

MUTUAL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is entered into on this day of 201... between

MAS (**PRIVATE**) **LIMITED** (include name of MAS Company) a company duly incorporated under the laws of Sri Lanka bearing Company Number PV (number) and having its registered office at 10th floor, Aitken Spence Building Tower II, 315 Vauxhall Street, Colombo 02 Sri Lanka (hereinafter referred to as “**MAS**” which term shall as herein used where the context so requires mean and include the said **MAS** (**PRIVATE**) **LIMITED**, its subsidiaries, successors and permitted assigns)

AND

..... a company incorporated in bearing registration number and having its registered address at (hereinafter referred to as “**Company**” which term shall mean and include the said its successors and assigns)

(hereinafter individually referred to as the “**Party**” and collectively referred to as the “**Parties**”).

WHEREAS, both MAS and Company acknowledge that they will each be given access to and obtain knowledge of Confidential Information (as defined below) owned by the other and/or its subsidiaries and Affiliates (as may be applicable), through discussions, including meetings, visits, correspondence, presentations and exchange of any related material from time to time for the purpose of assessing the desirability or viability of entering into or furthering a business relationship or contractual relationship between the Parties (“**Purpose**”)

WHEREAS in consideration of the mutual disclosure of Confidential Information, MAS and Company agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

“**Confidential Information**” means technical, customer, supplier, personnel, financial, commercial and or business information, data any other information or knowledge communicated at any time before or after the date of this Agreement, including information of a proprietary, private or confidential nature in written, graphical, oral or otherwise tangible or intangible form whether communicated in writing, orally, graphically or by inspections or visits, relating directly or indirectly to the business or affairs of MAS or its Affiliates, on the one hand or the Company on the other hand. Confidential Information shall include, without limitation, any information or knowledge pertaining to (i) business plans or concepts, business strategies, products, packaging, formulae, specifications, designs, procedures, processes, schematics, models or samples; (ii) retail store operations; (iii) merchandising, advertising, distribution or sales plans, processes, methods or figures; (iv) customer, employee or supplier information; or (v) any financial information; (vi) records, data, databases, computer and software programs, systems, projects, proposals, notes, reports, drawings, materials, product, compounds and compositions; (vii) trademarks, trade names, intellectual property, patents, inventions, know how, trade secrets; (viii) any information of a third party to whom the Disclosing Party owed an obligation of confidentiality and which has been disclosed with the authorization of such third party and (ix) such other information relating to the business of MAS, its Affiliates, the Company, and any information ascertained by inspection, visits, evaluation and tests or analysis of samples.

“**Affiliates**” shall mean any one or more business entities which, directly or indirectly, are controlling, controlled by, or under common control with either Party. Control shall mean the ownership of 33% or more of the share capital of a company or having management control of a company.

“**Disclosing Party**” means the party disclosing the Confidential Information.

“**Receiving Party**” means the party receiving the

Confidential Information.

Under this Agreement both parties will be the Disclosing Party and Receiving Party.

2. USE, DISCLOSURE AND REPRODUCTION

2.1 The Receiving Party acknowledges and agrees:

2.1.1. That all Confidential Information acquired by the Receiving Party from the Disclosing Party shall be and shall remain the exclusive property of the Disclosing Party.

2.1.2. To receive in confidence any Confidential Information and apply security and disclosure standards in relation to the Confidential Information which are the same as the standards that it applies to its own most commercially sensitive information but not less than reasonable care and to limit access to such Confidential Information to authorized employees and agents (that are bound by confidentiality with the Receiving Party) on a need to know basis in order for the Parties to participate in the the Purpose and not to disclose such Confidential Information to others [including consultants, advisors and other entities and persons who are not full time, regular employees of the Receiving Party] or authorise anyone else to discuss such Confidential Information with others without the prior written approval of the Disclosing Party. The Receiving Party shall ensure that its authorized employees and agents maintain the confidentiality obligations herein, by obtaining written undertakings from such authorized employees and agents. The said employees and agents shall maintain the confidentiality of such Confidential Information notwithstanding termination or expiration of the term of employment, or any other relationship including but not limited to that of authorized agency/distributorship.

