

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on _____ Day _____ 2023.

BETWEEN:

(1) _____, a company incorporated under the laws of _____, having their registered office at _____; and

(2) _____, a company incorporated under the laws of _____, with company number: _____ having its registered offices at _____; and

(each a **"Party"** and together referred to as the **"Parties"**).

RECITAL:

The Disclosing Party is willing to disclose to the Receiving Party Certain Confidential Information for, and in the course of discussions and correspondence between the parties relating to and for the purpose of _____ ("the Purpose") subject to the terms and conditions herein.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following expressions shall unless the context otherwise requires have the following meanings:

"Agreement" means this agreement and any document referred to, completed or to be completed in accordance with its provisions;

"Authorised Person" means, in relation to the Receiving Party, a Representative to whom disclosure of Confidential Information is reasonably necessary in order for the Receiving Party to fulfil the Purpose;

"Confidential Information" means all and any information or data in whatever form (including in oral, written, electronic and visual form) relating to the Disclosing Party or any of its Associated Companies and/or Group, which by its nature or content is identifiable as, or could reasonably be expected to be, confidential and/or proprietary to the Disclosing Party or any of its Associated Companies; and includes, (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), the information described in Annexure **"A"** as well as any other information which is otherwise made available by the Disclosing Party or its agents to the Recipient or its agents, whether before, on or after the Signature Date, including

any information, analysis or specifications derived from, containing or reflecting such information;

” **Disclosing Party** “means the Party disclosing (either directly or on its behalf) any Confidential Information to the Receiving Party;

”**Group and/or Associated Companies**” means in relation to either Party, a company which is a subsidiary or a holding company of that Party, or any company which is a subsidiary of any such holding Company.

”**Purpose**” has the meaning given in the Recital;

” **Receiving Party** “means the Party receiving any Confidential Information from, or on behalf of, the Disclosing Party; and

”**Representative**” means any director, officer, employee or professional adviser of the Receiving Party or any member of its Group.

2. MUTUAL OBLIGATIONS OF CONFIDENTIALITY

2.1 In consideration of the disclosure of Confidential Information by the Disclosing Party to the Receiving Party, the Receiving Party shall:

2.1.1 keep the Confidential Information secret subject to the terms and conditions of this Agreement and give it no less protection than it accords its own most confidential and valuable information (and in any event reasonable protection);

2.1.2 not use the Confidential Information for any purpose other than the Purpose;

2.1.3 not disclose the Confidential Information or any part thereof to any person other than an Authorised Person in accordance with clause 3;

2.1.4 not take any copies or make any summaries or transcripts of the whole or any part of the Confidential Information save as is strictly necessary for the Purpose and all such copies, summaries and transcripts shall be deemed to be, and shall be clearly identified as being, Confidential Information;

2.1.5 notify the Disclosing Party immediately if it becomes aware or suspects that any Confidential Information has been disclosed to or is in the possession of any person who is not an Authorised Person and provide any assistance to the Disclosing Party as it may reasonably require at the Disclosing Party's cost (unless such unauthorised possession, use or knowledge is the fault of the Receiving Party when such assistance shall be at its own cost);

2.1.6 keep all Confidential Information separate from its own documents in a safe and secure place and shall treat all Confidential Information in a manner which is no less secure than the manner in which it treats its own confidential and/or proprietary information; and

2.1.7 upon expiry of this Agreement or at the request of the Disclosing Party, deliver up to the Disclosing Party or destroy or erase (as the Disclosing Party may

direct) any records of whatsoever nature in the possession, custody or control of the Receiving Party which contain any Confidential Information or which are produced or received by the Receiving Party in connection with the Purpose.

3. PERMITTED DISCLOSURE

3.1 Subject to clause 3.2 below, the Receiving Party may, during the term of this Agreement, disclose Confidential Information to any of its Authorised Persons.

3.2 Before disclosure of Confidential Information to an Authorised Person, the Receiving Party shall ensure that such Authorised Person is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Authorised Person was a party to this Agreement. The Receiving Party shall be liable for any breach by any of its Authorised Persons as if the Receiving Party were itself in breach of this Agreement.

4. DATA PROTECTION

4.1 The Parties agree that any use or disclosure of the Confidential Information shall be strictly in compliance with the Protection of Personal Information Act, 4 of 2013 ("POPI") [*may vary according to governing law data protection legislation*] and all other laws, policies, and procedures relating to the protection, storage, handling, privacy, processing and destruction of personal data. In particular, and without limiting the generality of the foregoing, the Parties shall:

4.1.1 comply with section 18 of POPI, in that they shall secure the integrity of any personal information in their possession or under their control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of personal information and/or unlawful access to or processing of personal information; and

4.1.2 take all reasonable measures to:

4.1.2.1 identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control;

4.1.2.2 establish and maintain appropriate safeguards against the risks identified;

4.1.2.3 regularly verify that the safeguards are effectively implemented; and

4.1.2.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

4.2 The Parties shall at all times during the performance of their obligations in terms of this Agreement, ensure that no Confidential Information is sold, disclosed, commercially exploited, or used in any way other than as expressly authorised in this Agreement.

5. EXCEPTIONS

- 5.1 Notwithstanding any other provisions hereof, the Receiving Party shall not be liable for release or disclosure of, and the confidentiality obligations hereunder shall not apply to, any Confidential Information that:
- 5.1.1 is required by law or any governmental or other regulatory authority to be disclosed or by the order of a court of competent jurisdiction;
 - 5.1.2 is or becomes part of the public domain through no fault of the Receiving Party;
 - 5.1.3 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known to the Receiving Party prior to the disclosure by the Disclosing Party without an obligation to keep such Confidential Information confidential;
 - 5.1.4 is independently developed by the Receiving Party without any breach of this Agreement as evidenced by written records; or
 - 5.1.5 is approved in writing (including by email) for public release by the Disclosing Party.

