

## CONFIDENTIALITY AGREEMENT

- **"Confidential Information"** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the **Disclosing Party** or which is provided or disclosed in confidence, and which the **Disclosing Party** or any person acting on behalf of the **Disclosing Party** may disclose or provide to the **Receiving Party** or which may come to the knowledge of the **Receiving Party** by whatsoever means.
- Without limitation, the **Confidential Information** of the **Disclosing Party** shall **include** the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation):
  - Information relating to the **Disclosing Party's** business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the **Disclosing Party** is a party.
  - information contained in or constituting or relating to the **Disclosing Party's** systems, machinery, hardware or software, networks, telecommunications services and facilities, including third party products, and associated material, and information or incidents concerning faults or defects therein.
  - the **Disclosing Party's** technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae, and trade secrets.
  - the **Disclosing Party's** architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto.
  - Intellectual Property that is proprietary to the **Disclosing Party** or that is proprietary to a third party, including but not limited to third party products and data relating to the customers of the **Disclosing Party**.
  - business process outsourcing knowledge of the **Disclosing Party** and information relating to the **Disclosing Party's** current and existing strategic objectives, strategy documents and plans for both its existing and future information technology, processing, business processing and business process outsourcing.
- **Confidential Information excludes** information or data which:
  - is lawfully in the public domain at the time of disclosure thereof to the **Receiving Party**; or
  - subsequently becomes lawfully part of the public domain by publication or otherwise; or
  - is or becomes available to the **Receiving Party** from a source other than the **Disclosing Party** which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the **Receiving Party**; or
  - is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed; **provided that**
    - the onus shall at all times rest on the **Receiving Party** to establish that such information falls within such exclusions.
    - and the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in **a Party's** possession.
    - and any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in **a Party's** possession, but only if the combination itself is in the public domain or in **a Party's** possession.
- The **Receiving Party** acknowledges the importance of the **Confidential Information** to the **Disclosing Party** and, where applicable, third party proprietors of such information, and recognises that the **Disclosing Party** and/or third-party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.
- The **Receiving Party** agrees and undertakes:
  - **No publication of Confidential Information:** Except as permitted by this Agreement, not to disclose or publish any **Confidential Information** in any manner, for any reason or purpose whatsoever without the prior written consent of the **Disclosing Party** and provided that in the event of the **Confidential Information** being proprietary to a third party, it shall also be incumbent on the **Receiving Party** to obtain the consent of such third party.
  - **No exploitation of Confidential Information:** Except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the **Confidential Information** for any purpose whatsoever without

the prior written consent of the **Disclosing Party** and provided that in the event of the **Confidential Information** being proprietary to a third party, it shall also be incumbent on the **Receiving Party** to obtain the consent of such third party.

- **Restricting dissemination of Confidential Information:** To restrict the dissemination of the **Confidential Information** to only those of its staff who are actively involved in activities for which use of **Confidential Information** is authorised and then only on a "need to know" basis and the **Receiving Party** shall initiate, maintain, and monitor internal security procedures reasonably acceptable to the **Disclosing Party** to prevent unauthorised disclosure by its staff; and
- **Obligations with regards to staff:** To take all practical steps, both before and after disclosure, to impress upon its Staff who are given access to **Confidential Information** the secret and confidential nature thereof.
- All **Confidential Information** disclosed by the **Disclosing Party** to the **Receiving Party**, or which otherwise comes to the knowledge of the **Receiving Party**, is acknowledged by the **Receiving Party**:
  - **Confidential Information** is proprietary: to be proprietary to the **Disclosing Party** or where applicable, the relevant third-party proprietor.
  - **Disclosure does not confer rights:** not to confer any rights of whatsoever nature in such **Confidential Information** on the **Receiving Party**; and
  - **PAIA:** to have been provided in confidence by the Disclosing Party, for the purposes of section 64(1) of the Promotion of Access to Information Act 2 of 2000.
- The **Receiving Party** shall protect the **Confidential Information** in the manner, and with the endeavour, of a reasonable person protecting their own **Confidential Information**. In no event shall the **Receiving Party** use less than reasonable efforts to protect the confidentiality of the **Confidential Information**.
- The **Disclosing Party** may at any time on written request to the **Receiving Party**, require that the **Receiving Party** immediately return to the **Disclosing Party** any **Confidential Information** and may, in addition, require that the **Receiving Party** furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such **Confidential Information** or material.
- Alternatively, the **Receiving Party** shall, as and when required by the **Disclosing Party** on written request to the **Receiving Party**, destroy all such **Confidential Information** and material and furnish the **Disclosing Party** with a written statement to the effect that the same has been destroyed.
- The **Receiving Party** shall comply with any request in terms of this clause within 30 (thirty) days of receipt of such request.
- In the event, that the **Receiving Party** is required to disclose the **Confidential Information** pursuant to this agreement the **Receiving Party**:
  - will advise the **Disclosing Party** thereof prior to disclosure, if possible.
  - will take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can.
  - will afford the **Disclosing Party** a reasonable opportunity, if possible, to intervene in the proceedings; and
  - will comply with the **Disclosing Party's** requests as to the manner and terms of any such disclosure.
- Nothing contained in this Agreement will restrict **Either Party** from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party, in the course of performing any **Services** under the Agreement, provided that in doing so such Party does not disclose **Confidential Information** to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.
- Neither of the parties shall disclose any aspect of this Agreement or any information of a proprietary or confidential nature to another party other than as may be required by law.