

CONFIDENTIALITY AGREEMENT

BETWEEN

DETER-A-DYE SECURITY (PTY) LTD  
(a company with limited liability registered according to  
the laws of the Republic of South Africa and  
having its registered head office at  
36 SIMBA ROAD, SEBENZA, EDENVALE  
and hereinafter referred to as **DAD**)  
and

JAN W K T VISSER  
(hereinafter referred to as **VISSER**)

and

.....  
(a company / close corporation registered according to the laws of  
.....  
and having its registered head office at  
.....  
.....  
and, duly authorised hereto by resolution of the company  
dated ....., and which is hereinafter represented by  
.....  
which is hereinafter referred to as **THE CONTRACTOR**

and/or

.....  
in his/her personal capacity as  
.....  
of  
.....of  
.....  
and hereinafter referred to as .....

and

all of whom are hereinafter referred to as "the Party" or "either Party"  
or, collectively, as "the Parties to this agreement".

## **1 INTRODUCTION**

- 1.1 WHEREAS it may become necessary or desirable for the parties hereto to disclose confidential information (as hereinafter defined) one to the other in order to investigate the feasibility of the sale and/or use and/or exploitation of the banknote cold staining system using a liquid dye inside a tamper-evident plastic security bag being patented by DAD, and its potential business opportunities (hereinafter referred to as "the Purpose";
- 1.2 the parties are each willing and have agreed to disclose their respective confidential information to the other subject to the following terms and conditions

## **2 CONFIDENTIAL INFORMATION**

- 2.1 "confidential information" shall mean any and all data and information provided by a party pursuant to this agreement, whether in oral or in documentary form or by way of models or other tangible forms, or by demonstrations or by any other means or forms and which the disclosing party has -
  - 2.1.1 in the case of confidential information supplied in documentary form or by way of a model, ensured that it is at the time of disclosure clearly and conspicuously marked to show that it is imparted in confidence; and
  - 2.1.2 in the case of confidential information imparted orally or by demonstration or by any other non-tangible means or form, declared at the time of disclosure that it is imparted in confidence and / or sent a written summary of the confidential information, clearly and conspicuously marked as above-mentioned, to the receiving party within seven (7) days of the date of the original disclosure (it being understood that such information shall be protected hereunder during the

seven (7) day period and shall include but shall not necessarily be limited to -

- 2.1.2.1 in the case of confidential information supplied in documentary form or by way of a model or in other tangible form, ensured that it is at the time of disclosure clearly and conspicuously marked to show that it is imparted in confidence and;
- 2.1.2.2 in the case of confidential information imparted orally or by demonstration or by any other non-tangible means or form, declared at the time of disclosure that it is imparted in confidence and sent in a written summary of the confidential information, clearly and conspicuously marked as above-mentioned, to the receiving Party within 7 (seven) days of the date of the original disclosure (it being clearly understood that such information shall be protected hereunder during such 7 (seven) day period and shall include:-
  - 2.1.2.2.1 confidential information imparted orally or by demonstration, or by any other non-tangible means or form or by any note or record of the disclosure made to the receiving Party; and
  - 2.1.2.2.2 any copy in whole or in part of any of the items mentioned in this definition which may be made in any medium to the receiving Party; and
  - 2.1.2.2.3 any information which can be obtained by analysis, or testing of software or any component thereof provided to the receiving Party by the disclosing Party.
- 2.1.3 Further, without limiting the generality of the term, "confidential information" shall mean:
- 2.1.4 any business, commercial, financial, marketing, technical, scientific, training of security information and know-how of **DAD**;
- 2.1.5 information relating to shareholders, subsidiary companies, business partners, clients, employees or any other person,

where an onus rests on **DAD** to maintain the confidentiality of such information;

