Memorandum of Understanding

1. Parties and effective date

NON-BINDING EXCEPT FOR THE BINDING PROVISIONS LISTED IN CLAUSE 6. SUBJECT TO A DEFINITIVE AGREEMENT.

1.1 **Date and parties.** This Memorandum of Understanding (the "MOU") is entered into on **[Date of the MOU: _____]** (the "Effective Date") between:

(a) **[Party A's full legal name: _____]**, [Party A's legal form and registration number: _____], with its registered address at [Party A's registered address: _____] ("Party A"); and

(b) **[Party B's full legal name: _____]**, [Party B's legal form and registration number: _____], with its registered address at [Party B's registered address: _____] ("Party B"),

each a "Party" and together the "Parties".

1.2 **Later signature.** If the Parties sign on different dates, this MOU takes effect on the date of signature by the Party that signs last, and that date is then the Effective Date for every purpose of this MOU.

1.3 **Who is bound.** Only the two entities named in clause 1.1 are Parties. A subsidiary, holding company, branch, department, municipal entity, trust, staff member or contractor of a Party does not become a party to this MOU because it takes part in any activity described in it, and acquires no rights or obligations under it, unless it signs this MOU or a written accession to it.

1.4 **Signatories.** Each Party signs this MOU through a representative who is authorised to do so, as confirmed in clause 38.

2. Background and recitals

2.1 Party A carries on the following business or mandate: [What Party A does: _____].

2.2 Party B carries on the following business or mandate: [What Party B does: _____].

2.3 The Parties have held preliminary discussions about the following initiative: [The initiative: _____] (the "Initiative").

2.4 The Parties wish to record their present understanding of the Initiative, the way in which they intend to work together to assess it, and the steps that may lead to a Definitive Agreement.

2.5 The Parties also wish to agree a short list of legally binding rules that apply while they talk and share information, including rules on confidentiality, personal information, costs, competition law and the resolution of disputes.

2.6 These recitals describe the background and the Parties' expectations. They do not create obligations, and a recital does not prevail over an operative clause.

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3. Definitions and interpretation

3.1 **Defined terms.** In this MOU, unless the context clearly indicates otherwise:

(a) "Background IP" means Intellectual Property owned by or licensed to a Party before the Effective Date, or developed or acquired by it outside the Initiative.

(b) "Binding Provisions" means the provisions listed in clause 6.1.

(c) "Business Day" means any day other than a Saturday, a Sunday or an official public holiday in the Republic of South Africa.

(d) "Competition Act" means the Competition Act 89 of 1998, and "Competition Authorities" means the Competition Commission, the Competition Tribunal and the Competition Appeal Court.

(e) "Confidential Information" has the meaning given in clause 17.1.

(f) "Definitive Agreement" means a written agreement about all or part of the Initiative that states that it is legally binding and that is signed on behalf of each Party by a duly authorised signatory.

(g) "Intellectual Property" means patents, designs, trade marks, copyright, rights in software and databases, know-how, trade secrets, rights in confidential information and all similar rights anywhere in the world, whether registered or not, and every application for any of them.

(h) "Non-Binding Provisions" means every provision of this MOU that is not a Binding Provision.

(i) "Personal Information" and "processing" have the meanings given to them in POPIA.

(j) "POPIA" means the Protection of Personal Information Act 4 of 2013 and its regulations.

(k) "PAIA" means the Promotion of Access to Information Act 2 of 2000.

(l) "Representative" means the person named for a Party in Schedule 3, or a replacement appointed under clause 11.2.

(m) "Steering Committee" means the committee described in clause 11.3.

(n) "Term" means the period set out in clause 25.

3.2 **Interpretation.** Headings are for convenience and do not affect interpretation. Words in the singular include the plural and the reverse. "Including" and "in particular" do not limit the words before them. A reference to a statute includes that statute as amended or re-enacted, and any regulation made under it. A reference to a clause or Schedule is to a clause of, or Schedule to, this MOU. Where a number of days is given, the first day is excluded and the last day included, and if the last day is not a Business Day, the period ends on the next Business Day.

3.3 **Contra proferentem excluded.** No provision of this MOU is to be interpreted against a Party because that Party drafted or proposed it.

