

NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

by and between

the **Company**

and

the **Counterparty**

*Capitalised terms shall have the meaning given to those terms in **Annexure A**.*

1. **Recordal of Relationship**

- 1.1. It is recorded that the Parties are currently considering engaging with one another for (i) the provision of certain good and/or services; and/or (ii) the purposes of forming a partnership (the "**Engagement**"). The Parties have entered (or may enter) into negotiations and discussions on a non-exclusive basis regarding the Engagement ("**Discussions**") and as such, either Party may disclose Confidential Information to the other Party for the purposes of the Engagement.
- 1.2. All Confidential Information made available by the Disclosing Party to the Receiving Party or its Representatives or to which the Receiving Party or its Representatives are given access by virtue of executing this Agreement is acknowledged and agreed by the Receiving Party to be Confidential Information, which is valuable, special and unique to the Disclosing Party and that such Confidential Information would not have been made available to the Receiving Party or its Representatives but for this Agreement. Accordingly, the Disclosing Party has a significant legitimate and commercial interest to protect the unauthorised disclosure of such Confidential Information and the Receiving Party acknowledges that the Disclosing Party is entitled to protect such interests through this Agreement.
- 1.3. The Disclosing Party also requires that the Receiving Party undertakes, and the Receiving Party wishes to undertake to the Disclosing Party, that there shall be no circumvention by the Receiving Party or any of its Representatives of any project, matter, transaction or development arising out of, or in connection with, directly or indirectly, the Engagement or the Discussions.
- 1.4. Accordingly, the Parties hereby enter into this Agreement to –
 - 1.4.1. regulate the provision and use of the Confidential Information;
 - 1.4.2. protect the Confidential Information from dissemination to, and use by, unauthorised persons;
and
 - 1.4.3. regulate the non-circumvention by the Receiving Party of any project, matter, transaction or development arising out of, or in connection with, or relating to, directly or indirectly, the Engagement or the Discussions.

2. **Term**

2.1. Notwithstanding the date of signature of this Agreement, this Agreement shall commence on the Effective Date and shall remain of full force and effect for 36 (thirty six) months, whereafter, it shall automatically terminate ("**Term**").

2.2. It is expressly agreed and understood by both Parties entering into this Agreement that the Parties shall, from the Effective Date –

2.2.1. be bound by the undertakings and/or obligations; and

2.2.2. be entitled to enforce any rights, title or interest,

expressly set out or conferred herein.

3. **Undertakings by the Receiving Party**

3.1. The Receiving Party undertakes (save as otherwise permitted herein) –

3.1.1. to treat as strictly confidential and not to divulge or permit to be divulged, whether in writing or orally or in any other manner, to any third party any of the Confidential Information without the prior written consent of the Disclosing Party, other than to its directors, prescribed company officers, employees, professional advisors, partners or funders or any other person which the Disclosing Party has agreed to in writing who -

3.1.1.1. have a need to know (and then only to the extent that each such Representative has a need to know) for the purposes of considering, evaluating, negotiating or advancing the Engagement;

3.1.1.2. are aware that the Confidential Information should be kept strictly confidential; and

3.1.1.3. have been directed by the Receiving Party to keep the Confidential Information confidential and have signed a non-disclosure agreement agreeing to keep the Confidential Information confidential,

(the "**Representatives**");

3.1.2. to take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons, adopting reasonable standards of care and safeguards, which care and safeguards shall not be less than the standard of care which a reasonable man would use to protect his own confidential information;

- 3.1.3. not to use or exploit the Confidential Information for any purpose whatsoever other than strictly in relation to and for the purposes of considering, evaluating, negotiating or advancing the Engagement;
 - 3.1.4. to only make copies of any of the Confidential Information disclosed by the Disclosing Party or made available in terms of this Agreement that are strictly necessary for considering, evaluating, negotiating or advancing the Engagement;
 - 3.1.5. to inform the Disclosing Party immediately if –
 - 3.1.5.1. the Receiving Party becomes aware of, or reasonably suspects there has been, a breach by it or its Representatives of the obligations in this Agreement; or
 - 3.1.5.2. the Receiving Party is required by Applicable Law to disclose the Confidential Information;
 - 3.1.6. upon termination of this Agreement, to return to the Disclosing Party, or destroy, any Confidential Information furnished to it by the Disclosing Party together with all copies, notes and memoranda relating thereto and deliver to the Disclosing Party a certificate signed by the Receiving Party that it has not retained any part thereof and procure that its Representatives takes the aforesaid steps in relation to all Confidential Information received by them; and
 - 3.1.7. not to make any public announcement or discuss any matter with the media or any other third party in relation to the Engagement, except as is required by Applicable Law, provided that, to the extent permitted by Applicable Law and time permitting, the Parties shall first consult with each other as to the terms and timing of the disclosure.
- 3.2. The above undertakings shall not apply to –
- 3.2.1. Confidential Information which at the time of disclosure by the Disclosing Party is published or is otherwise generally available to the public;
 - 3.2.2. Confidential Information which after disclosure by the Disclosing Party is published or otherwise becomes generally available to the public otherwise than through any breach of this Agreement by the Receiving Party or its Representatives;
 - 3.2.3. Confidential Information which the Receiving Party demonstrates was known by the Receiving Party before the date the Confidential Information is disclosed to it by the Disclosing Party and which the Receiving Party is entitled to freely disclose to third parties;
 - 3.2.4. Confidential Information which the Receiving Party demonstrates was rightfully acquired from others who do not owe a confidentiality obligation to the Disclosing Party; or

- 3.2.5. subject to clause 3.3 below, Confidential Information which the Receiving Party is required to disclose by Applicable Law.
- 3.3. In the event that the Receiving Party is required to disclose Confidential Information as contemplated in clause 3.2.5, the Receiving Party will –
 - 3.3.1. advise the Disclosing Party in writing prior to disclosure, if possible;
 - 3.3.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
 - 3.3.3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings if it wishes to do so;
 - 3.3.4. comply with the Disclosing Party's reasonable requests as to the manner and terms of such disclosure; and
 - 3.3.5. notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it was made.
- 3.4. The onus shall be on the Receiving Party to demonstrate that the provisions of clause 3.2 apply to the Confidential Information.
- 3.5. The Receiving Party shall co-operate with the Disclosing Party (at the Disclosing Party's cost and expense) if the Disclosing Party decides to bring any legal or other proceedings to challenge the validity of a requirement to disclose Confidential Information pursuant to clause 3.2.5.

4. **Title and Limited Rights**

The disclosure of any Confidential Information to the Receiving Party or the Representatives does not confer upon the Receiving Party or the Representatives any rights or license or proprietary rights of whatsoever nature in and to such Confidential Information.

5. **Non-Solicitation & Non-Circumvention**

- 5.1. Each Party warrants, represents and undertakes that it shall not, and it warrants, represents and undertakes that it shall procure that its Representatives shall not, without the prior written approval of a duly authorised director of the other Party, at any time for the duration of the Agreement and a period of 18 (eighteen) months following the termination of the Agreement (the "**Restraint Period**"), whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust, Controller of any entity or otherwise and whether for reward or not, directly or indirectly:

- 5.1.1. encourage or entice or incite or persuade or induce any employee of the other Party to terminate his employment with such Party; or
- 5.1.2. furnish any information or advice to any employee then employed by the other Party or to any prospective employer of such employee or use any other means which are directly or indirectly designed, or in the ordinary course of events calculated, to result in any such employee terminating his employment with the other Party and/or becoming employed by, or directly or indirectly in any way interested in or associated with any other company, close corporation, firm, undertaking or concern; or
- 5.1.3. circumvent, bypass, obviate or avoid the other Party in respect of the Discussions and/or Engagement, or take any action which would adversely affect or otherwise hinder or frustrate the Discussions and/or the Engagement; or
- 5.1.4. use, avail itself to or derive profit from any Confidential Information without the other Party's prior written consent,

or attempt to do so.