- 2.1.6 information relating to **DAD**'s marketing strategies, trade secrets, existing and future business plans, training and other policies, activities, practices, relationships, products and services;
- 2.1.7 information relating to the past, present and future research and development of **DAD**;
- 2.1.8 information contained in software, associated material and documentation belonging to **DAD**;
- 2.1.9 plans, designs, concepts, drawings, functional and technical requirements, specifications and data of **DAD**;
- 2.1.10 data concerning architecture, demonstration tools and techniques, processes, machinery and equipment of **DAD**;
- 2.1.11 information concerning the charges, fees, license fees and royalties and costs of **DAD**, including but not limited to its pricing and costing methodologies, or those of its subcontractors, partners, associates or their subsidiaries and the methods, practices or service performance levels achieved;
- 2.1.12 the contents of this Agreement;
- 2.1.13 other information in respect of which an onus rests upon **DAD** to maintain the confidentiality of such information.

### 3 **DISCLOSURE OF CONFIDENTIAL INFORMATION**

3.1 The Parties hereto agree that:

- 3.1.1 the confidential information represents a valuable, special, secret and unique proprietary asset or interest of **DAD** which, if certain parts of the confidential information were disclosed;

- 3.1.1.1 would be likely to cause harm to the commercial or financial interests of **DAD** and/or could reasonably be expected to put **DAD** at a disadvantage in contractual or other negotiations and/or prejudice **DAD** in commercial competition; and
- 3.1.1.2 may reasonably be expected to endanger the life or physical safety of **DAD**'s staff or that of its clients; and may be likely to prejudice the security of buildings, structures, means of transport or other property, and/or methods, systems, plans or procedures for the safety of the public or a part thereof.
- 3.2 **THE CONTRACTOR** agrees that:
  - 3.2.1 as a prerequisite to its appointment, **DAD** will be entitled, in its sole and absolute discretion, either through itself or through its nominated agents, to perform credit and criminal record checks in respect of the owners, shareholders, members, partners, directors, employees, and/or agents or subcontractors of **THE CONTRACTOR**, and **DAD** shall furthermore be entitled, in its sole and absolute discretion, not to appoint any CONTRACTORS in respect of which the results of such credit and criminal record checks are not satisfactory in **DAD**'s sole opinion.
  - 3.2.2 Where a contractor carries on business in the Republic of South Africa, it hereby acknowledges and undertakes that it is fully aware of the terms and conditions of the Occupational Health and Safety Act No 85 of 1993 as amended from time to time, as read with all regulations and standards promulgated in terms of the said Act from time to time. **THE CONTRACTOR** agrees that it shall comply with its obligations towards **DAD** whether stipulated herein, or in terms of any other agreement that it may conclude with **DAD**, or not, and that it shall use all equipment for the purposes of such agreements, in accordance with the provisions of such Act or agreements. **THE CONTRACTOR** accepts accountability for its employees and subcontractors to the extent that such employees and subcontractors contravene the provisions of such Act or Acts. **THE CONTRACTOR** agrees that it and any of its personnel who access **DAD**'s premises shall comply with

the standard health and safety rules and regulations applicable at such premises to the extent that such health and safety rules are communicated in writing to **THE CONTRACTOR**.

4 **DUTIES OF THE CONTRACTOR**

4.1 In consideration of the provision thereof by **DAD** to **THE CONTRACTOR**, the latter shall

4.1.1 hold such information in strict confidence; and

4.1.2 use such confidential information only for the Purpose; and

4.1.3 permit access to such confidential information only to such employees of **THE CONTRACTOR** as are required to use such confidential information for the Purpose provided that -

4.1.3.1 those persons are legally bound to **THE CONTRACTOR** by an obligation of confidence in regard to such confidential information and **THE CONTRACTOR** shall take all such reasonable steps as are necessary and reasonable in the opinion of **DAD** to enforce such obligations; and

4.1.3.2 in each such case and if **DAD** so requires it, such employees shall execute a confidentiality agreement in favour of **DAD** in the same terms as this clause 4; and

4.1.3.3 not disclose such confidential information in whole or in part directly or indirectly to any third party except those mentioned in sub-clause 4.1.3 unless such disclosure shall have been approved by **DAD** in writing in like terms contained in this clause 4; and

4.1.3.4 such third party undertakes to **DAD** and to **THE CONTRACTOR** to return all documents and other materials containing such confidential information and in the possession, custody and control of the third party, when it is no longer necessary for the third Party to possess or have custody or control of such documents and other material

and/or, in any event, on written demand by **DAD** and/or **THE CONTRACTOR** and/or upon the termination of this agreement for whatever reason.

4.1.4 neither copy nor reproduce such confidential information in whole or in part unless specifically authorised in writing in advance by **DAD**.

4.2 Without prejudice to the generality of clause 4.1 above, **THE CONTRACTOR** shall exercise no less a degree of care in protecting the confidentiality of **DAD's** confidential information than that which it uses to protect its own information of like sensitivity and importance but, in any event, no less than reasonable care.

4.2.1 for the avoidance of doubt, it is recorded that each of the Parties may disclose confidential information of the other to their affiliates. For the purposes of this Agreement, 'Affiliate' shall mean any corporation, company, or other business entity which directly or indirectly controls, is controlled by, or is under common control with such Party. Each Party shall be responsible for the compliance by its affiliates with the terms and conditions of this Agreement to the same extent that such Party is itself bound by such agreement.

4.2.2 Notwithstanding any lesser degree of protection that may be otherwise be permissible hereunder, where any confidential information is identified by a notice thereon, or is declared by **DAD** or **THE CONTRACTOR** at the time of disclosure as being the subject of any national or governmental security regulations or classification to protect such confidential information, **DAD** and **THE CONTRACTOR** shall and do hereby irrevocably undertake to comply with and take all such measures as may be required by such regulations or classifications.

4.2.3 **THE CONTRACTOR** hereby irrevocably undertakes, promises and agrees that it will not during the course of its association with **DAD**, or thereafter for a period of 5 (FIVE) YEARS, disclose the confidential information to any third party , for

any reason or purpose whatsoever, without the prior written consent of **DAD**, save in accordance with the provisions of this agreement.

4.2.4 It may disclose the confidential information only to its staff (or any other person in accordance with 4.2.1 above) on a strictly need-to-know basis. **THE CONTRACTOR** will take whatever steps are necessary to ensure that such staff (or such other persons) agree to abide by the terms of this Agreement to prevent the unauthorised disclosure of the confidential information to third parties.

4.3 **THE CONTRACTOR** agrees

4.3.1 not to exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the confidential information disclosed pursuant hereto for any purpose whatsoever other than contemplated in this agreement, without the express prior written consent of **DAD** first being had and obtained;

4.3.2 not at any time, subject to clause 6 below, during or after the termination of this Agreement, to release any statement to the press, or make any other public statement of any nature which could reasonably be expected to be published in any media regarding the relationship between the Parties or the subject matter of this Agreement, without the prior written consent of **DAD**, which consent may be withheld in **DAD**'s sole discretion. ;

4.3.3 that the unauthorised disclosure of the confidential information to a third party may cause irreparable loss, harm and damage to **DAD**.

4.4 Accordingly, **THE CONTRACTOR** indemnifies and holds **DAD** harmless against any loss, action, claim, harm, damage or other liability of whatsoever nature sustained by **DAD** pursuant to a breach by **THE CONTRACTOR** of the provisions of this agreement.



4.5 **THE CONTRACTOR** acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure of the confidential information and that **DAD** will be entitled, without waiving any of its rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction including, without limitation, direct damages.

4.6 Neither Party shall be liable for any indirect or consequential loss or damages whatsoever and howsoever arising.

## 5 **EXCEPTIONS TO THE OBLIGATIONS**

5.1 Without prejudice to any obligations imposed on and assumed by **THE CONTRACTOR** under any national or governmental security regulations or classifications, the obligations of confidentiality herein shall not apply to any part of the confidential information which **THE CONTRACTOR** can prove:-

5.1.1 was in the possession of **THE CONTRACTOR** before such confidential information was imparted by **DAD** or is independently developed by any agent, subcontractor, or employee of **THE CONTRACTOR**, without access to or use of knowledge of the confidential information imparted by **DAD**;  
or

5.1.2 is in or subsequently comes into the public domain other than by

5.1.3 breach by **THE CONTRACTOR** of its obligations hereunder or under any agreement of confidentiality between the parties,  
or

5.1.4 the lodgement by **DAD**, or on its behalf, of any, and all, applications for the registration of patents for the protection of the confidential information, either in the Republic of South Africa, anywhere else in the world, where any one, or more,

or all, of the said registrations of such patents has not been finally registered and/or is still pending.

- 5.1.5 or was or is independently developed by any agent, subcontractor or employee of **THE CONTRACTOR** without access to or use or knowledge of the confidential information imparted by **DAD**; or
- 5.1.6 or is received by **THE CONTRACTOR** without restriction of disclosure or use from a third party with the right to make such disclosure on such terms; or
- 5.1.7 is approved in writing by **DAD** for unrestricted release or unrestricted use by **THE CONTRACTOR**; or
- 5.1.8 is disclosed by **THE CONTRACTOR** to satisfy an order of court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time or when called upon to do so by any other duly authorised and empowered authority or official. In these circumstances, **THE CONTRACTOR** will advise **DAD** in writing prior to such disclosure to enable **DAD** to take whatever steps it deems necessary to protect its interests in this regard. **THE CONTRACTOR** will disclose only that portion of the confidential information which it is legally required to disclose and **THE CONTRACTOR** will use its reasonable endeavours to protect the confidentiality of such confidential information to the widest extent possible and in the circumstances; and/or
- 5.1.9 such information is disclosed to a third party pursuant to the prior written authorisation from **DAD**; and/or
- 5.1.10 such information was rightfully in **THE CONTRACTOR**'s possession prior to receipt from **DAD**, as proven by **THE CONTRACTOR**'s written or electronic records, in circumstances that do not result in a breach of the provisions of this Agreement; and/or

- 5.1.11 if it can be proved that such information has been rightfully received from a third party in circumstances that do not result in a breach of the provisions of this Agreement; and/or
  - 5.1.12 such information is developed independently of **DAD** by **THE CONTRACTOR**, as proven by its written or electronic records, without relying on or referring in any way to confidential information disclosed by **DAD**;
  - 5.1.13 is reasonably required by **THE CONTRACTOR** to instruct its attorneys in a legal action, or proposed legal action, instituted against it by **DAD**.
- 5.2 If any portion of the confidential information falls within any one of the above exceptions, the remainder shall continue to be subject to the restrictions contained in this Agreement.
- 6 **PROMOTION TO ACCESS OF INFORMATION ACT OF 2000**
- 6.1 In the event that **THE CONTRACTOR** receives a request for the whole or any part of the confidential information in terms of the said Act, no provision of this Agreement will be construed in such a way that **DAD** is deemed to have granted its consent to **THE CONTRACTOR** to disclose such confidential information.
  - 6.2 Subject to the provisions of clause 7.3, the Parties agree that the disclosure of confidential information by **THE CONTRACTOR** otherwise than in accordance with the provisions of this Agreement will entitle **DAD** to institute proceedings for breach of confidence against **THE CONTRACTOR** as envisaged by section 45 of the said Act.
  - 6.3 The Parties acknowledge that the provisions of clause 7.2 will not be construed in such a manner as to exclude the applicability of any other ground of refusal contained in the Act which may be applicable in the event that **THE CONTRACTOR** receives a request for the whole or any part of the confidential information in terms of the Act.

7 **RIGHTS AND DUTIES OF DAD**

7.1 Any confidential information imparted to **DAD** hereunder shall remain the property of the disclosing Party. Except for the right to use the confidential information for the Purpose, no other license is granted to or shall be deemed to have arisen or be granted in favour of the receiving party in respect thereof or to any or all of the confidential information or to any or all of the underlying intellectual property rights comprised therein.

7.2 Nothing in this agreement shall oblige or commit or be construed as obliging or committing either Party to disclose any confidential information to the other or to enter into any other contractual relationship with the other.

7.3 The disclosing Party will disclose to the receiving Party only such confidential information which the disclosing Party reasonably considers appropriate to fulfill the Purpose.

7.4 The disclosing Party hereby represents that the disclosure of confidential information to the receiving Party shall not be contrary to any laws or regulations or in breach of any obligations of the disclosing Party to any third party.

8 **TERMINATION**

8.1 Notwithstanding the date of signature of this Agreement, it will be deemed to be binding on the Parties from the first date on which confidential information was communicated and/or acquired by **THE CONTRACTOR** as contemplated in this Agreement and will continue to bind the Parties for a period of 5 (FIVE) years after the termination of this Agreement.

8.2 This agreement may be terminated forthwith at any time by written notice given by one Party to the other. Upon receipt of such notice the receiving Party shall cease all use of the confidential information of the disclosing Party. Notwithstanding such termination, the receiving Party shall

remain bound by the provisions of the whole of clauses 1 and 2 until the confidential information shall cease to be subject to any obligations of confidentiality pursuant to the whole of this Agreement.

8.3 If there is no formal termination of this Agreement, it shall be terminated on the date upon which it can be reasonable said that the projects were completed provided that such termination shall not be earlier than the expiry of the period of 5 (FIVE) years from the said date of completion of the projects.

9 **PROCEDURES FOR THE TRANSMISSION OF CONFIDENTIAL INFORMATION AND NOTICES**

9.1 With respect to any confidential information which may be disclosed pursuant to this agreement, it is expressly provided, understood and agreed that the employees listed below shall be exclusively authorised to receive or send confidential information under this agreement on behalf of the respective Parties,

..... for .....  
.....for DAD

or such other persons as may be notified by one Party to the other from time to time in writing as having the right to receive and send confidential information on behalf of that Party.

9.2 Confidential information and any notices required to be given hereunder, and documents in legal proceedings in connection with this Agreement shall be transmitted and/or served between, or on, the Parties at their *domicilia citandi et executandi* addressed as follows (or to such other address as a Party may specify from time to time by notice in writing to the other)

To: Deter-A-Dye (Pty) Ltd  
36 SIMBA ROAD

SEBENZA  
1609  
EDENVALE  
SOUTH AFRICA  
Fax No: +27 11452 1425

To: .....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
Fax No: .....

And marked for the attention of one or more of the persons named in or notified pursuant to clause 9.1 hereof

9.3 Failure of the disclosing Party to observe the provisions of this clause shall not release the receiving Party from its obligations under this agreement.

9.4 A party may change its address for the purposes of this clause to another physical address in the Republic of South Africa, by notice in writing to the other party, or **THE CONTRACTOR**, with the prior written consent of **DAD** first being had and obtained, may change its address for the purposes of this clause to another physical address elsewhere in the world.

9.5 Any notice in terms of this agreement will only be validly given if in written or printed paper-based form. For the avoidance of doubt, where any provision of this Agreement requires either Party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written or printed paper-based form. The provisions of the Electronic Communications and Transactions Act 25 of 2002, in this regard being expressly excluded from this

Agreement, and data messages as defined in that Act) are excluded as a valid form of notice in terms hereof.

9.6 Any notice shall be deemed to have been sufficiently given and received if addressed as set out below:

9.6.1 20 (TWENTY) days after posting, if posted by registered post and/or registered airmail post, to the Party's address in terms of this sub-clause;

9.6.2 on delivery if delivered to the Party's physical address in terms of clause 9.2 dealing with the service of legal documents;

9.6.3 on the first business day following successful transmission, if sent to the Party's then telefax number, as evidenced by a confirmation print-out.

10 **INTELLECTUAL PROPERTY**

10.1 The ownership of any and all intellectual property throughout the world which exists in the confidential information shall remain with the disclosing Party and shall not vest in the receiving Party. The ownership of any and all intellectual property throughout the world resulting from the Purpose shall vest exclusively in the disclosing Party unless otherwise agreed in writing in a licencing agreement which may be entered into between the Parties at a date after the signature of this agreement by the Parties hereto

11 **THE RETURN OF CONFIDENTIAL INFORMATION**

11.1 Within three days of written request of the disclosing party given at any time and, in any event, automatically within three days of termination of this agreement for any reason, the receiving party shall return all confidential information of the disclosing party to it.

**12 MISCELLANEOUS**

- 12.1 The parties hereto acknowledge that the breach of this agreement would cause irreparable harm and injury which may not be compensable in monetary terms alone. Accordingly they agree that in the event of a breach, or the threat of a breach, the prejudiced Party, so as specifically to enforce the terms and conditions of this agreement, or to prevent or cure or reduce the adverse effects of the breach, shall be entitled, on service on the other party of the founding application, in addition to and without prejudice to its other remedies, to apply to the High Court of South Africa for a restraining order, or preliminary injunction or similar relief and costs as between attorney and own client. The laws of the Republic of South Africa shall govern this agreement.
- 12.2 Neither party shall cede or assign or charge or otherwise deal with its interests (in whole or in part) in and to this agreement.
- 12.3 No alteration or amendment to this agreement shall be of any force or effect unless committed to writing and signed by a duly authorised representative of each of the Parties.
- 12.4 This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes and cancels any prior representations, negotiations, commitments, undertakings, communications (whether oral or in writing), acceptances, understandings and agreement between the parties with respect to or in connection with any of the matters or things to which this agreement applies or refers.
- 12.5 The failure to exercise, or the delay in the exercising of a right or remedy under this agreement shall not constitute a waiver of such right or remedy, or a waiver of any rights or remedies or of any single or partial exercise of any rights or remedies, or the exercise of any other right or remedy.



13           **SEVERABILITY**

13.1           In the event of any one, or more of the provisions of this Agreement being held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement will be construed as if such invalid, or illegal or unenforceable provision(s) was not a part of this Agreement and the Agreement will be carried out as closely as possible in accordance with its original terms and intent.

14           **INTERPRETATION**

14.1           In this Agreement, unless the context clearly indicates a contrary intention:

14.2           the head notes of the clauses of the Agreement are for reference purposes only and will not affect the interpretation of any of the provisions to which they relate;

14.3           words importing the singular will include the plural and vice versa; words importing the masculine will include the feminine and neuter genders and vice versa; and word importing natural persons will include legal persons and vice versa.

14.4           Wherever any number of days is to be calculated from a particular day, such number will be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day will be deemed to be the next succeeding business day. Any reference to days (other than business days), months or years will be a reference to calendar days, months or years, as the case may be.

14.5           Any reference in this Agreement to legislation or subordinate legislation applies to legislation in force at the date of signature hereof and as amended from time to time.

- 14.6 Where any term is defined or clarified within a particular clause, that term will be the meaning ascribed to it in that clause whenever it is used in this Agreement.
- 14.7 If any provision in a definition or clarification is a substantive provision conferring rights on a Party, then notwithstanding that it is only a definition or clarification, effect will be given to that provision in the body of this Agreement.
- 14.8 The use of the word "including" followed by a specific example(s) will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example(s).

DATED AT ..... THIS ..... DAY OF ..... 2004

WITNESS 1 .....  
For DETER-A-DYE SECURITY (PTY) LTD

WITNESS 2 .....

DATED AT ..... THIS ..... DAY OF ..... 2004

WITNESS 1 .....  
For VISSER

WITNESS 2 .....

DATED AT ..... THIS ..... DAY OF ..... 2004

WITNESS 1 .....  
For **THE CONTRACTOR**

WITNESS 2 .....