv) an investment in, v) a joint venture, partnership and/or association with, and/or vi) any form of take-over of, any Business/es to be introduced (or previously introduced) by Aldes to the Buyer for sale;
- 1.1.8 **"Purpose"** – bears the meaning assigned thereto in clause 2.3 below;
- 1.1.9 **"Representative"** – means the Buyer's duly authorised repetitive/s (if any), described as such under and in terms of the *Buyer's Profile* on the face of this Agreement and the signatory to this Agreement as referenced at the end of this Agreement;
- 1.1.10 **"Seller/s"** – means each of the owners, of each of the Business/es introduced by Aldes to the Buyer from time to time, independently and separately;
- 1.1.11 **"Signature Date"** – means the date of signature of this Agreement by the last Party signing;
- 1.2 In this Agreement, unless the context clearly indicates a contrary intention:
- 1.2.1 clause headings have been inserted for convenience only and shall not be taken into account in its interpretation;
- 1.2.2 words in the singular shall include the plural and *vice versa*, words in the masculine gender shall include the feminine and neuter gender and vice versa, and a reference to natural persons shall include created entities (corporate and unincorporated) and *vice versa*;
- 1.2.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the definition;
- 1.2.4 words and/or terms defined in any clause shall, unless the application of any such word and/or term is specifically limited to that clause, bear the meaning assigned to such word and/or term throughout the Agreement;
- 1.2.5 any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

- 1.2.6 the use of the word “including” followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and general words that follow specific words in a list, shall not be construed as referring only to the types of things identified by the specific words;
- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.4 The terms of this Agreement, having been negotiated, shall not be interpreted against the person/entity who procured its preparation and drafting, nor shall exclusion clauses contained in this Agreement be construed against the person/entity relying on same.
- 1.5 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.

## **2. BACKGROUND**

- 2.1 The Buyer records that it is (and/or has been and/or will be) partaking in the Negotiations with the explicit view to the Seller/s, the Business/es and the Buyer (or any combination of them) entering into one or more sale of assets, sale of business, sale of shares, sale of membership interest (and/or sale of other interests), merger, amalgamation, investment, acquisition, take-over, joint venture, partnership and/or association agreement/s regarding: i) the sale and acquisition of, ii) a merger or amalgamation with, iii) an investment in, iv) a partnership, association and/or joint venture with, and/or v) any form of take-over of, the whole (or specified portions) of one or more of the Business/es by the Buyer.
- 2.2 The Buyer realises that, in the course of the Negotiations, Aldes the Business/es and/or the Seller/s will be required to disclose Confidential Information and/or Confidential Material to the Buyer for the purposes of assisting the Buyer in determining whether or not it wishes to: i) acquire the business and/or assets of, ii) acquire the shares and/or members interest (and/or other interest) in, iii) merge and/or amalgamate with, iv) invest in, v) form a partnership, joint venture and/or association with, and/or vi) take-over, any Business/es.
- 2.3 The Buyer acknowledges and agrees that the sole purpose of any disclosures of Confidential Information and/or Confidential Material is strictly limited to that stated in clauses 2.1 and 2.2 above and to assist the Buyer in identifying, evaluating and understanding the structure, scope, nature, composition and extent (albeit financially, operationally, legally or otherwise) of the Business/es, with a view to the Buyer possibly entering into any form of transaction and/or agreement contemplated in clauses 2.1 and/or 2.2 above with (or with regard to) any of the Business/es (the “Purpose”).

## **3. PERIOD**

- 3.1 This Agreement shall commence, notwithstanding the signature date hereof, on the earliest of:
- 3.1.1 the date of signature of this agreement by the Buyer; or
- 3.1.2 the date of the first meeting or correspondence between Aldes and the Buyer regarding any Business/es and/or Seller/s; and shall continue in perpetuity and indefinitely thereafter.

## **4. UNDERTAKING OF CONFIDENTIALITY**

- 4.1 The Buyer undertakes, towards and in favour of Aldes, the Business/es and/or the Seller/s, with regard to any of the Confidential Information and/or Confidential Materials, that it will:
- 4.1.1 keep all the Confidential Information and/or Confidential Materials (whether disclosed to it orally, in written form or in any other manner) strictly confidential and secret and that it will hold same in trust and confidence;
- 4.1.2 ensure that no part of the Confidential Information and/or Confidential Materials shall be copied, reproduced, stored in a retrievable system or transmitted, in any form or manner or by any means whatsoever (albeit electronic, mechanical,

photocopying, recording or otherwise) without the joint prior written permission of Aldes and the Seller/s and/or Business/es who disclosed such Confidential Information and/or Confidential Materials;

- 4.1.3 not at any time, without the joint prior written consent of Aldes and the Seller/s and/or Business/es who disclosed such Confidential Information and/or Confidential Materials, and albeit publically or privately, publish, disclose, communicate or otherwise reveal the Confidential Information and/or Confidential Materials or any part thereof to any person other than to employees and advisers of the Buyer who are reasonably required in the course of their duty, to receive and consider the Confidential Information and/or Confidential Materials;
- 4.1.4 will use all of its best efforts to ensure that each of its employees, agents, servants and advisers to whom any Confidential Information and/or Confidential Materials are disclosed individually, undertakes to be bound by confidentiality and non-disclosure provisions not less restrictive than those contained herein;
- 4.1.5 not seek to gain any commercial advantage from such Confidential Information and/or Confidential Materials, unless Aldes and the Seller/s and/or Business/es who disclosed such Confidential Information and/or Confidential Materials expressly agree otherwise in writing;
- 4.1.6 at all times keep such Confidential Information and/or Confidential Materials under its care and control and in a safe place;
- 4.1.7 use and apply such Confidential Information and/or Confidential Materials only for the Purpose;
- 4.1.8 not use or implement any of the Confidential Information and/or Confidential Material in any manner or form or for any purpose that is (or may be) contrary, or detrimental, to the cause and interests of the Seller/s, the Business/es and/or Aldes;

## **5. NON-APPLICABILITY**

- 5.1 The provisions of this Agreement regarding Confidential Information and/or Confidential Materials will not apply in respect of information or material:
  - 5.1.1 which is within the public domain at the date of commencement of this Agreement;
  - 5.1.2 which becomes, lawfully and independently and through no fault of the Buyer, part of the public domain subsequent to the date on which this Agreement becomes effective;
  - 5.1.3 which the Buyer can show was in its possession prior to the disclosure thereof by Aldes, the Business/es and/or the Seller/s who disclosed such information and/or materials;
  - 5.1.4 which the Buyer receives from a third party, who has no confidential commitment to Aldes, the Business/es and/or the Seller/s who disclosed such information and/or materials;
  - 5.1.5 with regard to which the Buyer receives written approval from Aldes, the Business/es and/or the Seller/s who disclosed such information and/or materials, authorising such disclosure or use;
  - 5.1.6 which is required by law to be disclosed, provided that if the Buyer, its consultants or employees (or it is reasonably likely that any of them will) become legally compelled to disclose, prompt notice of such fact shall be given by the Buyer, so that Aldes, the Business/es and/or the Seller/s who disclosed such information and/or materials may seek an appropriate remedy to prevent such disclosure or waive compliance with the provisions of this Agreement, and the Buyer will fully cooperate with Aldes, the Business/es and/or the Seller/s who disclosed such information and/or materials, should Aldes and/or the relevant Seller/s and/or Business/es elect to challenge the validity of such requirement.
- 5.2 Specific information disclosed by Aldes, the Business/es and/or the Seller/s, will not be deemed to come under the exceptions referred to in clause 5.1 above merely because it is embraced by more general information, which is, or becomes, public knowledge, or was in the Buyer's prior possession.

## 6. OWNERSHIP

- 6.1 The Seller/s and/or the Business/es shall retain ownership of all their Confidential Information and/or Confidential Materials, which shall be deemed to be lent to the Buyer for the Purpose only.
- 6.2 Nothing contained in this Agreement, nor in any disclosures hereunder made, shall be construed to grant to the Buyer any license or other rights in, or to the Confidential Information and/or Confidential Materials, beyond the usage rights (for the Purpose) granted to the Buyer in terms hereof.

