

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("**Agreement**") is made this 18 day of September 2015 between:

**GfK Asia Pte Ltd**, a company registered in Singapore, with its registered address at One George Street #22-02, Singapore 049145 ("**GfK**");

and

- (1) Harald Johan van Heerde, a person with the passport number [REDACTED] with his address at [REDACTED]
- (2) Joannes Evangelista Benedictus Maria Steenkamp, a person with the passport number of [REDACTED], with his address at [REDACTED]
- (3) Hannes Datta, a person with the passport number of [REDACTED] with his address at [REDACTED]
- (4) Marnik Gustaaf Dekimpe, a person with the passport number of [REDACTED] with his/her address at [REDACTED]

((1) to (4) above together shall be referred to as the "Researchers").

### 1. Purpose

Each of the Researchers and GfK (individually, a "Party" and collectively, the "Parties") has expressed an interest in entering into discussions to evaluate a prospective business relationship (the "**Project**"). In consideration of each Party and/or its respective Representatives (as defined below) disclosing Confidential Information (as defined below) to the other Party and/or its Representatives in connection with the Project, and other good and valuable consideration, each Party agrees to maintain the confidentiality of such information in accordance with the provisions of this Agreement and will direct its Representatives to do the same.

### 2. Definitions

- a. **Confidential Information** means all information whether technical or business which is disclosed or provided by the Disclosing Party to the Receiving Party during the term of this Agreement which is of a confidential or proprietary nature or which a reasonable person would believe should be treated as such, including but not limited to the Disclosing Party's and the Disclosing Party's client's information, if applicable, technical information, designs, recipes, plans, programs, methods, systems, formulae, processes, technology, object code, source code, executable code, flow charts, devices, designs, machines, inventions, research or development projects, plans for future project development, financial information, sales practices, business plans, marketing and pricing plans and strategies, customers, suppliers and all other Confidential Information of every kind and character. In addition to information provided by the Disclosing Party in connection with a potential Project, Confidential Information also shall include analyses, compilations, studies or other documents prepared by the Receiving Party and/or its Representatives that contain or otherwise reflect such information.
- b. **Disclosing Party** means the person disclosing the Confidential Information.
- c. **Receiving Party** means the person receiving the Confidential Information.

### 3. Exclusions to Confidential Information

Confidential Information shall not include any information that:

- a. was publicly known and generally available to the Receiving Party and/or its Representatives prior to the time of disclosure by the Disclosing Party,
- b. becomes publicly known and generally available after disclosure by the Disclosing Party through no action or inaction of the Receiving Party and/or its Representatives in breach of this Agreement,
- c. is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided such source is not known by the Receiving Party to be subject to another confidentiality agreement with or other obligation of secrecy to the Disclosing Party or another party with respect to such information, or
- d. is independently developed by the Receiving Party without use of the Confidential Information, as shown by the Receiving Party's files and records or other evidence in the Receiving Party's possession.

Notwithstanding the foregoing or any other provision of this Agreement, nothing contained herein shall prevent the Receiving Party or its Representatives (as hereinafter defined) from disclosing all or any portion of Confidential Information as required by applicable law (including orders and other legal process validly issued by a court or other tribunal), provided that, in the case of disclosures or communications permitted by this clause, the Receiving Party shall (a) to the extent practicable, promptly notify in writing the Disclosing Party of any such requirement or request, (b) disclose or communicate such Confidential Information to an extent no greater than what is required by applicable law and (c) reasonably co-operate with and assist the Disclosing Party with respect to any actions the Disclosing Party may take, at its own expense, to obtain a protective order or otherwise to oppose or limit such disclosure.

#### **4. Non-Disclosure of Confidential Information**

Except as set forth below, the Receiving Party agrees that the Confidential Information will be kept confidential by it and used solely for the purpose of evaluating the Project ("Permitted Purpose"). The Receiving Party shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorised use, dissemination or publication of the Confidential Information as the Receiving Party uses to protect its own Confidential Information of a like nature. Notwithstanding the permission granted to the Receiving Party to utilise the Confidential Information for the Permitted Purpose set forth herein, the Disclosing Party shall retain all rights, title and interest to its Confidential Information, and the Receiving Party will not acquire any patent, copyright, trademark, or other intellectual property rights under this Agreement except for the limited right to use the Confidential Information for the Permitted Purpose.

#### **5. Permitted Disclosure to Representatives**

The Receiving Party may disclose the Confidential Information to each of its Representatives that need to know such information for the purpose of the Project. As used herein, the term "Representatives", with respect to any party, means its affiliates and its respective directors, officers, employees, advisors and/or agents (including, without limitation, legal advisers and accountants). The Receiving Party shall (i) cause its Representatives to maintain the confidentiality of the Confidential Information in accordance with the terms of this Agreement, (ii) be responsible for any breach of this Agreement by any of its Representatives and (iii) take all reasonable measures to restrain its Representatives from prohibited or unauthorised disclosure or use of the Confidential Information.

#### **6. Return of Confidential Information**

Upon the earlier of the termination or expiration of this Agreement or the Disclosing Party's request, the Receiving Party shall (i) return to the Disclosing Party all originals and copies of the Disclosing Party's Confidential Information in hard copy form or format; and (ii) delete and erase all originals and copies of the Disclosing Party's Confidential Information in electronic or other non-hard copy form, format or media. Receiving Party may keep an archival set of its working papers together with such copies of Confidential Information to comply with its document retention policies, applicable law, rule, regulation or professional standards and neither party shall be obligated to return or destroy Confidential Information contained in its electronic back-up systems. Any copies of Confidential Information so kept shall be retained in accordance with the terms of this Agreement.

## **7. No Warranty as to Accuracy**

Each Party understands and acknowledges that the other Party has not made and does not make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information.

## **8. No Rights Granted**

The Parties agree that no contract or agreement providing for a potential business transaction shall exist or be deemed to exist between them unless and until a definitive written agreement has been executed and delivered. The Parties further agree that, unless and until a definitive written agreement between the Parties has been executed and delivered, neither Party shall have any legal obligation of any kind whatsoever with respect to any business transaction by virtue of this Agreement.

## **9. Publication Rights**

- a. The Parties acknowledge that subject to the obligations of the Parties under this Agreement in connection with the Confidential Information, the outcomes of the Project advance the Researcher's mission of education and research and the outcomes of the Project are to be communicated to the research community.
- b. Where a Party wishes to publish Project results in any forum, the Party who seeks to publish the Project results (the "Publishing Party") will send a written request accompanied by the proposed publication material to the other Party at least 14 working days prior to the proposed submission date.
- c. Within 14 working days of receiving the written request, the non-publishing Party will respond to the written request. If the non-publishing Party does not respond within 14 working days of receiving the written request, the non-publishing Party will have been deemed to have given its consent to the Publishing Party.
- d. Where the non-publishing Party indicates that the material proposed for publication be amended to remove any Confidential Information, the Publishing Party will use its best efforts to amend the proposed publication material to remove such Confidential Information.
- e. A Party may only withhold approval or request changes to a publication if the Party can substantiate its concerns relating to the publication of the Confidential Information or the protection of commercially valuable intellectual property.

## **10. Remedies**

Each Party agrees that its obligations set forth in this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business. Each Party expressly agrees that due to the unique nature of the Disclosing Party's Confidential Information, monetary damages may be

inadequate to compensate the Disclosing Party for any breach by the Receiving Party of its covenants and obligations set forth in this Agreement. Accordingly, each Party agrees and acknowledges that any such breach or threatened breach shall cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available in law, in equity or otherwise, the Disclosing Party shall be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Receiving Party.

#### **11. Term**

This Agreement shall commence on the date first written above ("**Start Date**") and, unless extended by the written consent of both Parties hereto, shall continue in full force and effect until the expiry of a period of four (4) years from the Start Date. Notwithstanding the foregoing provision, each Party shall have the right to terminate this Agreement without cause on thirty (30) days' prior written notice.

#### **12. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Singapore. In order to ensure English language and efficient proceedings, any dispute arising out of or in connection with this Agreement including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the internationally recognised Singapore International Arbitration Centre ("SIAC") for the time being in force which rules are deemed to be incorporated by reference into this clause. The Tribunal shall consist of a single arbitrator to be appointed by the Chairman of the SIAC.

#### **13. Third Party Rights**

A person who is not a party to this Agreement shall have no rights to enforce any term of this Agreement.

#### **14. Miscellaneous**

This Agreement sets forth the entire agreement of the Parties relating to the subject matter hereof and supersedes and merges all prior discussions between the Parties, written and oral, relating to the subject matter hereof. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by both Parties. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect, and the Parties shall renegotiate in good faith any term held invalid and shall be mutually bound by such substitute provision(s). Neither Party may assign this Agreement without the prior written consent of the other Party, and any attempt to do so shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the Parties' respective successors and permitted assigns. Each Party represents that the person signing this Agreement on the Party's behalf has been duly authorised to execute this Agreement on behalf of such Party, and each of the signatories hereto signing in a representative capacity warrants and represents that he or she has been duly authorised by and on behalf of his or her respective principal to execute this Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original and both of which taken together shall constitute one and the same instrument.

Signatures received via facsimile shall be deemed originals for all purposes.

**IN WITNESS WHEREOF**, the Parties have caused their duly authorised representatives (as the case may be) to execute this Agreement as of the date first above written.

**GfK**

Name: [REDACTED]  
Title: Regional COO, APAC CC  
Signature: [REDACTED]

**Researchers**

(1) Name: Harald Johan van Heerde

Title: Research Professor of Marketing

Signature: [REDACTED]

(2) Name: Joannes Evangelista Benedictus Maria Steenkamp

Title: C. Knox Massey Distinguished Professor of Marketing & Marketing Area Chair

Signature: [REDACTED]

(3) Name: Hannes Datta

Title: Assistant Professor

Signature: [REDACTED]

(4) Name: Marnik Dekimpe

Title: Research Professor of Marketing & Marketing Area Chair

Signature: [REDACTED]