3.4 **Words of intention.** In the Non-Binding Provisions, words such as "will", "shall", "agree", "intend", "plan", "expect" and "is responsible for" express present intention only and do not create a legal obligation.

3.5 **Priority.** If clause 5 or clause 6 conflicts with any other provision of this MOU, clauses 5 and 6 prevail. If the body of this MOU conflicts with a Schedule, the body prevails.

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4. Purpose and shared objectives

4.1 **Purpose.** This MOU records the framework within which the Parties intend to explore, plan and, if each of them so decides, carry out the Initiative.

4.2 **Shared objectives.** The Parties' shared objectives are:

(a) [First shared objective: _____];

(b) [Second shared objective: _____]; and

(c) [Third shared objective: _____].

4.3 **Guiding principles.** In pursuing these objectives the Parties intend to act openly and in good faith towards each other, to share relevant information promptly, to respect each other's independence and decision-making processes, and to comply with the law.

4.4 **What this MOU does not do.** This MOU does not oblige either Party to conclude a Definitive Agreement, to invest money or other resources, to supply goods or services, to employ or second staff, or to transfer any asset, except where a Binding Provision expressly says so.

5. Status of this MOU

5.1 **Non-binding nature.** Except for the Binding Provisions, this MOU is a statement of the Parties' present intentions only. The Parties do not intend the Non-Binding Provisions to create legally binding obligations, and neither Party may enforce them or claim damages for a failure to carry them out.

5.2 **Subject to a Definitive Agreement.** Every arrangement described in the Non-Binding Provisions is subject to the conclusion of a Definitive Agreement. Until a Definitive Agreement is signed, no contract comes into existence for the Initiative or any part of it, even if the Parties have agreed on many of its terms.

5.3 **Open issues.** The Parties record that material terms of the Initiative remain open, including price or cost allocation, risk allocation, the legal structure, warranties and the issues listed in Schedule 1. The Parties do not intend to be bound until those issues are settled by agreement in a Definitive Agreement.

5.4 **Conduct does not create a contract.** No course of dealing, exchange of drafts, email, meeting minutes, part performance, payment, start of work or statement by any Representative or employee creates a binding agreement for the Initiative, or waives clause 5.2, unless it meets the requirements of a Definitive Agreement.

5.5 **Freedom to withdraw.** Subject only to the Binding Provisions (including any binding negotiation duty that applies under clause 14), each Party may stop discussions about the Initiative at any time and for any reason by written notice, without liability to the other Party.

6. Binding provisions

6.1 **Exhaustive list.** Only the following provisions of this MOU are legally binding on the Parties: clause 1 (Parties and effective date), clause 3 (Definitions and interpretation), clause 5 (Status of this MOU), this clause 6, clause 13 (Costs and no commitment of funds), clause 14 (Definitive agreement and negotiation), but only to the extent that clause 14 says so, clauses 15.4 to 15.6 (Competition approvals), clause 16 (Exclusivity), if the Parties complete it, clause 17 (Confidentiality), clause 18 (Personal information), clause 19 (Intellectual property), clause 20 (Names, logos and publicity),

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clause 21 (Relationship of the parties), clause 22 (Non-exclusivity), clause 23 (Compliance with laws), clauses 24.3 to 24.6 (Public sector parties), and clauses 25 to 39.

6.2 **Intention to be bound.** The Parties intend the Binding Provisions to be legally binding and enforceable from the Effective Date. Each Binding Provision is a separate agreement that stands on its own, and its validity does not depend on whether the Non-Binding Provisions are carried out or whether a Definitive Agreement is ever concluded.

6.3 **No other binding terms.** No provision that is not listed in clause 6.1 is binding, even if it uses mandatory language or describes a step that a Party has already taken.

6.4 **Effect of failure to agree.** If the Parties fail to conclude a Definitive Agreement, the Binding Provisions continue to apply for the periods stated in clause 27, and nothing else in this MOU binds either Party.

7. Scope of cooperation

7.1 **Areas of cooperation.** The Parties intend to cooperate in the following areas: [Areas of cooperation: _____].

7.2 **Location.** The activities under this MOU are expected to take place in or from [Where the work happens: _____].

7.3 **Exclusions.** The following activities fall outside this MOU unless the Parties later agree otherwise in writing: [Activities outside the MOU: _____].