## 7. FAILURE OF NEGOTIATIONS AND RETURN OF CONFIDENTIAL INFORMATION AND/OR CONFIDENTIAL MATERIALS

- 7.1 The Buyer hereby undertakes that, in the event of Negotiations failing with regard to any specific Business/es presented to the Buyer by Aldes for sale, for any reason whatsoever, it shall immediately return to Aldes, the specific Business/es and/or the specific Seller/s all Confidential Information and/or Confidential Materials which has been disclosed to it by Aldes, the specific Business/es and/or the specific Seller/s. Negotiations shall be deemed to have failed in the event of either of the Buyer and/or the relevant Seller/s indicating in writing that no transaction and/or agreement contemplated in clauses 2.1 and/or 2.2 will occur, proceed and/or materialise with (or with regard to) the relevant Business/es.

## 8. LIABILITY

- 8.1 The Buyer acknowledges that it will be liable to Aldes, the Business/es and/or the Seller/s for a breach of this Agreement by itself or any of its employees, consultants, advisers and/or agents.
- 8.2 The Buyer indemnifies and undertakes to hold harmless Aldes, the Business/es and the Seller/s (the “Indemnified Party”) against all and any loss, damage, liability or expense which the Indemnified Party may suffer or incur as a result of or which may be attributable to:
- 8.2.1 any intentional or grossly negligent disclosure of the Confidential Information and/or Confidential Material to any unauthorised party by the Buyer or any of its employees, consultants, agents and/or advisers; or
- 8.2.2 any unauthorised use of the Confidential Information and/or Confidential Material by the Buyer or any of its employees, consultants, agents and advisers; or
- 8.2.3 any unauthorised use of the Confidential Information and/or Confidential Material by any unauthorised party who acquired the Confidential Information and/or Confidential Material through/from the Buyer and/or its employees, consultants, agents and/or advisers.

## 9. INTERDICT

- 9.1 The Buyer agrees that a breach of the terms and conditions of this Agreement, including the unauthorised disclosure and/or use of the Confidential Information and/or Confidential Material by the Buyer, would be harmful to Aldes, the Business/es and/or the Seller/s.
- 9.2 As damages may not always be an appropriate remedy for breach, Aldes, the Business/es and/or the Seller/s shall be entitled to enforce the provisions of this Agreement (including the confidentiality, non-disclosure, non-use, non-circumvent and/or non-solicitation provisions) by means of an interdict, claim for specific performance or other equitable and available relief.
- 9.3 The enforcement of provisions of this Agreement (including the confidentiality, non-disclosure, non-use, non-circumvent and/or non-solicitation provisions) by means of an interdict, claim for specific performance or other equitable and available relief, will not limit, negate or detract from Aldes', the Business/es' and/or the Seller/s' rights to pursue a damages claim or from any other remedies they may have in law.

**10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Buyer acknowledges that all right and title in and to any intellectual property rights and/or copyrights, in respect the Confidential Information and/or Confidential Materials, are owned by the Seller/s and/or the Business/es who disclosed same and/or such Seller/s and/or Business/es licensors.
- 10.2 This Agreement does not affect any of the Seller/s' and/or Business/es' ownership of their intellectual property rights and/or copyrights. The Seller/s and/or Business/es however grant the Buyer a limited license to use such intellectual property rights and/or copyrights to the extent necessary for the Purpose.

