

MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

Between

STER KINEKOR THEATRES a division of PRIMEDIA PROPRIETARY LIMITED

(Registration Number 2005/044403/07)

Of: Ster Kinekor Office Park,
185 Katherine Street,
Sandton, Johannesburg,
South Africa,
2146

Postal address: PO Box 76461
Wendywood,
Johannesburg,
South Africa,
2144

(hereinafter referred to as "**SKT**")

and

[insert company's full registered name]

(Registration Number **[insert company's full registration number]**)

Of:

Postal address:

(hereinafter referred to as "**XXX**")

(hereinafter jointly referred to as "**the Parties**")

RECITAL

Whereas the Parties for their mutual benefit and for the purposes of potentially engaging in a business relationship involving [REDACTED] ("**the potential business**") as more fully described below may have exchanged and wish to exchange certain information of a confidential nature and wish to protect such information in the manner set out in this agreement, it is hereby agreed as follows: -

1 INTERPRETATIONS

Unless inconsistent with or otherwise indicated by the context:

- 1.1 "**the potential business**" shall mean the potential business opportunity/concept that would be entered into by the Parties, which potential business relates to [REDACTED];
- 1.2 "**confidential information**" includes, but not limited to:
 - 1.2.1 the concept and basis of the potential business as set out above;
 - 1.2.2 any commercial, financial, customer or market information, know-how or trade secrets;
 - 1.2.3 all other information designated as "**confidential**" or "**proprietary**", or which by virtue of its nature and the circumstances of disclosure would be considered to be confidential or proprietary to the disclosing party,which is disclosed or communicated to the receiving party by the disclosing party in connection with or arising out of the potential business, opportunity/concept;
- 1.3 "**the disclosing party**" is the party disclosing the confidential information;
- 1.4 "**the receiving party**" or "**recipient**" is the party receiving the confidential information.

2 HANDLING OF CONFIDENTIAL INFORMATION

- 2.1 The receiving party shall maintain the other party's confidential information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the receiving party applies to its own confidential information, which the receiving party warrants as providing adequate protection against unauthorised disclosure, copying, reproduction or use.
- 2.2 The receiving party may disclose the confidential information only to its officers, employees and any other person who is required to know such information out of necessity. The receiving party agrees to procure that such officers and employees will be bound by this agreement even after their relationship with the receiving party has been terminated.
- 2.3 Copies or reproductions containing confidential information shall not be made except to the extent reasonably necessary for the opportunity/concept, and copies or reproductions made shall remain the property of the disclosing party. Following the opportunity/concept all confidential information and copies or reproductions thereof shall be returned to the disclosing party or destroyed by the receiving party.

- 2.4 Unless the Parties otherwise agree in writing, any documentation or records relating to the disclosing party's confidential information which comes into the possession of the receiving party during the existence of this agreement:
- 2.4.1 shall be deemed to be the property of the disclosing party;
 - 2.4.2 shall not be published or circulated by the receiving party;
 - 2.4.3 shall not be copied or reproduced by the receiving party other than strictly in accordance with the requirements of the opportunity/concept, and any such copies and reproductions shall be kept separate from other documents and records of the receiving party; and
 - 2.4.4 shall be surrendered to the disclosing party or destroyed on request, and the receiving party shall not retain any extracts, copies or reproductions therefrom.
- 2.5 The receiving party agrees:
- 2.5.1 not to disclose the confidential information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement; and
 - 2.5.2 not to utilise, employ, exploit or in any other manner whatsoever use the confidential information disclosed pursuant to the provisions of this agreement for any purpose whatsoever other than strictly in relation to the opportunity/concept.
- 2.6 The receiving party indemnifies and holds the disclosing party harmless against any loss, claim, or damage suffered or sustained by the disclosing party pursuant to a breach by the receiving party in terms of this agreement should agreement be met by both the receiving party and the disclosing party.

3 EXCLUDED INFORMATION

The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any information that:

- 3.1 is known to or in the possession of the receiving party prior to disclosure thereof by the disclosing party;
- 3.2 is or becomes publicly known, otherwise than pursuant to a breach of this agreement by the receiving party;
- 3.3 is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, and the disclosing party is given reasonable advance notice of such order and an opportunity to object to such disclosure; or

- 3.4 is disclosed to a third party pursuant to the prior written authorisation from the disclosing party.