7.4 **Separate agreements for specific work.** If a Party is to pay the other, supply goods or services to the other, process Personal Information on behalf of the other, transfer or license Intellectual Property, second staff, or acquire an interest in the other's business or property, the Parties intend to record that step in a separate written agreement before it starts.

7.5 **Changes in scope.** Either Party may propose a change in the scope of cooperation through the Steering Committee. A change has effect only once both Representatives record it in writing, and it does not change the status of any provision under clause 5 or clause 6.

8. Responsibilities of Party A

8.1 **Intended contribution.** Subject to clause 5, Party A intends to:

(a) [Party A: first task: _____];

(b) [Party A: second task: _____]; and

(c) [Party A: third task: _____].

8.2 **Resources.** Party A intends to make available the staff, expertise, facilities and information reasonably needed to carry out the activities in clause 8.1, at its own cost unless Schedule 2 provides otherwise.

8.3 **Internal approvals.** Party A intends to seek any internal approvals it needs (including from its board, council or accounting authority) within the periods shown in Schedule 1, and to tell Party B promptly if an approval is refused or delayed.

8.4 **Information.** Party A intends to tell Party B promptly of any matter that may materially affect the Initiative, such as a change in its funding, regulatory position, ownership or key staff.

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9. Responsibilities of Party B

9.1 **Intended contribution.** Subject to clause 5, Party B intends to:

(a) [Party B: first task: _____];

(b) [Party B: second task: _____]; and

(c) [Party B: third task: _____].

9.2 **Resources.** Party B intends to make available the staff, expertise, facilities and information reasonably needed to carry out the activities in clause 9.1, at its own cost unless Schedule 2 provides otherwise.

9.3 **Internal approvals.** Party B intends to seek any internal approvals it needs within the periods shown in Schedule 1, and to tell Party A promptly if an approval is refused or delayed.

9.4 **Information.** Party B intends to tell Party A promptly of any matter that may materially affect the Initiative, such as a change in its funding, regulatory position, ownership or key staff.

10. Joint responsibilities

10.1 **Joint activities.** Subject to clause 5, the Parties intend jointly to:

(a) [First joint task: _____];

(b) [Second joint task: _____]; and

(c) agree the scope, structure and key terms of any Definitive Agreement.

10.2 **Stakeholders.** Where the Initiative affects communities, employees, organised labour, regulators or other stakeholders, the Parties intend to agree in the Steering Committee how and when those stakeholders are consulted, and which Party leads each consultation.

10.3 **Risk register.** The Parties intend to keep a shared register of the main risks to the Initiative, with an owner and a response for each risk, and to review it at each Steering Committee meeting.

10.4 **Good faith.** Each Party intends to act reasonably and in good faith in the joint activities. This clause 10.4 does not create a legal duty and does not extend clause 14.

11. Governance, representatives and reporting

11.1 **Representatives.** Each Party appoints the Representative named in Schedule 3 as its main point of contact for the Initiative. A Representative may coordinate work and exchange information, but has no authority to amend this MOU, waive a right or bind his or her Party to any obligation unless that Party gives that authority in writing.

11.2 **Replacement.** A Party may replace its Representative at any time by notice to the other Party.

11.3 **Steering Committee.** The Parties intend to set up a Steering Committee of [Number of Steering Committee members: _____] members, with an equal number appointed by each Party. The Steering Committee is expected to meet at least [How often the committee meets: _____], in person or by video conference, to monitor progress against Schedule 1, deal with risks and issues, and recommend decisions to the Parties.

11.4 **Decisions.** The Steering Committee makes recommendations by consensus. A recommendation binds a Party only after that Party has approved it under its own internal rules and confirmed its approval in writing.

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11.5 **Minutes and reports.** The Parties intend that one Party, alternating each meeting, keeps written minutes of each meeting and circulates them within five Business Days. Each Party intends to give the Steering Committee a short written progress report before each meeting.

11.6 **Unresolved matters.** A matter that the Steering Committee cannot resolve within two meetings may be referred by either Party to the escalation procedure in clause 30.2.

12. Timeline and milestones

12.1 **Expected timeline.** The Parties intend to carry out the Initiative according to the workplan and milestones in Schedule 1, beginning on or about [Expected start date: _____].

12.2 **Target date for a Definitive Agreement.** The Parties aim to conclude a Definitive Agreement, or to decide not to proceed, by [Target date for a Definitive Agreement: _____] (the "Target Date").

12.3 **Delay.** If a milestone is likely to be missed, the responsible Party intends to inform the Steering Committee as soon as it becomes aware of the risk, with the reason for the delay and a proposed new date.

12.4 **No liability for missed dates.** The milestones and the Target Date are planning dates only. A missed milestone or Target Date does not give either Party a claim against the other, but it may be a ground for termination under clause 26.

13. Costs and no commitment of funds

13.1 **Own costs.** Unless Schedule 2 or a later written agreement provides otherwise, each Party bears its own costs and expenses in connection with this MOU and the Initiative, including the costs of its advisers, due diligence, travel and staff.

13.2 **Shared costs.** Costs that Schedule 2 identifies as shared costs are to be borne in the proportions stated there, but only once both Parties have approved the specific expense in writing before it is incurred.

13.3 **No commitment of funds.** Nothing in this MOU commits either Party to spend or contribute money, to budget for the Initiative, or to provide any guarantee, loan or other financial support. A Party that is an organ of state or that depends on public funds or grants makes no commitment of those funds by signing this MOU, and any expenditure by it remains subject to its applicable budget, appropriation and procurement rules.

13.4 **Third-party costs.** Neither Party may incur a cost in the name of the other, or hold itself out as authorised to do so.

13.5 **VAT.** Any amount payable between the Parties under a written cost-sharing arrangement excludes value-added tax, which is payable in addition against a valid tax invoice where it applies.

14. Definitive agreement and negotiation

14.1 **Purpose of negotiation.** The Parties intend to negotiate a Definitive Agreement covering the open issues listed in Schedule 1 and any other matter needed to carry out the Initiative.

14.2 **Choice of option.** The Parties choose [Negotiation option: _____] below. If no option is chosen, Option A applies.

14.3 **Option A: no binding duty to negotiate.** Under Option A, each Party is free to negotiate or not, and to agree or not, in its sole discretion. No Party has a legal duty to continue negotiating or to

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conclude a Definitive Agreement, and neither Party may claim damages because negotiations failed for any reason.

14.4 **Option B: binding duty to negotiate with a deadlock-breaking mechanism.** Under Option B, this clause 14.4 is binding, and:

(a) each Party must negotiate the terms of the Definitive Agreement in good faith with the other Party, and must attend negotiation meetings and respond to drafts within a reasonable time, until the earlier of the Target Date and the date of termination of this MOU;

(b) the terms already settled in Schedule 1, Part B (Agreed terms) are to be included in the Definitive Agreement, unless both Parties agree in writing to change them;

(c) if the Parties have not agreed any term that the Definitive Agreement requires within [Days before a deadlock can go to arbitration: _____] days after either Party gives written notice of a deadlock on that term, either Party may refer the disputed term to arbitration under clause 30.4, and the arbitrator must determine that term on a fair and reasonable basis, having regard to the terms already agreed, the objectives in clause 4.2 and the market practice for comparable transactions;

(d) the arbitrator's determination is final and binding on the Parties, and the determined term is incorporated into the Definitive Agreement, which each Party must sign within ten Business Days after the award; and

(e) the right of a Party to terminate this MOU under clause 26 does not replace the deadlock procedure in paragraph (c), and a Party may not give notice of termination for convenience while a reference under paragraph (c) is pending.

14.5 **Drafts.** Every draft of the Definitive Agreement is subject to clause 5 and binds no one until it is signed by both Parties, except as clause 14.4(d) provides.

14.6 **Conditions.** The Definitive Agreement is expected to contain the conditions precedent described in clause 15 and any other condition that the Parties agree.

15. Due diligence and conditions

15.1 **Access for due diligence.** Each Party intends to give the other Party and its advisers reasonable access, during normal business hours and on reasonable notice, to the documents, sites and staff reasonably required to assess the Initiative, subject to clause 17 and clause 18.

15.2 **Information requests.** Requests for information are to be sent through the Representatives, and each Party intends to answer a request within ten Business Days or explain why it cannot.

15.3 **Other conditions.** The Parties expect the Definitive Agreement to be conditional on: (a) satisfactory due diligence by each Party; (b) the internal approvals of each Party; (c) any consent required from a lender, landlord, funder or regulator; and (d) the following further conditions: [Further conditions for the Definitive Agreement: _____].

15.4 **Competition assessment.** Each Party must, before the Definitive Agreement is signed, assess with its advisers whether the Initiative is a merger that must be notified to the Competition Commission under the Competition Act, and the Parties must cooperate in good faith in preparing and filing any notification that is required.

15.5 **No implementation before approval.** If the Initiative is a notifiable merger, neither Party may implement it, transfer control, integrate operations, or exercise rights of ownership in the other's business, until the Competition Authorities have approved the merger, with or without conditions.

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15.6 **Early notification.** The Parties may agree in writing to notify a merger on the basis of this MOU, a term sheet or a draft agreement, before the Definitive Agreement is signed. Each Party bears its own costs of a notification, and any filing fee is to be borne as stated in Schedule 2.

16. Exclusivity and break fee

16.1 **Optional clause.** This clause 16 applies only if the Parties complete the exclusivity period below. If the field is left blank or marked "not applicable", clause 16 has no effect.

16.2 **Exclusivity.** For [Exclusivity period: _____] from the Effective Date (the "Exclusivity Period"), neither Party will, directly or through any person acting on its behalf, solicit, encourage, negotiate or conclude any agreement with a third party for a transaction or project that is the same as, or substantially similar to, the Initiative in the area described in clause 7.

16.3 **Notice of approaches.** If a Party receives an unsolicited approach during the Exclusivity Period that falls within clause 16.2, it must inform the other Party in writing within five Business Days, without being required to disclose information that it owes to the third party in confidence.

16.4 **Break fee.** If a Party breaches clause 16.2, it must pay the other Party a break fee of [Break fee for breach of exclusivity: _____] within 30 days after written demand. The break fee is a penalty under the Conventional Penalties Act 15 of 1962. The Parties agree that it is a genuine and proportionate estimate of the wasted costs and lost opportunity of the innocent Party, and that the innocent Party may claim the break fee instead of damages for that breach, but not both.

16.5 **Reduction.** Nothing in clause 16.4 limits the power of a court or arbitrator to reduce the break fee under the Conventional Penalties Act 15 of 1962 if it is out of proportion to the prejudice suffered.

16.6 **Exceptions.** Clause 16.2 does not apply to the ordinary business of a Party that existed before the Effective Date, to a transaction that the other Party approves in writing, or to any step required by law or by an order of a court or regulator.

17. Confidentiality and access to information

17.1 **Confidential Information.** "Confidential Information" means all information, in any form, that one Party (the "Discloser") or its advisers disclose to the other Party (the "Recipient") in connection with the Initiative, including technical, financial, commercial, personnel and customer information, and the existence and terms of this MOU and of the negotiations.

17.2 **Exclusions.** Information is not Confidential Information to the extent that the Recipient shows that it: (a) is or becomes public other than through a breach of this clause; (b) was lawfully in the Recipient's possession before disclosure, free of any duty of confidence; (c) is lawfully received from a third party that is free to disclose it; or (d) is developed independently by the Recipient without use of the Discloser's information.

17.3 **Obligations.** The Recipient must: (a) keep the Confidential Information confidential; (b) use it only to assess and carry out the Initiative; (c) disclose it only to its directors, employees, officials, professional advisers, auditors and funders who need to know it for that purpose and who are bound by duties of confidence at least as strict as this clause; and (d) protect it with at least the degree of care that it uses for its own information of a similar kind, and never less than reasonable care.

17.4 **Legal disclosure.** The Recipient may disclose Confidential Information to the extent required by law, by a court order, by the rules of a stock exchange or by a regulator, provided that, where lawful, it gives the Discloser prompt prior notice, discloses only the minimum required, and cooperates with any lawful step that the Discloser takes to protect the information.

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17.5 **Requests for access to records.** Each Party acknowledges that information supplied under this MOU is supplied in confidence and that its disclosure could put the Discloser at a disadvantage in contractual or other negotiations. If a Party that is a public body receives a request under PAIA for a record that contains the other Party's Confidential Information, it must notify the other Party promptly and give it the opportunity to make representations, and must apply the grounds of refusal that protect information supplied in confidence and information owed in confidence under an agreement.

