

CONFIDENTIALITY AND RESTRAINT UNDERTAKING

between

(Registration Number:
("the Restrainee")

and

JFM LOGISTICS (PTY) LTD
(Registration Number: 2017/131851/07
("the Company")

1. INTRODUCTION

It is recorded that:

- 1.1 contemporaneously with the execution of this Agreement, the Transport Agreement shall be executed;
- 1.2 the Restrainee in undertaking the Carriage Services under the Transport Agreement has or will be exposed to the conduct of the Business;
- 1.3 the Restrainee acknowledges that:
 - 1.3.1 the Company would not have entered into the Transport Agreement without the Restrainee having given the undertakings in favour of the Company which are contained in this Agreement;
 - 1.3.2 it will derive a substantial financial benefit from the implementation of the Transport Agreement;
 - 1.3.3 it gives the undertakings in favour of the Company contained in this Agreement, realising all the implications thereof as recorded herein.

2. INTERPRETATION AND DEFINITIONS

- 2.1 In this Agreement :
 - 2.1.1 clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of this Agreement, nor modify nor amplify any of its provisions;
 - 2.1.2 the Parties shall, wherever necessary or appropriate, be referred to by the defined designations as in 2.2 below;
 - 2.1.3 a reference to : -
 - 2.1.3.1 any particular gender shall include the other gender;

- 2.1.3.2 the singular shall include the plural and *vice versa*;
- 2.1.3.3 a natural person shall include a juristic person (whether a corporate or unincorporated created entity) and *vice versa*;
- 2.1.4 all of the annexes (if any) hereto are incorporated herein and shall have the same force and effect as if they were set out in the body of this Agreement;
- 2.1.5 words and/or expressions defined in this Agreement shall bear the same meanings in any annexes hereto which do not contain their own defined words and/or expressions;
- 2.1.6 where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;
- 2.1.7 where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the Parties shall be deemed to have intended such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday;
- 2.1.8 where an expression has been defined (whether in 2.2 below or elsewhere in this Agreement) and such definition contains a provision conferring a right or imposing an obligation on any Party, then notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement;
- 2.1.9 if figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
- 2.1.10 words and/or expressions defined in any particular clause in the body of this Agreement shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Agreement;

- 2.1.11 the terms "holding" and "subsidiary" in relation to any company shall bear the meanings assigned to them in the Companies Act No 71 of 2008;
- 2.1.12 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;
- 2.1.13 the *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned;
- 2.1.14 a reference to any statutory enactment (including statutes, ordinances, regulations and by-laws) shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enacted or substituted from time to time thereafter;
- 2.1.15 a reference to any legal principle, doctrine or process under South African law shall include a reference to the equivalent or analogous principle, doctrine or process in any other jurisdiction in which the provisions of this Agreement may apply or to the laws of which a Party may be or become subject;
- 2.1.16 the expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination.

2.2 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:-

- 2.2.1 "this Agreement" – the confidentiality and restraint undertaking contained in this document;

- 2.2.2 "the Business" – the transportation, logistics and warehousing business operated by the Company,
- 2.2.3 "the Company" means JFM Logistics (Pty) Ltd, registration number 2017/131851/07, with its registered address at 607 Chevrolet Street, Markman Industrial, Port Elizabeth,6001;
- 2.2.4 "Competitive Business" – any business which competes with the Business;
- 2.2.5 "Parties" – the Company and the Restrainee and "Party" shall mean either one of them as the context requires;
- 2.2.6 "the Restrainee"
- 2.2.7 "Transport Agreement" - the agreement entered into between the Restrainee and the Company contemporaneously with the execution of this Agreement, in terms whereof, the Restrainee is appointed to undertake various Carriage Services on behalf of the Company.
- 2.2.8 "Signature Date" - the date upon which the last of the Parties signs this Agreement;
- 2.2.9 "Termination Date" – the date upon which the Transport Agreement with the Company is terminated for any reason.

3. **CONFIDENTIALITY**

3.1 It is recorded that:

3.1.1 the Company shall conduct the Business;

3.1.2 the Restrainee, by virtue of its association with the Business will become possessed of, and has had and will have access to the trade secrets and confidential information relating to the Business including, inter alia, but without limiting the generality of the foregoing, the following matters relating to the Business, all of which are hereinafter referred to as "the Trade Secrets":

- 3.1.2.1 know-how, processes and techniques;
 - 3.1.2.2 knowledge of customers and business associates of the Business;
 - 3.1.2.3 the contractual arrangements with its customers, suppliers and business associates;
 - 3.1.2.4 the financial details of the relationship with its customers, suppliers and business associates;
 - 3.1.2.5 the financial details (including credit terms) relating to the customers and suppliers of the Business;
 - 3.1.2.6 the identity of prospective customers and their requirements;
 - 3.1.2.7 other matters which relate to the Business and in respect of which information is not readily available in the ordinary course of business to a competitor of the Business.
- 3.2 If the Restrainee solicits, approaches, or otherwise becomes associated with a direct competitor of the Business, the Company's proprietary interests in the Trade Secrets will be prejudiced.
- 3.3 Having regard to the facts recorded in 3.1 and 3.2, the Restrainee undertakes in favour of the Company that in order to protect the proprietary interests of the Company in the Trade Secrets:
- 3.3.1 the Restrainee will not either use, exploit or directly or indirectly divulge or disclose to any person any of the Trade Secrets;
 - 3.3.2 the Restrainee will not, either for itself or as the agent of anyone else, persuade, induce, solicit, encourage or procure any employee of the Business to:

3.3.2.1 become employed by or interested in any manner whatever in any other business, firm, undertaking or company (all of which are hereinafter referred to as "Any Concern");

3.3.2.2 terminate his employment with the Business;

3.3.3 the Restrainee shall not furnish any information or advice acquired by him to anyone else which results in any employee of the Business becoming employed by, or directly or indirectly interested in any manner in, Any Concern;

3.3.4 the Restrainee shall not solicit, interfere with, or entice or endeavour to entice away from the Business any person, firm or company who or which at any time during the period set out in 4.3 is a customer of or is accustomed to dealing with the Business, nor shall the Restrainee furnish any information or advice to any customer or use any other means or take any other action which is directly or indirectly designed, or in the ordinary course of events calculated, to result in any customer terminating its association with the Business and/or transferring its business to any other entity other than the Company.

3.4 Notwithstanding anything to the contrary in this Agreement, the following information will not be regarded as confidential information for the purpose of this Agreement:

3.4.1 any information which is, or becomes, generally available to the public so as to become a part of the public domain;

3.4.2 any information which is disclosed by the Restrainee in order to comply with any Order of Court of competent jurisdiction, or the provisions of any law or regulation in force from time to time, provided that the Restrainee has advised the Company to take such steps as the Company deems necessary at its cost to protect its interests in such information, and provided further that the Restrainee shall

disclose only that portion of information which he is legally required to disclose, and shall use his best endeavours to protect the confidentiality of any information so disclosed without being obliged to incur any expense;

3.4.3 any information that the Restrainee can prove was disclosed to him by a third party, excluding information that the Restrainee knows or ought reasonably to know is subject to an obligation of confidentiality;

3.4.4 any information that the Restrainee can prove is lawfully in his possession and was obtained by him other than by virtue of his employment and/or association with the Company;

3.4.5 any information which the Restrainee has, or may acquire, as a result of his general knowledge, skill and/or experience.

4. **RESTRAINT**

4.1 The Restrainee acknowledges that, by virtue of its association with the Business, he will become possessed of, and has had and will have access to, the Trade Secrets and the confidential information of the Business.

4.2 If, after the conclusion of this Agreement, the Restrainee solicits or approaches any customer of the Business or otherwise becomes associated with or interested in a Competitive Business, the Company's proprietary interests in the Trade Secrets and the Business will be prejudiced.

4.3 Having regard to the facts recorded in 4.1 and 4.2, the Restrainee undertakes to the Company that he shall not during the period of the Transport Agreement and for a period of 5 (five) years after the Termination Date, be directly or indirectly interested, engaged or concerned, whether as principal, agent, partner, representative, shareholder, director, employee, consultant, adviser, financier, administrator or in any other like capacity in any Competitive Business or to approach or attempt to solicit any customers of the Business:

4.3.1 carried on in the Republic of South Africa, ("the Area"); and

4.3.2 which carries on business in direct competition with the Business.

4.4 The Restrainee acknowledges that:

4.4.1 the restraints imposed upon him in terms of 4.3 are reasonable as to subject matter, area and duration, and are reasonably required by the Company to protect and maintain the goodwill of the Company's proprietary interest in the Business;

4.4.2 the provisions of 4.3 shall be construed as imposing a separate and independent restraint in respect of:

4.4.2.1 each of the months falling within the period referred to in 4.3;

4.4.2.2 every magisterial district or metropolitan area falling within the Area;

4.4.2.3 every capacity, in relation to a Competitive Business in which the Restrainee is prohibited from acting in terms of 4.3;

4.4.2.4 the nature of interest, act or activity comprising the Business;

5. **BREACH OF RESTRAINT**

5.1 The Restrainee acknowledges that the Company will suffer financial harm and loss should the Restrainee breach any of the restraints or undertakings given by him in terms of this Agreement.

5.2 Upon a breach by the Restrainee of any of the restraints or undertakings given by him in terms of this Agreement, the Company shall be entitled to enforce the undertaking or restraint in question and, in addition, or alternatively thereto as

the Company may elect, be entitled to claim and recover from the Restrainee such damages as the Company may have sustained as a result of such breach, inclusive of the loss of any income that the Business would have derived but for the breach of the restraint by the Restrainee.

6. DOMICILLA AND NOTICES

6.1 The Parties choose *domicilium citandi et executandi* ("Domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement, as follows:

the Restrainee

the Company

607 Chevrolet Street, Markman Industrial,
Port Elizabeth, 6001 and email.....

6.2 Each of the Parties, by written notice to the others of them, shall be entitled from time to time to vary their Domicilium to any other address within the Republic of South Africa, provided that such other address may not be a post office box or poste restante.

6.3 Any notice given and any communication or payment made by any Party to the others of them ("the Addressee") which :

6.3.1 is delivered by hand during the normal business hours of the Addressee at the Addressee's Domicilium for the time being, shall be presumed, unless the contrary is proved, to have been received by the Addressee at the time of delivery;

6.3.2 is transmitted by email in a PDF format, shall be presumed, unless the contrary is proved, to have been received by the Addressee one hour after the time of transmission, provided that such transmission has been effected on a business day, failing which the email shall be presumed to have been received by the Addressee one hour after commencement of business on the next business day.

6.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice

or communication to it notwithstanding that it was not sent to or delivered at its chosen Domicilium.

7. GENERAL

- 7.1 This document constitutes the sole record of the agreement between the Parties relating to the subject matter hereof.
- 7.2 No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 7.3 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 all of the Parties.
- 7.4 No indulgence which any party ("the Grantor") may grant to any other Party ("the Grantee") shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee which may have arisen in the past or which might arise in the future.

THUS DONE AND SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES SET OUT HEREUNDER:

Date:

Place:

For:

Director who warrants that he is duly authorised hereto

Date:

Place: