

**CONFIDENTIALITY AGREEMENT**



DATED

**PARTIES:**

- (1) Other party name and address ("the Company"); and
- (2) Dynamic Merchandise Ltd (DML) whose registered office is at 20, Burrough Court, Burrough On the Hill, Leicestershire

**INTRODUCTION:**

- A DML has agreed with the Company to disclose to it certain information, including information about its products ("the Products"), to enable the Company to provide agreed services ("the Services") to DML
- B DML is willing to disclose the information to the Company to enable it to perform the Services strictly in accordance with the terms of this Agreement under conditions of confidentiality.

**AGREEMENT:**

**1 Interpretation**

For the purposes of this Agreement "Information" means any confidential information belonging to or in the possession of DML (in whatever form) relating to the Products and any other confidential information which may be obtained from DML by the Company which relates to the business of DML including financial information, data, know-how, formulae, processes, software programs and any other material which is not available to the public at large.

**2 Undertakings**

- 2.1 In consideration of DML disclosing Information to the Company, the Company hereby undertakes:-
  - 2.1.1 to use the Information so disclosed exclusively for the purpose of the performance of the Services;
  - 2.1.2 to maintain confidential all Information that it may acquire in any manner and it will not, directly or indirectly, use or disclose any of the Information in whole or in part save for the purposes of and in accordance with this Agreement without the prior written consent of DML
    - 2.1.3.1 Not to disclose the fact that it is in receipt of the Information save as otherwise specified in this Agreement or with the prior written consent of DML.

**3 Exceptions**

- 3.1 The foregoing restrictions on the Company shall not apply to any Information which:-
  - 3.1.1 the Company can prove by documentary evidence produced to DML within 3 working days of disclosure of the Information by DML, was already in its possession and at its free disposal prior to the disclosure;
  - 3.1.2 the Company can prove by documentary evidence produced to DML within 3 working days of disclosure of the Information by DML, is or has become generally available to the public in printed publications in general circulation through no act or default on the Company's part or that of its employees PROVIDED THAT Information shall not be deemed to be generally available to the public by reason only that it is known to a few of those people to whom it might be of commercial interest and a combination of two or more portions of the Information shall not be deemed to be generally available to the public by reason only of each separate portion being so available.

3.2 The Company shall also be entitled to make any disclosure of the Information required by law or any governmental or other regulatory authority provided that it gives DML not less than 3 working days' notice prior to such disclosure.

**4 Confidentiality**

- 4.1 To secure the confidentiality attaching to the Information the Company shall:-
  - 4.1.1 keep separate from all its documents and other records all Information and any and all information generated by the Company based thereon;
  - 4.1.2 keep all documents and any other material bearing or incorporating any of the Information only at its usual place of business;
  - 4.1.3 not use, reproduce, transform or store any of the Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside its usual place of business; and
  - 4.1.4 disclose the Information to key employees only who shall, for the avoidance of doubt, be bound by the same restrictions and obligations regarding the Information as are placed upon the Company under this Agreement; and
  - 4.1.5 at the request of DML made at any time, deliver up to DML all documents and other material in the possession custody or control of the Company that bear or incorporate any part of the Information.
  - 4.1.6 take all reasonable steps to ensure that no third party, customer or competitor of the Company, nor any other commercial company individual or competitor of DML, shall view or have access to information in the Company's possession, whether that be at the Company's normal place of trading or elsewhere.

**5 Proprietary Rights**

5.1 The Company hereby acknowledges that nothing contained in this Agreement confers on the Company any form of proprietary rights in the Information and in particular no licence, copyright or other intellectual property right is granted by DML, directly or indirectly, now or in the future.

**6 Warranties and Representations**

6.1 The Company hereby acknowledges that DML makes no representations or warranties in relation to the Information provided.

**7 Indemnity**

7.1 The Company hereby acknowledges that any breach of this Agreement by it or its employees could result in DML suffering considerable loss and shall indemnify and keep indemnified DML in respect of any loss or damage sustained in the event that it is in breach of this Agreement.

**8 Term**

8.1 Notwithstanding the termination or expiry of this Agreement for whatever reason, the obligations and restrictions in this Agreement shall continue to have full force and effect.

**9 Miscellaneous**

- 9.1 Any reference to DML in this Agreement shall be deemed to include any member of its Group (the term "Group" having the meaning given by section 262(1) of the Companies Act 1985).
- 9.2 The parties hereto agree that the restrictions, obligations and undertakings contained in this Agreement are necessary for the protection of DML legitimate business interests but if any such restriction, obligation or undertaking shall be found to be void or voidable but would be valid and enforceable if some part of the restriction, obligation or undertaking were deleted such restriction or undertaking shall apply with such modification as shall be necessary to make it valid and enforceable.

**10 Governing Law**

10.1 The construction validity and performance of this Agreement shall be governed by English law.

IN WITNESS whereof this Agreement has been entered into the day and year first above written.

SIGNED by..... NAME.....)

on behalf of .....