**11. NO REPRESENTATIONS OR WARRANTIES**

- 11.1 The Buyer agrees that Aldes has not made, and does not make, any representation or warranty as to the accuracy or the completeness of the Confidential Information and/or Confidential Materials (or any other information presented regarding the Seller/s and/or the Business/es introduced to the Buyer for sale). Aldes merely makes the Confidential Information and/or Confidential Materials (and other information) available to the Buyer as it receives same from the Seller/s and/or Business/es.
- 11.2 Aldes has never (nor will it) provide any binding or final financial, business, operational or other technical advice or assistance regarding any of the Business/es, or regarding any of the transactions concluded by the Buyer related to such Business/es. It is understood that Aldes' role is that of a business broker, and not that of a professional legal, financial, operational or other adviser.
- 11.3 The Buyer warrants and guarantees that it will employ and implement such processes, procedures and steps as it deems feasible and necessary in the circumstances, at its sole cost and liability, to verify all information (including Confidential Information and/or Confidential Materials) presented to it regarding any and all of the Business/es, and to become wholly and completely informed on the nature, scope, intent and extent of all transactions proposed and/or related to the Business/es and/or its acquisition and/or takeover of, its merger and/or amalgamation with and/or its partnership, association and/or joint venture with the whole or specific portions of such Business/es.

**12. EXCLUSIVITY**

- 12.1 The Buyer warrants and guarantees that it will not (albeit directly itself or indirectly through any of its subsidiaries (as defined in the Act), holding companies (as defined in the Act), group companies (as defined in the Act), related parties (as defined in the Act) and/or inter-related parties (as defined in the Act)), for the entire term that Negotiations are on-going regarding any specific Business/es and for a period of 24 (twenty four) months after such Negotiations are deemed to have ceased (refer clause 7.1 above), engage in any other negotiations (or actually conclude a transaction) regarding the sale and acquisition of any business/es, companies, joint ventures, trusts, partnerships and/or any other ventures (albeit an acquisition of shares, members interest, other interest, assets and/or business) which are similar or identical (in the nature of their activities) to any Business/es introduced to the Buyer by Aldes for sale.

**13. NON-SOLICITATION**

- 13.1 The Buyer herewith warrants and guarantees that it will never (albeit directly itself or indirectly through any of its subsidiaries (as defined in the Act), holding companies (as defined in the Act), group companies (as defined in the Act), related parties (as defined in the Act) and/or inter-related parties (as defined in the Act)) solicit, interfere with entice or endeavour to entice away from any of the Seller/s and/or Business/es any of their employees, agents and/or distributors, nor will it directly or indirectly commission or procure such actions by anyone else, nor will it directly or indirectly assist anyone else in doing (or to do) so.
- 13.2 The Buyer herewith warrants and guarantees that it will never (albeit directly itself or indirectly through any of its subsidiaries (as defined in the Act), holding companies (as defined in the Act), group companies (as defined in the Act), related parties (as defined in the Act) and/or inter-related parties (as defined in the Act)) solicit, interfere with entice or endeavour to entice away from the Seller/s and/or Business/es any of their clients, customers and/or suppliers, nor will it directly or indirectly commission or procure such actions, nor will it directly or indirectly assist anyone else in doing (or to do) so.

**14. NON-CIRCUMVENT**

- 14.1 The Buyer acknowledges that Aldes will be deemed and regarded (and will be) the effective cause of any transaction which may transpire and/or materialise between the Buyer and any Business/es and/or Seller/s.
- 14.2 The Buyer warrants and guarantees that it will never circumvent Aldes (albeit directly itself or indirectly through any of its subsidiaries, holding companies, group companies, related parties and/or inter-related parties or otherwise indirectly), in negotiating or concluding any transactions, arrangements and/or agreements contemplated in clauses 2.1 and/or 2.2 above with (or with regard to) any Seller/s and/or Business/es. For avoidance of doubt, the Buyer will at all times act in good faith and will only transact and deal with Seller/s and/or Business/es, via the brokerage, intervention and mediation of Aldes.
- 14.3 The Buyer acknowledges and agrees that Aldes is, will be and will remain entitled to receipt of its agreed brokerage commission (albeit due and payable by the Seller/s, the Business/es, the Buyer or any of them), should the Buyer (albeit directly itself or indirectly through any of its subsidiaries, holding companies, group companies, related parties and/or inter-related parties or otherwise indirectly) or anyone else the Buyer may have introduced to the Business/es and/or Seller/s, conclude any agreements and/or transactions contemplated in clauses 2.1 and/or 2.2 above with (or with regard to) any Business/es and/or Seller/s.

**15. CESSION**

- 15.1 Each of the Buyer's respective rights, duties and obligations pursuant to this Agreement are personal to it and may not be sold, ceded, assigned or otherwise transferred without the prior written consent of Aldes, the Business/es and the Seller/s.
- 15.2 The Buyer notes and agrees that the Seller/s, Business/es and/or Aldes have a real interest and right in and to the protection of the Confidential Information and/or Confidential Material as provided for in this Agreement. As such, Aldes, the Seller/s and/or the Business/es will be entitled to cede, assign and transfer any claim they may have in terms of or under this Agreement (regarding a breach of any of the confidentiality, non-disclosure and non-use provisions of this Agreement) by, between and amongst each other, without the consent of the Buyer being obtained at any time whatsoever or in any form or manner whatsoever.

**16. NON-VARIATION**

- 16.1 No alteration or variation to or of this Agreement shall be of any force or effect unless it is recorded in writing and signed by the Buyer, Aldes and the Seller/s.

**17. DOMICILIUM**

- 17.1 The Buyer chooses the address set out in the Buyer's Profile on the face of this Agreement as the address at which all notices and other communications must be delivered to it for the purposes of this Agreement.

**18. GENERAL**

- 18.1 Any indulgence, latitude or extension of time which may be allowed by either of Aldes, the Seller/s and/or the Business/es shall not under any circumstances be taken as preventing any of them from exercising their rights contained in this Agreement.
- 18.2 The Buyer undertakes to treat all matters relating to this Agreement as being confidential and, therefore, shall not, without the written approval of the Aldes, the Seller/s and the Business/es, disclose the provisions of this Agreement to any third party.

**19. BUYER'S INFORMATION**

- 19.1 The Buyer notes that Aldes' decision to introduce any Business/es for sale to the Buyer (and the Seller/s and/or Business/ess decision to enter into discussions with the Buyer) is, in part, based on the information presented by the Buyer under and in terms of the Buyer's Profile on the face of this Agreement. As such, the Buyer warrants and guarantees that all information presented and provided via and in terms of the Buyer's Profile was, is and will remain true, complete and accurate and that it will immediately inform Aldes should there be any change in the information provided/presented.

**20. FURTHER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENTS**

- 20.1 Aldes may from time to time, dependant on the nature, scope and extent of information to be provided to the Buyer, require that the Buyer enter into and conclude further and/or additional confidentiality and non-disclosure agreements. Should the Buyer fail and/or refuse to enter into and conclude such further agreements, Aldes may, in its sole and absolute discretion, refuse to disclose further information to the Buyer regarding any and/or all Seller/s and/or Business/es.
- 20.2 It is noted and agreed that the Buyer and certain of the Seller/s and/or Business/es may from time to time enter into and conclude one or more confidentiality and/or non-disclosure agreements amongst, by and between themselves. It is noted and agreed that those agreements will be in addition to, and not in substitution of/for, this Agreement. Those Agreements will in no way, manner or form detract from, limit, terminate and/or negate any of the terms, conditions and provisions of this Agreement, unless Aldes has given its specific prior written consent to the contrary.

**21. REPRESENTATIVE**

- 21.1 The Representative warrants and guarantees that he is wholly, completely and fully authorised to act for and on behalf of the Buyer herein and that he has full right, title and authority to bind the Buyer to the terms and conditions referenced in this Agreement.
- 21.2 The Representative notes and agrees that, due to his representation of the Buyer herein, he will or may become privy to the Confidential Information and Confidential Materials and will be responsible (either wholly or in part) for the Buyer abiding by and discharging its duties, obligations and undertakings in terms of this Agreement. To this end it is required that the Representative (which he hereby does), bind and subject himself to the terms and conditions of this Agreement, as if he himself was the Buyer, along with the Buyer. For avoidance of doubt, wherever a duty, requirement, expectation or obligation is imposed on the Buyer, the Representative will abide thereby and discharge same in the same manner and to the same extent as is required and expected of the Buyer.

Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Surname: \_\_\_\_\_

Identity Number: \_\_\_\_\_

(Duly authorised thereto for and on behalf of the Buyer)

\_\_\_\_\_  
Initial