

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

BETWEEN

IZIKO MUSEUMS OF SOUTH AFRICA

Physical Address	25 Queen Victoria Street Cape Town		
Postal Address	P O Box 61, Cape Town 8000		
Telephone No.	+27 21 481 3800		
Fax No.	+27 21 481 3993		
Signed at		Date	
Name		who warrants that they are duly authorised to sign	
Signature			

AS WITNESSED BY:	
Name	Signature
Name	Signature

AND

.....

Registration number			
Physical Address			
Postal Address			
Telephone No.			
Fax No.			
Signed at		Date	
Name		who warrants that they are duly authorised to sign	
Signature			

AS WITNESSED BY:	
Name	Signature
Name	Signature

THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS ATTACHED HERETO

<p>1. INTERPRETATION In this agreement:-</p> <p>1.1 clause headings are for convenience and are not to be used in its interpretation;</p> <p>1.2 unless the context indicates a contrary intention:-</p> <p>1.2.1 an expression which denotes:-</p> <p>1.2.2 any gender includes the other genders;</p> <p>1.2.3 a natural person includes a juristic person and vice versa;</p> <p>1.2.4 the singular includes the plural and vice versa;</p> <p>1.3 the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-</p> <p>1.3.1 “confidential information” means all information which the receiving party may receive or acquire from the disclosing party, and includes, without limiting the generality of the term:-</p> <p>1.3.1.1 information relating to the disclosing party's strategic objectives and planning for both its existing and future Information Technology needs;</p> <p>1.3.1.2 information relating to the disclosing party's business activities, business relationships, products, services, customers and clients;</p> <p>1.3.1.3 information contained in the disclosing party's software and associated material documentation;</p> <p>1.3.1.4 technical, scientific, commercial, financial and market information, know-how and trade secrets;</p> <p>1.3.1.5 data concerning business relationships, architectural information, demonstrations, processes and machinery;</p> <p>1.3.1.6 plans, designs, drawings, functional and technical requirements and specifications; and</p> <p>1.3.1.7 information concerning faults or defects in the disclosing party's systems, hardware and/or software or the incidence of such faults or defects;</p> <p>but excluding information or data which:-</p> <p>1.3.1.8 is at the time of disclosure to the receiving party lawfully and without breach of any confidentiality obligations, within the public domain;</p> <p>1.3.1.9 is, at the time of such disclosure, already within the possession of the receiving party, or it has been independently developed by the recipient; or</p> <p>1.3.1.10 is obliged to be produced under order of a court or government agency of competent jurisdiction, or in terms of statute;</p> <p>provided that the onus shall at all times rest on the receiving party to establish that such information falls within the exceptions contained in clauses 1.3.1.8 to 1.3.1.10 inclusive and provided further that information disclosed in terms of this agreement will not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in a party's possession.</p> <p>1.3.2 “the disclosing party” means any party who discloses information to the other party;</p> <p>1.3.3 “the disclosing purpose” means the purpose or reason for which the parties have entered or will enter into discussions resulting in the disclosure of confidential information to each other, as set out in Schedule 1;</p> <p>1.3.4 “the parties” means the parties to this agreement;</p> <p>1.3.5 “the receiving party” means any party who receives or acquires the confidential information of the other party under any circumstances whatsoever;</p> <p>1.4 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning</p>	<p>assigned to such words and expressions in such clause.</p> <p>2. RECITALS</p> <p>2.1 The parties wish to hold discussions for the disclosing purpose, during the course of which certain confidential and proprietary information will be disclosed.</p> <p>2.2 The parties wish to record the basis on which they will honour and protect each other's confidential information.</p> <p>3. RESTRICTIONS ON DISCLOSURE AND USE</p> <p>3.1 The parties shall only use the confidential information for the specific purposes set out in the disclosing purpose.