2.1.3. To use such Confidential Information only for the Purpose described above.

2.1.4. The disclosure of Confidential Information or the execution of this Agreement shall not be construed as a right to license, to make, use or sell any Confidential Information, intellectual property, patents or products of the Disclosing Party.

2.1.5. To return promptly to the Disclosing Party, or to destroy any copies of such Confidential Information in written, graphic or other tangible form at the Disclosing Party's request.

2.1.6. Neither the Receiving Party nor its Affiliates, associates, officers, employees, representatives, consultants or professional advisers shall by any means re-engineer, attempt to re-engineer, modify, copy or part with possession of the whole or any part of the Confidential Information.

2.1.7. To keep all materials containing Confidential Information in a safe and secure place and return them to the Disclosing Party immediately on the termination of this Agreement and/or the discussions in relation to the Purpose and/or on the Disclosing Party's prior request or to destroy any copies of such Confidential Information in written, graphic or other tangible form.

2.1.8. To authorise only such employees who have understood the obligations set out in this Non-Disclosure Agreement to enter the premises of the Disclosing Party.

2.1.9. To instruct and permit the employees mentioned in 2.1...2. to provide a declaration of confidentiality by form attached hereto marked Annexure 1, on

entrance to the premises of the Disclosing Party.

2.2 The following obligations do not apply to Confidential Information which:

2.2.1 As shown by reasonably documented proof, was in the Receiving Party's possession prior to receipt thereof from the disclosure; or

2.2.2 As shown by reasonably documented proof, was received by the Receiving Party in good faith from a third party not subject to a confidential obligation to the Disclosing Party; or

2.2.3 Now is or later becomes publicly known through no breach of confidential obligation by the Receiving Party; or

2.2.4 Is disclosed pursuant to a requirement imposed by a government agency or is otherwise required to be disclosed by operation of law, except that prior to any disclosure pursuant to this subsection, the Receiving Party shall notify the Disclosing Party and shall give the Disclosing Party an opportunity to participate in objecting to production of the Confidential Information; or

2.2.5 Was developed by the Receiving Party prior to having access to any of the Confidential Information received from the Disclosing Party; or

2.2.6 Is authorized in writing by the Disclosing Party to be released or is designated in writing by Disclosing Party as no longer being confidential or proprietary.

2.3 Neither this Agreement nor provision of Confidential Information pursuant to it shall be construed as an agreement, commitment, promise or representation by either party to do business with

the other or to do anything except as set out specifically in this Agreement.

2.4 The Parties agree that if any transaction in relation to the exchange of Confidential Information is to be entered into, they shall enter into a separate agreement which shall cover the commercial elements of such transaction. The Party makes no representation that the other party is the only third party with which discussions of a nature similar to those between the Company and MAS are being conducted.

2.5 Each Party shall maintain the existence of this Agreement and this relationship confidential and shall not disclose to any third party unless prior written authorization from the other Party is obtained.

3. INTELLECTUAL PROPERTY

3.1 Neither party shall acquire any license or any other intellectual property interest in any Confidential Information disclosed to it by the Disclosing Party, except the specific right to receive and use the Confidential Information for the Purpose. Further, disclosure of Confidential Information shall not result in any obligation to grant the Receiving Party any right in and to said Confidential Information.

3.2 The Disclosing Party shall remain owner of Intellectual Property Rights ("IP") in relation to Confidential Information controlled or owned by the Disclosing Party or its Affiliates prior to the date of commencement of this Agreement or IP generated by the Disclosing Party or its Affiliates independently to this Agreement and controlled or owned by such Disclosing Party or its Affiliates ("Background IP").

3.3 The ownership of any IP in any work of whatsoever nature developed jointly by the Parties and/or Affiliates pursuant to this Agreement, including without limitation any concepts, designs and plans for the Purpose (together the "Developed IP"), shall be mutually determined by the Parties.

4. GOVERNING LAW

This Agreement shall be construed in accordance with the substantive Laws of Sri Lanka.

5. ENTIRE AGREEMENT/MODIFICATIONS

5.1 This Agreement embodies the entire understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior understandings and arrangements, oral or written, relating to the Confidential Information except for any other confidentiality agreement between or among the parties hereto. This Agreement may be amended only by written agreement executed by both Parties. This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party. This Agreement shall be binding on successors and permitted assigns of the Parties.