6. TERM

- 6.1 Subject to clause 6.2 below, the obligations of the Receiving Party with respect to each item of Confidential Information shall commence on the date on which such information is disclosed or otherwise received (whether before or after the Signature Date) and shall endure for a period of 5 (five) years. The obligations referred to in clause 2 shall endure notwithstanding any termination of the negotiations/discussions herein.
- 6.2 Where personal information as defined in the POPI is disclosed by the Disclosing Party, such information shall remain the Disclosing Party's information and the Receiving Party shall not disclose such information either during or after this Agreement without the Disclosing Party's consent.

7. BREACH

- 7.1 Without prejudice to the other rights of the Disclosing Party, in the event of any unauthorised disclosure or use of the Confidential Information, the Receiving Party shall immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach and use all reasonable commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.
- 7.2 Cancellation is not an appropriate remedy for breach of this Agreement and this Agreement may not be cancelled or terminated save by written agreement between the Parties. As damages alone may not be an adequate remedy for any breach of the obligations set out in this Agreement, the remedies of interdict, specific performance

and any other equitable relief may be appropriate for any threatened or actual breach, which remedies the Disclosing Party will be entitled to apply for, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).

- 7.3 In the event of litigation relating to this Agreement as a result of a breach by the Receiving Party or its Authorised Persons, the Receiving Party shall bear and pay for all reasonable legal or other costs, fees and expenses incurred by the Disclosing Party (on an attorney-own-client scale) in connection with such litigation, including any appeal proceedings.

8. GENERAL

- 8.1 All Confidential Information shall be deemed to be (and all copies thereof or of any part or parts thereof shall become upon the creation thereof) and shall remain the property of the Disclosing Party.
- 8.2 This Agreement shall not operate as an assignment to the Receiving Party of any patents, copyrights, registered designs, unregistered designs, trademarks, tradenames or other rights of the Disclosing Party as may subsist in or be contained in or reproduced in the Confidential Information and the Receiving Party shall not, nor shall any persons on its behalf, apply for any patent, or registration of any trademark or design or any other intellectual property right, in respect of the Confidential Information or any part thereof.
- 8.3 The Disclosing Party makes no representations or warranties as to the accuracy or completeness of the Confidential Information disclosed.
- 8.4 The Receiving Party shall not assign or sub-license or otherwise transfer its rights or obligations under this Agreement.
- 8.5 The invalidity or unenforceability of any part of this Agreement for any reason whatsoever shall not affect the validity or enforceability of the remainder.
- 8.6 The Receiving Party shall keep confidential the existence of and the contents of this Agreement and all negotiations relating to this Agreement and/or the Purpose and shall not use or permit to be used the name of the Disclosing Party in any advertisement or publicity campaign or other disclosure without the prior written consent of the Disclosing Party.
- 8.7 This Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter and replaces all previous agreements between, or understandings by, the Parties with respect to such subject matter. This Agreement cannot be varied except by written instrument signed on behalf of both of the Parties.
- 8.8 This Agreement is made solely and specifically between the Parties hereto for the benefit of the Parties and each member of their respective Groups whose Confidential Information is disclosed pursuant to this Agreement and is not intended to be for the benefit of or enforceable by any other person. For the avoidance of doubt, only the

Parties shall have the right to bring and defend proceedings against each other under this Agreement for the benefit of their respective Groups.

- 8.9 Without limitation, clauses 2.1.7, 6 and 8.11, this clause and any other clause, the survival of which is necessary for the interpretation or enforcement of this Agreement, shall continue to have effect and shall survive expiry of this Agreement.
- 8.10 This Agreement will in all respects be governed by and construed under the laws of - _____.
- 8.11 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court, _____ in any dispute arising from or in connection with this Agreement.

SIGNED at _____ on this _____ Day of _____ 2023.

For and on behalf of _____

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on this _____ Day of _____ 2023.

For and on behalf of _____

Signature

Name of Signatory

Designation of Signatory

Annexure A

LIST OF SPECIFIC CONFIDENTIAL INFORMATION

1. Information relating to the Disclosing Party's or any of its Associated Companies' existing and future strategic objectives and existing and future business plans and corporate opportunities.
2. Trade secrets.
3. Technical information, techniques, know-how, operating methods and procedures.
4. Details of costs, sources of materials and customer lists (whether actual or potential) and other information relating to the existing and prospective customers and suppliers of the Disclosing Party or any of its Associated Companies.
5. Pricing, price lists and purchasing policies.
6. Computer data, programmes and source codes.
7. Information contained in or constituting the hardware or software of the Disclosing Party or any of its Associated Companies, including third party products and associated material.
8. Information relating to the network telecommunications services and facilities of the Disclosing Party or any of its Associated Companies.
9. Any and all methodologies, formulae and related information in developed software and processes and other business of the Disclosing Party or any of its Associated Companies.
10. Products, drawings, designs, plans, functional and technical requirements and specifications.
11. Intellectual property that is proprietary to the Disclosing Party or any of its Associated Companies or that is proprietary to a third party and in respect of which the Disclosing Party or any of its Associated Companies has rights of use or possession.
12. Information relating to any contracts to which the Disclosing Party or any of its Associated Companies is a party.
13. Any information which is not readily available to a competitor of the Disclosing Party or any of its Associated Companies in the normal course of business.