4 LIMITATIONS AND WARRANTY

- 4.1. The receiving party shall:

- 4.1.1 not divulge the other party's confidential information, in whole or in part, to any third party;
- 4.1.2 use the confidential information only for purposes of the potential business and matters relating thereto; and
- 4.1.3 make no commercial use of the confidential information or any part thereof without the written prior consent of the disclosing party.

- 4.2 Each party warrants to the other party its right to disclose its confidential information to the other party and to authorise the other party to use the same for purposes of the potential business.

5 TITLE

All confidential information disclosed by the disclosing party to the receiving party is:

- 5.1 proprietary to the disclosing party; and
- 5.2 does not confer any rights of whatsoever nature in such confidential information to the receiving party.

6 NON-CIRCUMVENTION

- 6.1 The Parties to this agreement will refrain from soliciting business and contracts from sources not their own which have been made available to them through this agreement, without the express written permission of the party who made the original introduction;
- 6.2 in addition, the Parties will maintain complete confidentiality regarding the potential business, and will only disclose business sources under mutual agreement, and only after written permission has been received;
- 6.3 the Parties agree not to circumvent or attempt to circumvent each other; and
- 6.4 in the event of either direct or indirect disclosure, the aggrieved will be entitled to injunctive relief, specific performance or other appropriate equitable remedies without prejudice to any such breach any rights or remedies at law or in equity otherwise available to the disclosing party. No failure or delay by the disclosing party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

7 REMEDIES

It is agreed that all Confidential Information is provided on an "as is" basis. Neither Party makes any representation or warranty, express or implied, with respect to the Confidential Information disclosed by it. Neither Party represents or warrants that any product or business plan marketed or carried out as disclosed, or at all. Any actions taken by a recipient of Confidential Information in response to the disclosure of the Confidential Information shall be solely at the risk of the Party taking action. In no event shall a disclosing party be liable for any direct, indirect, special, or consequential damages in connection with or arising out of the use by the recipient of the Information disclosed to the recipient.

In no event shall either Party be liable for any indirect or consequential damages (including without limitation, loss of profits) arising out of or in connection with a breach of this Agreement, unless the breach of the Agreement was intentional or as a result of gross negligence.

8 TERMINATION

This agreement shall continue in force from the date hereof for a period of 12 (twelve) months. The provisions of clause 2, 3, 4, 5 and 6 shall survive any such termination.

8 ENTIRE AGREEMENT

This agreement constitutes the entire agreement and understanding between the parties in respect of NON-DISCLOSURE AND CONFIDENTIALITY and supersedes all previous agreements, understandings and undertakings in such respect.

9 GOVERNING LAW AND ARBITRATION

- 9.1 The interpretation, construction and effect of this agreement shall be governed and construed in accordance with laws of the Republic of South Africa, without regard to conflicts of law principles.
- 9.2 If any dispute arises out of or in connection with this agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.
- 9.3 A dispute within the meaning of this clause exists once one Party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.
- 9.4 Within 10 (ten) business days following such notification, the Parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the Parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 9.5 In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Parties resolving the dispute within 15 business days, the Parties must refer the dispute for resolution by way of mediation in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA").

- 9.6 In the event of the mediation envisaged in clause 9.5 failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) business days, be referred to arbitration as envisaged in the clauses below.
- 9.7 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the Parties.
- 9.8 Each Party agrees that the Arbitration will be held as an expedited arbitration in Sandton, Johannesburg, in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator's decision. If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA.
- 9.9 The provisions of this clause 9 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending finalization of this dispute resolution process for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 9.10 The references to AFSA shall include its successor or body nominated in writing by it in its stead.
- 9.11 This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the agreement terminates, is nullified or cancelled for whatsoever reason or cause.
- 9.12 From the commencement of the first demand in accordance with the foregoing to the final conclusion of the process set out in this clause, the running of prescription will be interrupted.
- 9.13 Notwithstanding anything to the contrary contained herein, failure to comply with clause 9 shall be deemed to be a breach of contract.

10 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

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