5.2 If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect. The Parties shall negotiate in good faith to substitute a valid, legal and enforceable provision that reflects the intent of such invalid or unenforceable provision

6. CONFIDENTIALITY PERIOD

Unless terminated earlier in writing by mutual agreement, this Agreement shall remain in force for a period of five (5) years from the date hereof. The termination of this Agreement shall however not affect the obligations of confidentiality agreed to by the Parties in terms hereof and such obligation shall continue without a point in time notwithstanding the termination hereof.

7. INDEPENDENT DEVELOPER

Each of the Parties, as a Disclosing Party, understands that the Receiving Party may currently

or in the future be independently developing information internally, or receiving information from third parties that may be similar to such Disclosing Party's Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or inference that such Receiving Party will not develop products or services, or have products or services developed for such Receiving Party, that, without violation of this Agreement, compete with the products or systems contemplated by such Disclosing Party's Confidential Information.

8. ARBITRATION

Any dispute or difference of whatever nature arising between the Parties hereto shall be first settled by mutual negotiations and failing which shall be referred to an arbitration as a condition precedent to any legal proceeding, other than legal proceedings which the parties may institute for the preservation and/or vindication of its legal rights.

The arbitration shall be carried out in terms of the Laws of Arbitration of the International Chamber of Commerce and shall be held in Sri Lanka. The arbitration shall be conducted in English.

9. WARRANTY

ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS". The Disclosing Party makes no representation, warranty or guarantee whatsoever about the Confidential Information. The Parties hereto warrant to each other that their authorised signatories are entitled to sign on their behalf and the rights and obligations of each of the Parties hereto shall be legally valid and binding and enforceable on them.

10. BREACH

10.1. In the event of a breach of a term of this Agreement by employees and agents of the Receiving Party, the Receiving Party shall fully indemnify the Disclosing

Party and pay damages for all losses suffered irrespective of whether such losses were directly or indirectly due to the employees and/or agents breach.

10.2. It is agreed that a violation of any of the provisions of this Agreement by the Receiving Party may cause irreparable harm and injury to the Disclosing Party and that Disclosing Party shall be entitled to pursue, in addition to any other rights and remedies it may have at law or in equity, an injunction enjoining and restraining the Receiving Party from doing or continuing to do any such act and any other violations or anticipatory violations of this Agreement.

11. COUNTERPARTS

This Agreement shall be signed in two counterparts each of which together will be deemed to be an original and both of which will constitute one and the same document. Signing of this Agreement and transmission by facsimile document transfer will be acceptable and binding upon the Parties hereto and the duly executed original copy shall be returned within fifteen (15) days of faxing this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have placed their hands hereunto as of the date mentioned above.

On behalf of MAS (PRIVATE) LIMITED

On behalf of

.....
Name:
Title
Date

.....
Name:
Title
Date

Annexure 1

Specimen

..... (date)

Declaration of Confidentiality

I (Name of Visitor) bearing(Passport No & country of Issue) being an employee of (hereinafter referred to as "the Company") have been authorized by the Company to visit and/or its Affiliates("MAS") situated at(address(es) of MAS premises) on this (date/s).

I understand that the Company and MAS have entered into a Non- Disclosure Agreement dated("NDA") and have been informed of the obligations therein.

I agree to conform to all terms and conditions in the NDA and the rules and regulations currently in place at MAS during my visit to MAS.

I acknowledge that all information including processes and products or any other information obtained, seen or which I have become privy to during my visit is the property of MAS and I undertake to maintain the confidentiality of the same. I, further confirm that I shall not photograph, record, copy or remove any information that I have been exposed to during my visit to the premises of MAS.

I shall not use, modify or reengineer any information including processes and products or any other information obtained, seen, or which I have become privy to during my visit for the benefit of the Company, its subsidiaries, affiliates or myself or any third party without the authorization of MAS

In the event I cease employment/service at the Company, I shall at all times maintain the secrecy of the Confidential Information of MAS disclosed/ privy to during the term of my employment/ service with the Company.

Signature:

Employee ID No: