

Elixir Concepts (PTY) LTD

PRE-CONTRACTUAL

CONFIDENTIALITY AGREEMENT

Dated / / 2009

Elixir Concepts (Pty) Ltd
Attention: Leigh Hailstone
16 Skeen Boulevard, 3rd Floor
Bedfordview
2008
Tel: 011 879 1978
Fax: 011 450 2644

PRE-CONTRACTUAL CONFIDENTIALITY AGREEMENT made this day of 20__.

PARTIES **ELIXIR CONCEPTS (PTY) LTD, Reg. No 2006/020275/07**
of 3rd Floor, 16 Skeen Boulevard, Bedfordview, 2008.
("Boost Juice")

AND The party or parties set out in the Schedule to this Agreement
("You")

INTRODUCTION

- A.** Boost Juice will be making available to You certain information in order to allow You to consider purchasing the rights to a Boost Juice Franchise.
- B.** Boost Juice is willing to provide You with the information subject to confidentiality of that information being preserved in accordance with this Agreement.

IT IS AGREED

1. Definitions and Interpretation

1.1 In this Agreement:

- (1) "**Agreement**" means this deed and any schedule or annexure to this deed;
- (2) "**Approved Purposes**" means the evaluation of the Business Opportunity, the making of a decision whether or not to take up the Business Opportunity and negotiation of a formal agreement concerning the Business Opportunity;
- (3) "**Boost Juice Franchisee**" means a person licensed to operate a Boost Juice Store;
- (4) "**Boost Juice Image**" means the specific image created or prescribed by Boost Juice for the operation of a Boost Juice Store including names, trade marks, uniform product ranges, specified design and colour schemes for business premises, signs, layouts, fixtures and fittings, equipment and uniforms;
- (5) "**Boost Juice Franchise**" means the right to establish and operate a Boost Juice Store;
- (6) "**Boost Juice Store**" means a business licensed to use, and using, the trade marks and other Intellectual Property of Boost Juice, including the unique Boost Juice System for conducting business and the distinctive Boost Juice

Image, for the purposes of operating a retail outlet specialising in the sale of fruit juice beverages and associated goods;

- (7) **"Boost Juice System"** means any one or more of the business formats, systems, methods, procedures, policies, operations, standards and controls upon the operation of Boost Juice Stores as may be specified by Boost Juice from time to time;
- (8) **"Business Opportunity"** means the opportunity to purchase the rights to a Boost Juice Franchise;
- (9) **"Confidential Information"** means information of every kind:
 - (a) relating to the Intellectual Property;
 - (b) relating to the business methods, trade secrets, financial position, trading or procedures of Boost Juice or a Related Body Corporate of Boost Juice;
 - (c) relating to any Boost Juice Franchisee; or
 - (d) which is the property of Boost Juice or any of its Related Bodies Corporate,and includes the Notes;
- (10) **"Corporations Act"** means the Companies Act or the Close Corporation Act;
- (11) **"Intellectual Property"** means:
 - (a) all copyright, know how, trademark rights, patent rights or any other intellectual property subsisting in the trade marks, logos, business system, distinctive image and operations manuals owned or used under licence by Boost Juice including software, source and object codes, scripts, records, documents, specifications, plans, program listings, calculations, menus, recipes or drawings; and
 - (b) any Confidential Information and/or know how necessary for the administration, operation and marketing of a Boost Juice Store;
- (12) **"Notes"** means notes which relate to, summaries and copies of and extracts from any Confidential Information whether in documentary, visual, machine readable or other form;
- (13) **"Schedule"** means the schedule to this Agreement.

1.2 Parties

- (1) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

- (2) A party which is a trustee or a representative of a juristic person is bound both personally and in its capacity as a trustee and as a representative.

2. Consideration

The consideration for You entering into this Agreement is the provision of Confidential Information by Boost Juice to You.

3. High Commercial Sensitivity

- 3.1 Boost Juice will provide to You the Confidential Information for the purpose of evaluating the Business Opportunity.
- 3.2 You acknowledge that the Confidential Information is commercially sensitive and that its continued confidentiality is vital to the success of Boost Juice and Boost Juice Franchisees.

4. Maintenance of Confidentiality

- 4.1 You must:
 - (1) use the Confidential Information solely for the Approved Purposes;
 - (2) not make Notes or allow Notes to be made except as necessary in connection with the Approved Purposes;
 - (3) maintain and take all steps necessary to maintain all Confidential Information in strictest confidence;
 - (4) ensure that proper and secure storage is provided for the Confidential Information and take all precautions necessary to prevent accidental disclosure of any of the Confidential Information;
 - (5) subject to clause 5, not disclose any of the Confidential Information to any person other than those of Your employees or officers or any solicitors or financial advisers or agents who are required to receive and consider the Confidential Information in the course of (and solely for the purpose of) the Approved Purposes;
 - (6) keep a record of what Notes have been made and by whom and supply this information to Boost Juice on request;
 - (7) keep confidential the fact that Confidential Information has been provided by Boost Juice to You;
 - (8) not provide a copy of any Confidential Information to any person; and
 - (9) not expressly or impliedly disclose the existence of Confidential Information.
- 4.2 Clause 4.1 does not impose obligations on You concerning Confidential Information which:

- (1) at the time of first disclosure by Boost Juice to You is already publicly available; or
 - (2) after disclosure by Boost Juice to You becomes publicly available otherwise than by disclosure in breach of the terms of this Agreement; or
 - (3) You obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information.
- 4.3 It is not a breach of clause 4.1 for You to disclose Confidential Information or Notes which You are obliged by law or court order to disclose to the person to whom it is disclosed.

5. Employees and Agents

You must:

- (1) give notice to Boost Juice, before allowing any other employees, officers or agents or any solicitors or financial advisers to have access to Confidential Information, of their identity; and
- (2) where requested by Boost Juice, ensure that prior to any person specified in clause 5(1) receiving or having access to Confidential Information that any such person signs an agreement similar to this Agreement in a form specified by Boost Juice.

6. Return of Confidential Information

You must return all Confidential Information and all documents and other media which contain Confidential Information to Boost Juice Franchising and delete any Notes electronically stored, whether by You or by Your officers, employees or agents:

- (1) immediately when requested by Boost Juice to do so; and
- (2) if not earlier requested:
 - (a) if You notify Boost Juice that You do not intend to take up the Business Opportunity, on the date that You notify Boost Juice; or
 - (b) if You notify Boost Juice that You intend to take up the Business Opportunity, upon conclusion of a formal agreement concerning the Business Opportunity.

7. Disclaimers

None of Boost Juice, its Related Corporate Entities or any of their respective employees, officers or agents:

- (1) makes any representation, or gives any warranty or assurance as to the accuracy or completeness of the Confidential Information; or

- (2) is liable for loss of any kind including damages, costs, interest, loss of profits or special loss or damage arising from any infringement, inaccuracy or incompleteness in the Confidential Information.

8. Acknowledgment

You accept that Boost Juice does not provide any warranties or representations concerning any information, systems or processes.

9. Remedies

You acknowledge that:

- (1) monetary damages alone would not be a sufficient remedy for a breach of this Agreement; and
- (2) in addition to any other remedy which may be available in law or equity, Boost Juice is entitled to interim, interlocutory and permanent injunctions or any of them, to prevent breach of this Agreement and to compel specific performance of it.

10. Restraint

Without limiting any other provision of this Agreement You must not:

- (1) for a period of 18 months after the date of this Agreement:
- (a) develop a business the same as or similar to a Boost Juice Store; or
 - (b) be engaged, concerned or interested in any business or person that competes against Boost Juice; or
 - (c) solicit, employ or engage the services of any employee of Boost Juice or any other person who becomes an employee of Boost Juice; and
- (2) at any time, use the Confidential Information for any of the purposes specified in clause 10(1).

11. Severability

- 11.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 11.2 If anything in this Agreement is unenforceable, illegal or void in one jurisdiction but not in another jurisdiction, it is severed only in respect of the operation of this Agreement in the jurisdiction where it is unenforceable, illegal or void.

12. Continuation of Obligations

- 12.1 Your obligations and undertakings continue indefinitely and are not diminished or terminated by the making or completion of an agreement concerning the Business Opportunity.

12.2 Your obligations and undertakings are for the benefit of and are enforceable by Boost Juice and its successors and assigns and are binding on You and Your successors.

13. Entire Understanding

13.1 This Agreement:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

13.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

14. Waiver

14.1 Failure or delay by Boost Juice in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy.

14.2 A single or partial exercise of a right, power or remedy by Boost Juice does not preclude either its exercise in the future or the exercise of any other right, power or remedy by Boost Juice.

15. Governing Law and Jurisdiction

15.1 In view of the fact that this agreement will be used in South Africa between the Master Franchisee and prospective Franchisees, we suggest that the law of South Africa be applicable and that the parties submit to the jurisdiction of the South African courts.

15.2 The law of South Africa governs this Agreement.

15.3 Boost Juice shall at its sole discretion be entitled, but not obliged, to institute any proceedings arising out of or in connection with this Agreement in the Magistrates' Courts.

SCHEDULE

You

Name: _____

Address: _____

Suburb _____ Province _____ Postcode _____

Name: _____

Address: _____

Suburb _____ Province _____ Postcode _____

EXECUTED as a deed.

Elixir Concepts (Pty) Ltd

EXECUTED by **ELIXIR CONCEPTS (PTY)**)
LTD , REGN NO: 2006/020275/07)
)

Director/Company Secretary

Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

By YOU

SIGNED SEALED AND DELIVERED by)
_____)
in the presence of:

Signature

Signature of Witness

Name

Name of Witness (BLOCK LETTERS)

Address of Witness

SIGNED SEALED AND DELIVERED by)
_____)
in the presence of:

Signature

Signature of Witness

Name

Name of Witness (BLOCK LETTERS)

Address of Witness