

2006/08/21

**ANNEXURE "D"**  
**CONFIDENTIALITY AGREEMENT**

entered into by and between:

\_\_\_\_\_  
(the employer, hereinafter referred to as the "FRANCHISEE")

and

\_\_\_\_\_  
(full name and identity number)  
(hereinafter referred to as the "EMPLOYEE")

**RECORDAL**

Whereas the EMPLOYEE is employed by the FRANCHISEE as a \_\_\_\_\_

And whereas the FRANCHISEE is part of a franchise (as defined in the franchise agreement entered into by the FRANCHISEE and the FRANCHISOR dated \_\_\_\_\_, hereinafter referred to as the "FRANCHISED BUSINESS")

And whereas the parties wish to record the terms agreed upon between them concerning the confidence, trust and faith to be maintained and observed by the EMPLOYEE in respect of the legitimate interests of the FRANCHISEE, the FRANCHISOR and of the FRANCHISED BUSINESS.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

## **1. DEFINITIONS**

- 1.1 "INTELLECTUAL PROPERTY" shall include trade marks, service marks, trade names, domain names, design rights, patents, copyright (including rights in computer software and data bases, and moral rights), rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist in any country in the world.
- 1.2 "FRANCHISOR" shall mean Big AI's Group (Pty) Ltd.

## **2. CONFIDENTIALITY AND RESTRAINTS OF TRADE**

- 2.1 During the continuance of the employment of the EMPLOYEE by the FRANCHISEE, the EMPLOYEE shall devote the whole of his/her time and attention exclusively to the affairs of the FRANCHISEE and shall remain just, loyal and faithful to the FRANCHISEE in the performance of his/her duties, and shall use his/her best endeavors to promote, develop, and extend the interests of the FRANCHISEE, the FRANCHISOR and the FRANCHISED BUSINESS.
- 2.2 The EMPLOYEE shall diligently, efficiently and promptly carry out and obey the FRANCHISEE'S lawful instructions conveyed from time to time to him/her and he/she shall render to the FRANCHISEE, as and when requested, such information, particulars and reports in regard to the business of the FRANCHISEE as will be required of him/her from time to time.
- 2.3 It is recorded that in the performance of his/her duties the EMPLOYEE will:

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- 2.3.1 Acquire knowledge of the trade secrets, copyright, trade marks, patents, secret processes, technical information, know-how, procedures, security information, special marketing techniques and other INTELLECTUAL PROPERTY used by the FRANCHISEE relating to the activities of the FRANCHISEE, the FRANCHISOR and the FRANCHISED BUSINESS;
- 2.3.2 Become acquainted with the customers, clients and principals of the FRANCHISEE, the FRANCHISOR and those of the FRANCHISED BUSINESS;
- 2.3.3 Derive considerable benefit from the technical and marketing training and experience obtained from the FRANCHISEE, the FRANCHISOR and the FRANCHISED BUSINESS.
- 2.4 For reasons set out above and *inter alia* the nature of the FRANCHISED BUSINESS, it is agreed that for the protection of the interests of the FRANCHISEE, the FRANCHISOR and the FRANCHISED BUSINESS, the EMPLOYEE, during or after the termination of his/her employment by the FRANCHISEE for any reason whatsoever, shall:
  - 2.4.1 Not, directly or indirectly, use any information or knowledge so acquired by him/her relating to trade secrets, trade marks, patents, security information, secret processes, technical information, procedures, know-how, special marketing techniques and/or other INTELLECTUAL PROPERTY of the FRANCHISEE, the FRANCHISOR and the FRANCHISED BUSINESS, whether for his/her benefit or otherwise, nor divulge or disclose such information or knowledge to any person whatsoever, save to those officials of the FRANCHISEE whose business it is to know the same;
  - 2.4.2 Not entice or attempt to entice the customers, clients or employees of the FRANCHISEE, the FRANCHISOR or the FRANCHISED BUSINESS away from it;
  - 2.4.3 Be restrained from being interested either directly or indirectly and whether as a director, partner, owner, principal, agent, representative or shareholder, financier or employee, or in any way whatsoever in a business similar to that being carried on by

the FRANCHISEE or in any business which competes or is likely to compete with the business being conducted by the FRANCHISEE and/or the FRANCHISOR and/or the FRANCHISED BUSINESS at the time of termination of the employment. The duration of this restraint shall be for a period of 6 (SIX) months after the termination of his/her employment for any reason whatsoever and shall apply to the FRANCHISEE'S franchise territory;

2.4.4 Shall not during the period of his/her employment with the FRANCHISEE, and for a period of 6 (SIX) months after termination of employment for any reason whatsoever, in the Republic of South Africa, whether directly or indirectly, solicit, canvass or accept any commission, assignment or order from any of the customers, clients or principals for whom the FRANCHISEE was acting as at the date of termination of the EMPLOYEE'S employment or for whom the FRANCHISEE acted at any time within 6 (SIX) months prior to or after the termination of the EMPLOYEE'S employment or be interested in such commission, assignment or order in any of the ways described in Clause 2.4.3 above;

2.4.5 Not, during the period of his employment with the FRANCHISEE, and for a period of 6 (SIX) months after the termination of such employment, enter into an agreement or interest himself/herself, directly or indirectly, and in any of the ways described in Clause 2.4.3 above, with any of the customers, clients or principals for or on whose order the FRANCHISEE acted in the Republic of South Africa within a period being not more than 6 (SIX) months prior to or after termination of the EMPLOYEE'S employment. The aforementioned restraint shall only be applicable to agency or commission contracts and contracts relating to the supply, distribution and sale of goods or services within the Republic of South Africa.

2.5 The EMPLOYEE agrees that the restraints set out above are reasonable as to the subject matter, area, and duration, to protect the interests of the FRANCHISEE, the FRANCHISOR and the FRANCHISED BUSINESS. The EMPLOYEE further agrees that each of the restraints set out above shall be a separate and independent restraint severable from any of the other restraints in regard to all aspects thereof, notwithstanding the manner in which such restraints have been grouped together or linked grammatically.

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Should any one or more of the restraints referred to in Clause 2.4 be invalid or unenforceable for any reason, the validity of any of the other restraints shall not be affected thereby.

- 2.6 Without being entitled to any additional remuneration the EMPLOYEE agrees and undertakes that any and all conceptions, inventions, security information, procedures, technical information, techniques and other INTELLECTUAL PROPERTY, which he may invent, discover, or work out during the term of his employment by the FRANCHISEE (whether during regular working hours or not) which relate to or could be used in connection with the activities of the FRANCHISEE, shall be for the benefit of and become the sole property of the FRANCHISEE. The EMPLOYEE undertakes to, without charge, assign, transfer and make over to the FRANCHISEE all the INTELLECTUAL PROPERTY rights in this regard in the future as and when the FRANCHISEE or the FRANCHISOR so requires. The EMPLOYEE hereby undertakes, when called upon to do so by the FRANCHISEE or the FRANCHISOR, to sign all documentation and do any and all things necessary to obtain and/or record such INTELLECTUAL PROPERTY and/or the assignment thereof to the FRANCHISEE.

SIGNED AT \_\_\_\_\_ on this day of \_\_\_\_\_ 200\_

AS WITNESS:

1. \_\_\_\_\_

2. \_\_\_\_\_

FRANCHISEE

SIGNED AT \_\_\_\_\_ on this day of \_\_\_\_\_ 200\_

AS WITNESS:

1. \_\_\_\_\_

2. \_\_\_\_\_

EMPLOYEE