

RESTRAINT OF TRADE

RESTRAINT UNDERTAKING ENTERED INTO BETWEEN (Company Name)
AND (Employee Name)

1. Definitions

- 1.1 The following expressions bear the meanings assigned to them hereunder and cognate expressions bear corresponding meaning, namely:
- 1.1.1 'Prescribed customer' means any person, firm, association, business undertaking, Company or legal person, whether in the Republic of South Africa or overseas:
 - 1.1.1.1 who is or was a customer of the Group at the termination date; and/or
 - 1.1.1.2 who is or was a prospective customer of the Group at the termination date of the employee whom such customer had approached to do business with the Group and/or been approached by the Group for purposes of doing business with the Group; and/or
 - 1.1.1.3 to whom prescribed services were being rendered by the Group at the termination date.
 - 1.1.2 'Prescribed business' means:
 - 1.1.2.1 any business involved in advertising and related services, and all facets of communication through all types of media including, without prejudice to the generality of the foregoing, newspapers, magazines, radio, television, electronic and outdoor advertising; and
 - 1.1.2.2 all advertising and related services rendered by the Group as at the termination date.
 - 1.1.3 'The termination date' means the date on which the employee's employment with the Group ceases or is terminated for any reason whatsoever.
 - 1.1.4 'The restraint period' means the period of his or her employment by the Group and a period of 12 (twelve) months from the termination date.
 - 1.1.5 'Intellectual Property' is defined as a subjective right having as its legal object some or other product of the human mind, which product is incorporeal and exists independently and outside of a person.
 - 1.1.6 'The territory' means the Republic of South Africa, as constituted at date of signature of this agreement.
 - 1.1.7 References to the Group shall be references to the Employer, the Company, FCB Holdings and all subsidiaries of FCB Holdings.
 - 1.1.8 A 'Subsidiary' is a subsidiary as defined in the Companies Act 1973 (as amended) and any Company, wheresoever incorporated or resident, in which the Company, directly or indirectly, owns at least 26 per cent equity share capital.
 - 1.1.9 'Prescribed staff' means all Employees of the Group as at the termination date.
 - 1.1.10 'Successors-in-title' shall include, but without limiting in any way the generality of the foregoing term, any person, firm, company or association of persons who or which:
 - 1.1.10.1 acquires the goodwill of all or part of the Group; or
 - 1.1.10.2 becomes the beneficial owner through its shareholding in any part of the Group of such goodwill; or
 - 1.1.10.3 has lawfully acquired the right to enforce the restraints embodied herein.

2. Restraint of Trade

- 2.1 It is recorded and the Employee acknowledges that:
- 2.1.1 the employee has been employed with the Company and will continue to be so employed;
- 2.2 In the course of his or her duties to and employment with the Company, the employee:
- 2.2.1 will acquire considerable know-how in and will learn the techniques of the Company;
 - 2.2.2 will acquire considerable intellectual property relating to the business of the Company;
 - 2.2.3 will gain access to the names of customers with whom the Company does business whether embodied in written form or otherwise;
 - 2.2.4 will have the opportunity of forging personal links and relationships with customers of the Company, which can result in such employee gaining in-depth knowledge of customers in the industry;
 - 2.2.5 will have access to the names of current and prospective clients of the group and their requirements;
 - 2.2.6 will have the opportunity of learning and acquiring trade secrets, business connections and/or other confidential information appertaining to the business of the Company and of the industry.

The employee acknowledges that, if he or she is not restricted from competing with the Company as provided for herein, the Company will potentially suffer considerable economic prejudice, including loss of custom and goodwill. Accordingly, the employee agrees and acknowledges that the only effective and reasonable manner in which the rights of the Company in respect of its business secrets and customer connections can be

protected is in terms of the restraints imposed upon the employee in terms of this agreement. Upon the breach of any of the provisions of this agreement, the Company shall be entitled to enforce the restraint of trade in question and to claim such damages as it may have suffered pursuant to or arising from such a breach.

- 2.3 The employee undertakes, for the duration of this restraint, he or she will neither directly nor indirectly use, in any manner whatsoever, any intellectual property acquired through his or her employment within the Group. Any intellectual property acquired through the employee's association with the Group shall, for the duration of the restraint agreement, remain the sole property of the Group.
- 2.4 The employee undertakes and warrants in favour of the Group and its successors-in-title or assigns that, for as long as he or she is employed and/or associated with the Group and for the duration of the restraint period, neither he/she nor any other Company, close corporation, firm, trust, partnership, undertaking or concern in or by which he/she is employed or holds direct or indirect interests or employed, will, anywhere in the prescribed area, and whether for reward or not, directly or indirectly:
 - 2.4.1 encourage and/or entice and/or incite and/or persuade and/or induce any Employee of the Company to terminate his/her employment with the Company;
 - 2.4.2 furnish any advice and/or information to any prescribed customer that he/she intends to or will, directly and/or indirectly, be interested and/or engaged in and/or concerned with and/or employed by an entity in the territory which deals/carries on with the prescribed business after the expiry of the restraint period;
 - 2.4.3 furnish any information and/or advice to any prescribed customer and/or use any other means and/or take any other action that is directly and/or indirectly designed, and/or in the ordinary course of events calculated, to result in such prescribed customer terminating its association with the Company and/or transferring its business to and/or utilising the prescribed business from any other person other than the Company, and/or attempt to do so;
 - 2.4.4 solicit business from prescribed customers for prescribed business;
 - 2.4.5 canvass business in respect of the prescribed business from prescribed customers;
 - 2.4.6 sell or otherwise supply any prescribed business to any prescribed customer;
 - 2.4.7 solicit appointment as a distributor, licensee, agent or representative of any prescribed customer in respect of prescribed business;
 - 2.4.8 render any prescribed services to or for the benefit of any prescribed client or attempt to do so;
 - 2.4.9 solicit, interfere with, or entice or attempt to entice away from the Group any prescribed customer; and/or
 - 2.4.10 solicit, interfere with, or entice or attempt to entice away from the Group any prescribed staff.
- 2.5 The Employee further undertakes and warrants in favour of the Company and its successors-in-title or assigns that, for as long as he/she is employed by the Company and for the duration of the restraint period, he/ she will not anywhere in the prescribed area be directly or indirectly interested, engaged, concerned, associated with or employed whether as proprietor, partner, director, shareholder, employee, consultant, contractor, financier, principal, agent, representative, assistant, adviser, administrator, trustee, partner, member or otherwise and whether for reward or not in any company, close corporation, firm, business, trust, partnership or undertaking, concern or other association of any nature that furnishes or renders any prescribed business, directly or indirectly to any advertising, promotions and/or communication business.
- 2.6 On or within 30 (thirty) working days of the termination date, the Company shall deliver a written notice to the Employee stating whether or not it has elected to implement the provisions of 2.7. If in such notice the Company elects to enforce its rights under 2.5, the notice shall be accompanied by a banker's or other financial institution's cheque or a bank guaranteed cheque for payment of the consideration due and payable to the Employee in terms of 2.7. If such written notice is not delivered, the Employee will be released from his obligation in 2.5 but shall be bound by the remaining provisions of this agreement.
- 2.7 If the Company elects to issue the notice contemplated in 2.6, the Company shall, in consideration for the undertakings given by and obligations imposed upon the employee under clause 2.5 hereof, pay to the employee, for the duration of the restraint period, with effect from the expiry of the month during which the termination date falls, monthly in arrears, a cash amount equal to the average monthly taxable remuneration (but excluding any share of profits and bonuses) paid by the Company to the employee and/or claimable by him during the six calendar months preceding the termination date as determined by the Company's then auditors, acting as experts and not as arbitrators. The determination of such auditors shall be final and binding in the absence of manifest error in calculation.
- 2.8 If the employee breaches any of his obligations under 2.3, 2.4 and/or 2.5, he/she shall:
 - 2.8.1 repay to the Company on demand all amounts paid to him by the Company under 2.6;

- 2.9 The employee acknowledges that:
- 2.9.1 the restraints imposed upon him/her in terms of 2.3, 2.4 and 2.5 are fair and reasonable as to subject matter, area and duration and are reasonably necessary to protect the proprietary interests of the Company, and to maintain the goodwill of the Company and are within the context of the benefits to be derived by the executive under this agreement;
 - 2.9.2 the provisions of 2.3, 2.4 and 2.5 shall be construed as imposing a separate and an independent restraint, severable from the rest, in respect of, without limit:
 - 2.9.2.1 each month of the periods referred to in 2.3, 2.4 and 2.5;
 - 2.9.2.2 every locality falling within the prescribed territory;
 - 2.9.2.3 the categories and identities of persons falling within the definition of prescribed customer;
 - 2.9.2.4 the categories of and specific services falling within the definition of prescribed business services;
 - 2.9.2.5 each of the businesses or companies in the Group;
 - 2.9.2.6 the categories and identities of persons falling within the definition of prescribed staff;
 - 2.9.2.7 each capacity in which the employee is constrained.
- 2.10 The employee acknowledges and agrees that the restraints contained in this agreement are stipulations for the benefit of the Group, any member of which shall be entitled to elect whether to exercise its rights hereunder.
- 2.11 The benefits conferred in terms of this restraint shall be not only for the benefit of the Company, but also for any owner of all or any portion of the Group and their successors-in-title or assigns. By signing this agreement, the Company accepts the benefits on behalf of each of such persons. Without limiting the generality of any of the provisions of this agreement, it is agreed that such acceptance by the Company constitutes a separate acceptance on behalf of each of such persons for the time being and that any such person shall be entitled to enforce the benefits conferred upon it in terms of 2.4 and/or 2.5.
- 2.12 The failure by the Company or any of the persons referred to in 2.10 to:
- 2.12.1 exercise any of its rights in terms of this clause 2 in consequence of any breach or breaches by the employee of any of the provisions of this clause 2;
 - 2.12.2 succeed in any proceedings instituted by it to enforce any of its rights in terms of the restraint given by the executive in 2.3, 2.4 and/or 2.5 as a result of the finding of any court, shall not preclude the Company or any such person from exercising any such rights in consequence of any subsequent breach by the employee of any subsequent findings of any court, as the case may be.
- 2.13 A breach of any of the restraints stipulated in this agreement shall entitle the Company, without prejudice to any other rights available to it in law and notwithstanding any other provision of this agreement, to apply to any court of competent jurisdiction for an appropriate interdict and/or other form of available recourse.
- 2.14 If the Employee breaches his obligations under 2.3, 2.4 and/or 2.5 or is ordered by a court of competent jurisdiction to comply with such obligations, then the period referred to in 2.3, 2.4 and/or 2.5 above will be deemed, at the instance and in the discretion of the Company, to be extended to a period of the same duration commencing on the date when the employee ceases such breach or the date on which a court makes the order contemplated above, whichever is the later; provided that, if the Company exercises its right to extend such period as aforesaid, then the provisions of this agreement shall apply in respect of such extended period, *mutatis mutandis*.
- 2.15 Notwithstanding 2.3, 2.4 and 2.5, the employee shall not be precluded from holding up to 5 per cent (five percent) of the issued shares of any company, the shares of which are listed on any recognised stock exchange, irrespective of the activities of any such company.