

This NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT (the "Agreement") is between Kamaka Ltd, a New Zealand limited liability company, with an address of Level 9, 6 Lorne Street, Auckland CBD 1010, or its affiliate ("Kamaka"), and the undersigned signatory party, on behalf of itself and its corporate affiliates ("Counterparty").

## RECITALS

Each party to this Agreement has requested, may request, has received, may be receiving or may receive from the other party information of a confidential or non-public nature for use by each party and its officers, directors, agents, employees and representatives, including, but not limited to, financial and legal advisers (collectively, "Representatives") in connection with discussions and exchanges relating to: discussion of a potential business relationship or transaction between the parties relating to possible supply of services by Counterparty to a renewable fuels project being developed in Imperial, California by Indaba (the "Project"). The parties desire to protect the confidentiality of such information in accordance with the terms of this Agreement.

## TERMS AND CONDITIONS:

### 1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

AGREEMENT means this agreement, inclusive of these Terms and Conditions and any attached schedules;

DISCLOSING PARTY means a party who discloses Confidential Information to the Receiving Party;

CONFIDENTIAL INFORMATION means (i) all information and materials relating to the Field or otherwise including but not limited to all drawings, specifications, technical information, research and development details, product analysis, compilations, documents, records, notebooks, and similar material in any form whatsoever; or (ii) information which is by its nature confidential or which the Disclosing Party advises the Receiving Party is confidential and shall include but not be limited to the terms of this Agreement, and information shall be deemed confidential whether or not it is identified as such at the time of disclosure; and

RECEIVING PARTY means a party who has received or has otherwise become aware of Confidential Information from the Disclosing Party.

### 2. OBLIGATIONS

2.1 In respect of the Confidential Information the Receiving Party shall:

- a. keep all Confidential Information in Receiving Party's possession and treat all Confidential Information as confidential regardless of when disclosed;
- b. not use any Confidential Information in any way other than for the Purpose;
- c. not use or allow the Confidential Information to be used in any manner which may conflict with or be harmful to the commercial interests of the Disclosing Party (including, without limitation, any direct or indirect commercial exploitation or other use of the Confidential Information);
- d. refrain from making or having made any duplication (in any form whatsoever) of the Confidential Information except to the extent necessary for the Purpose;
- e. not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party as may be applicable, and without first obtaining

from said third party an obligation of confidence on terms equivalent to the terms of this Agreement; and

- f. not use any of the Confidential Information in any way which would conflict with or be harmful to the interests of the Disclosing Party.

2.2 If the Receiving Party becomes aware of the possession, use, or knowledge of the Confidential Information by any unauthorised party, then the Receiving Party must:

- a. immediately inform the Disclosing Party; and
- b. at the Disclosing Party's request and expense, provide all assistance in relation to the unauthorised possession, use or knowledge as the Disclosing Party requires, unless such unauthorised possession, use or knowledge is the fault the Receiving Party, in which case such assistance shall be at the Receiving Party's expense.

2.3 The burden of proof of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the Receiving Party.

### **3. REMEDIES**

The Receiving Party acknowledges that monetary damages alone may be an inadequate remedy for breach of the Receiving Party's obligations under this Agreement. In addition to any other remedy, which may be available in law or equity, the Disclosing Party may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

### **4. INTELLECTUAL PROPERTY**

4.1 The Receiving Party will obtain no proprietary rights of any kind in the Confidential Information disclosed to the Receiving Party under this Agreement.

4.2 The Disclosing Party will retain sole ownership of all Confidential Information and all right, title, and interest in and to the intellectual property rights therein.

4.3 The Receiving Party acknowledges and agrees that:

- a. except as expressly provided in this Agreement, neither the signing of this Agreement nor the furnishing of any Confidential Information under this Agreement will be construed as granting to the Receiving Party any interest in licence to, or right to use any Confidential Information or any intellectual property rights therein for the Receiving Party's own benefit or for the benefit of any other person;
- b. all improvements and all intellectual property rights therein will be owned exclusively by the Disclosing Party; and
- c. to the extent that any improvements and the intellectual property rights therein do not on their creation vest in the Disclosing Party but vest in the Receiving Party, the Receiving Party will hold such improvements and intellectual property rights on trust for the Disclosing Party.

## **5. OBLIGATION OF CONFIDENTIALITY & RETURN OF CONFIDENTIAL INFORMATION**

5.1 Notwithstanding the expiry or termination of this Agreement, the Receiving Party's obligations under this Agreement will continue in full force and effect until the Confidential Information lawfully enters the public domain.

5.2 At the Disclosing Party's written request, the Receiving Party will promptly, at the Disclosing Party's election, return to the Disclosing Party or destroy or erase, or procure the destruction or erasure of, any or all of the Confidential Information.

## **6. GENERAL PROVISIONS**

6.1 No Warranty: The Disclosing Party provides no representation or warranty (whether express or implied) with respect to any Confidential Information other than that it has the right to disclose such Confidential Information to the Receiving Party.

6.2 No Assignment: The Receiving Party may not assign, transfer, novate or subcontract this Agreement or any rights or obligations under this Agreement, without the prior written consent of the Disclosing Party.

6.3 No Partnership: Nothing in this Agreement creates a partnership, agency, or joint venture between the Disclosing Party and the receiving Party.

6.4 Waiver: A failure by a party to enforce a provision of this Agreement will not constitute a waiver of any right to future enforcement of that or any other provision.

6.5 Severability: Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of the Agreement will remain binding upon the parties;

6.6 Governing Law: This Agreement will be subject to and interpreted in accordance with the laws of New Zealand and will be subject to the exclusive jurisdiction of the Courts of New Zealand.

6.7 Counterparts: This Agreement may be executed in counterparts (which may be facsimile copies) and all of which, when taken together constitute the one document.

6.8 Not An Offer: Neither this Agreement, nor the disclosure of any information by either Party to the other (including, without limitation, the disclosure of any Proprietary Information), nor the ongoing discussions and correspondence by the Parties concerning a potential Relationship or any other matter, shall constitute or imply any promise or intention by either Party to enter into a Relationship or any other business relationship with the other Party.

## **7. NON-CIRCUMVENTION**

7.1 Circumvention: The Parties agree herein that neither party shall seek to circumvent the validity, integrity or intent of the negotiations process between the Parties and will not without prior written consent from the Receiving Party, attempt to circumvent any relationships between the Receiving Party and any of its Confidential Business Relationships including but not limited to: any of its contractors, vendors, clients, agents, brokers, buyers, sellers, financiers, investors, lenders,



funding sources, employees, introduced to Disclosing Party by Receiving Party together with their members, associates, affiliates, subsidiaries, and related or contracted parties.

7.2 Liquidated Damages: In the case of circumvention the parties agree that Kamaka will receive a legal monetary penalty that is equal to three (3) times the fee it should have received in such transactions.

EXECUTED AS AN AGREEMENT on the date of the electronic signature provided in the electronic form below.