- 5.2. To the extent that an employee is successfully recruited by a Party during the period described in clause 5.1, and only if the other Party consents to such recruitment in writing, such Party shall pay the other Party a fee equal to 300% (three hundred percent) of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the other Party to the employee concerned.
- 5.3. Each Party acknowledges that the other will suffer financial harm and loss if it, any entity which is controlled by it, or any of its Representatives breaches any provision of this clause 5.
- 5.4. Notwithstanding anything to the contrary contained in herein, the provisions of this clause 5 shall survive the termination of this Agreement until the end of the Restraint Period.
- 5.5. For purposes of any clause contained in this Agreement, clause 5 is deemed to be a material term of this Agreement.

6. **Breach**

- 6.1. Should either Party commit a breach of any of the provisions of this Agreement, then the non-breaching Party shall be entitled to give the breaching Party 5 (five) Business Days' written notice (the "**Notice Period**") to remedy the breach.
- 6.2. If the breaching Party fails to remedy the breach within the Notice Period, the non-breaching Party shall be entitled, in addition and without prejudice to any other rights and remedies that it may have in terms this Agreement or otherwise, to (i) claim immediate specific performance by the breaching Party of all of

the non-breaching Party's obligations (whether or not the due date for performance thereof shall have arrived); or (ii) terminate this Agreement upon written notice to the breaching Party.

6.3. The foregoing is without prejudice to such other rights as the non-breaching Party may have at law including the right to apply for an urgent interdict from a court of competent jurisdiction.

6.4. The breaching Party shall be liable for the actions and omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the breaching Party.

7. **Arbitration**

7.1. Any disputes arising from or in connection with this Agreement (a "**Dispute**") shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator agreed to in writing by the Parties or, failing such agreement within 5 (five) Business Days after it is requested by any Party, appointed by the chair of AFSA. There shall be a right of appeal as provided for in the aforesaid rules.

7.2. Each Party to this Agreement –

7.2.1. expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

7.2.2. irrevocably authorises the other Party to apply, on behalf of both Parties to such Dispute, in writing, to the secretariat of AFSA in terms of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

7.3. Notwithstanding anything to the contrary in this clause 7, any Party shall be entitled to apply, on an urgent basis, for an interdict or for an order of specific performance from any court of competent jurisdiction.

7.4. This clause 7 is severable from the rest of this Agreement and shall remain in full force and effect notwithstanding any termination or cancellation of this Agreement.

ANNEXURE A – DEFINITIONS, INTERPRETATION AND GENERAL

1. Definitions

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

- 1.1. **"AFSA"** shall have the meaning ascribed to it in terms of clause 7.1;
- 1.2. **"Agreement"** means this non-disclosure and non-circumvention agreement including all exhibits, appendices, schedules, annexes, amendments, addenda and any other documents attached hereto, or incorporated by reference;
- 1.3. **"Applicable Law"** in relation to a Party, includes all and any -
 - 1.3.1. statutes, subordinate legislation and common law;
 - 1.3.2. regulations;
 - 1.3.3. ordinances and by laws;
 - 1.3.4. directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, including the rules and listing requirements of any licensed securities exchange; and
 - 1.3.5. other similar provisions,from time to time, compliance with which is mandatory for that Party;
- 1.4. **"Business Day"** means any day other than a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa;
- 1.5. **"Company"** shall have the meaning given to that term on the NDA Registration Form;
- 1.6. **"Confidential Information"** means all information (in any form) disclosed by the Disclosing Party to the Receiving Party including but not limited to:
 - 1.6.1. the existence and contents of this Agreement;
 - 1.6.2. the existence and terms of the Discussions or the fact that the Discussions have been concluded, have ceased or may take place in the future;
 - 1.6.3. the details, fact and existence of the Engagement;
 - 1.6.4. Intellectual Property, software source code, as well as all business, technical, financial, operational, administrative, staff management, customer, marketing, legal, economic, data

and other information of whatever form (including, without limitation, in written, oral, visual, electronic form, or on tape or disk), that is directly or indirectly disclosed whether before or after the Effective Date, to the Receiving Party and/or its Representatives, or which comes to the Receiving Party and/or any of its Representatives' attention in connection with the Engagement as well as all documents and other information that contains or reflects or are generated from such information and copies thereof;

- 1.6.5. all information, whether written or otherwise, which has been or will be disclosed by the Disclosing Party, to the Receiving Party or its Representatives in connection with this Agreement and/or the Engagement, including, without limitation, any information about the Disclosing Party including, without limitation, all agreements, documents and preparatory work relating to the Engagement or to the Disclosing Party that has passed or may in future pass between the Disclosing Party and the Receiving Party and/or any of its Representatives, or any combination of them;
- 1.6.6. any other information that is identified as being confidential or proprietary in nature; and
- 1.6.7. any findings, data or analysis derived from any of the aforesaid information;
- 1.7. "**Control**" means in relation to a juristic person the ability of another person, directly or indirectly, to ensure that the activities and business of that juristic person are conducted in accordance with the wishes of the latter person, and the latter person shall be deemed to so control the juristic person if the latter person owns, directly or indirectly, the majority of the issued share capital, members' interest or equivalent equity and/or holds, directly or indirectly, the majority of the voting rights in the juristic person or the latter person has the right to receive the majority of the income of that juristic person on any distribution by it of all of its income or the majority of its assets on a winding-up, and "**Controlling**", "**Controller**" and "**Controlled**" shall be construed accordingly;
- 1.8. "**Counterparty**" shall have the meaning given to that term on the NDA Registration Form;
- 1.9. "**Disclosing Party**" means the party disclosing the Confidential Information, being the Company or the Counterparty, as the context may require;
- 1.10. "**Discussions**" shall have the meaning ascribed to it in terms of clause 1.1;
- 1.11. "**Dispute**" shall have the meaning ascribed to it in terms of clause 7.1;
- 1.12. "**Effective Date**" shall have the meaning given to that term on the NDA Registration Form;
- 1.13. "**Engagement**" shall have the meaning ascribed to it in terms of clause 1.1;
- 1.14. "**Intellectual Property**" means any know-how (not in the public domain), invention (whether patented or not), design, trade mark (whether or not registered), or copyright material (whether or not registered), processes, process methodology (whether patented or not), and all other identical or similar intellectual

property as may exist anywhere in the world which is not in the public domain and any applications for registration of such intellectual property;

- 1.15. **“NDA Registration Form”** means the NDA registration form that has been completed and signed by the Parties;
- 1.16. **“Parties”** means the Company and the Counterparty, collectively, and **“Party”** means any one of them, as the context may indicate;
- 1.17. **“Receiving Party”** means the Party receiving the Confidential Information, being the Company or the Counterparty, as the context may require;
- 1.18. **“Representatives”** means any person referred to in clause 3.1.1 to whom Confidential Information is disclosed to by the Receiving Party in terms of and subject to this Agreement;
- 1.19. **“Restraint Period”** shall have the meaning ascribed to it in terms of clause 5.1;
- 1.20. **“Term”** shall have the meaning ascribed to it in terms of clause 2.1.

2. **Interpretation**

If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of the Agreement. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday. The expiration or termination of this Agreement shall not affect certain provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

3. **General**

This Agreement constitutes the entire, conclusive and complete statement of agreement between the Parties. All previous representations, discussions and written communications are superseded by this Agreement and the Parties disclaim any reliance on such representations, discussion and/or written communications. This Agreement may not be amended or modified and any term or obligation may not be waived except in writing signed by a duly authorized representative of each Party. This Agreement shall be governed by South African law. The exclusive place of jurisdiction for all Disputes arising from or in connection with this Agreement is Johannesburg, South Africa. All notices or reports which are required to be given under and in terms of this Agreement will be in writing and will be deemed to be duly given when delivered to the address provided by each Party as set out in this Agreement. Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any

jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Unless otherwise agreed between the Parties in writing, no Party shall be entitled to cede, assign, transfer, encumber or delegate any of its rights, obligations and/or interest in, under or in terms of this Agreement to any third party.