</p> <p>3.2 In addition, both parties agree, insofar as they may be the receiving party:-</p> <p>3.2.1 not to disclose, publish, utilise, employ, exploit or in any other manner whatsoever use the confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing party, which consent may be withheld in the sole and absolute discretion of the disclosing party;</p> <p>3.2.2 they will restrict the dissemination of the confidential information to only those of their personnel who are actively involved in the disclosing purpose and then only on a “need to know” basis and they will initiate internal security procedures reasonably acceptable to each other to prevent unauthorised disclosure and will take all practical steps to impress upon those personnel who need to be given access to confidential information, the secret and confidential nature thereof;</p> <p>3.2.3 that any unauthorised publication or other disclosure of the confidential information may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party hereby indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement.</p> <p>4. TITLE The receiving party shall acquire no right, title or interest in any information disclosed to it by the disclosing party pursuant to this agreement.</p> <p>5. STANDARD OF CARE The receiving party shall protect the confidential information of disclosing party in the same manner and with the same endeavour which a reasonable man would use to protect his own confidential information. Should the receiving party become aware of any unauthorised copying, disclosure or use of confidential information, it shall immediately notify the disclosing party thereof in writing and, without in any way detracting from the disclosing party's rights and remedies in terms of this agreement, take such steps as may be necessary to prevent a recurrence thereof.</p> <p>6. RETURN OF INFORMATION</p> <p>6.1 On Request. The disclosing party may at any time request the receiving party to return any material containing, pertaining to, or relating to the confidential information and may, in addition, request the receiving party to furnish a written statement to the effect that upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material.</p> <p>6.2 Destruction. Alternatively to clause 6.1, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that such material has been destroyed.</p>
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<p>6.3 Compliance with request. The receiving party shall comply with a request in terms of this clause 6 within 3 (three) days of receipt of such request, or such shorter period as the disclosing party may demand, so long as this allows the receiving party adequate time to comply.</p> <p>7. DURATION Notwithstanding termination of this agreement for any reason whatsoever, this agreement shall remain in force for a period of 5 (five) years after the date of termination.</p> <p>8. DOMICILIA AND NOTICES</p> <p>8.1 Addresses. The Parties hereby choose domicilium citandi et executandi (“domicilium”) for all purposes under this agreement the addresses set out on the face of this document.</p> <p>8.2 Change of Address. Either party may give written notice to the other, change its domicilium to any other physical address in the Republic of South Africa and its telefax number to any other South African number, provided that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.</p> <p>8.3 Deemed Receipt. Any notice to be given by either party to the other shall be deemed to have been duly received by the other party -</p> <p>8.3.1 if addressed to the addressee at its domicilium and posted by pre-paid registered post on the 10th day after the date of posting thereof, or</p>	<p>8.3.2 if delivered to the addressee’s domicilium by hand during business hours on a business day, on the date of delivery thereof, or</p> <p>8.3.3 if sent by fax to the addressee on the first business day following the date of sending thereof.</p> <p>9. GENERAL</p> <p>9.1 Entire agreement. This agreement, together with the schedules hereto and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Company and Iziko museums of Cape Town in respect of the subject matter hereof.</p> <p>9.2 Variation. No amendment or modification to this agreement shall be effective unless in writing and signed by authorised signatories of both the Company and Iziko Museums of Cape Town.</p> <p>9.3 Waiver. No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.</p> <p>9.4 Applicable Law. This agreement shall be governed and construed according to the laws of the Republic of South Africa.</p> <p>9.5 Costs. Each party shall be responsible for its own legal and other costs relating to the negotiation of this agreement.</p>
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SCHEDULE 1

DISCLOSING PURPOSE

WITH REFERENCE TO:

NAME OF CLIENT:

DESCRIPTION OF SERVICES:

OUR REFERENCE NO:

THIS NON-DISCLOSURE AGREEMENT ENTERED INTO BETWEEN IZIKO MUSEUMS OF CAPE TOWN AND HOLD AS CONFIDENTIAL ALL INFORMATION WHICH THEY MAY RECEIVE FROM THE OTHER PARTY (“**THE DISCLOSING PARTY**”) OR WHICH BECOMES KNOWN TO THEM DURING THE CURRENCY OF THIS AGREEMENT.