17.6 **Return or destruction.** Within 30 days after a written request or after termination, the Recipient must return or destroy the Confidential Information and confirm in writing that it has done so, but it may keep copies that it is required to keep by law or that are held in routine electronic back-ups, which remain subject to this clause.

17.7 **Remedies.** The Discloser may apply to court for an interdict or other urgent relief to prevent or stop a breach of this clause, without first following clause 30, in addition to any other remedy.

17.8 **Duration.** The obligations in this clause 17 continue for [Years confidentiality lasts after the MOU ends: _____] years after the end of the Term, and indefinitely for trade secrets for so long as they remain trade secrets.

18. Protection of personal information

18.1 **POPIA applies.** Each Party must comply with POPIA in processing Personal Information in connection with this MOU and the Initiative.

18.2 **Roles.** Unless the Parties agree otherwise in writing, each Party that determines the purpose and means of processing Personal Information, alone or together with the other, does so as a responsible party. Where the Parties jointly determine the purpose and means of a processing activity, they must agree in writing, before that processing starts, which Party handles notifications to data subjects, requests by data subjects and communications with the Information Regulator.

18.3 **Minimisation.** The Parties intend to share only the Personal Information that is adequate, relevant and not excessive for the Initiative, and to use de-identified information wherever it is enough.

18.4 **Security safeguards.** Each Party must secure the integrity and confidentiality of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of it, and unlawful access to or processing of it.

18.5 **Operators.** If one Party will process Personal Information for or on behalf of the other, the Parties must first conclude a written operator agreement that requires the operator to establish and maintain the security measures required by POPIA and to notify the responsible party immediately of any security compromise. No processing on behalf of the other Party may start until that agreement is signed.

18.6 **Security compromises.** A Party that has reasonable grounds to believe that Personal Information shared under this MOU has been accessed or acquired by an unauthorised person must notify the other Party in writing without undue delay, and the Parties must cooperate in any notification to the Information Regulator and to affected data subjects.

18.7 **Cross-border transfers.** Neither Party may transfer Personal Information received from the other Party to a third party in a foreign country unless the transfer meets one of the conditions in section 72 of POPIA and the other Party has given its prior written consent.

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18.8 **Special personal information.** Neither Party may share special personal information or Personal Information of children under this MOU unless the Parties have first recorded in writing the lawful basis for that processing.

19. Intellectual property

19.1 **Background IP.** Each Party keeps all rights in its Background IP. Nothing in this MOU transfers, assigns or licenses any Background IP to the other Party, except a non-exclusive, royalty-free right to use the Background IP disclosed to it solely to assess and carry out the Initiative during the Term.

19.2 **Project materials.** Unless a Definitive Agreement provides otherwise: (a) Intellectual Property in materials that one Party creates alone for the Initiative belongs to that Party; and (b) the Parties will negotiate in good faith the ownership and use of Intellectual Property that they create jointly, and until they agree, neither Party may exploit it commercially without the other's written consent.

19.3 **No implied licence.** No licence or other right in Intellectual Property arises by implication, estoppel or conduct.

19.4 **Publicly financed research.** If a Party is a public research institution or the Initiative is funded from public funds, the Parties will apply any legal or funder requirements about the ownership, disclosure and commercialisation of Intellectual Property, and will record them in the Definitive Agreement.

20. Names, logos and publicity

20.1 **Names and logos.** Neither Party may use the name, logo, trade mark or official symbol of the other Party without its prior written consent, which it may give subject to its brand guidelines.

20.2 **Announcements.** Neither Party may make a public announcement, media statement or social media post about this MOU or the Initiative unless the other Party has approved its content in writing beforehand.

20.3 **Exceptions.** Clause 20.2 does not prevent a disclosure required by law, by the rules of a stock exchange, or in the annual report or financial statements of a Party, provided that the disclosing Party, where possible, consults the other Party on the wording first.

21. Relationship of the parties

21.1 **Independent parties.** The Parties are independent contracting parties. Nothing in this MOU or in the activities under it creates, or is to be taken as evidence of, a partnership, joint venture, agency, employment or trust relationship between them.

21.2 **No partnership.** The Parties do not intend to bring money, labour, skill or assets into a common venture for their joint benefit with the object of making and sharing a profit. Any contribution described in this MOU is made by each Party for its own account.

21.3 **No authority to bind.** Neither Party has authority to act for, incur an obligation on behalf of, or bind the other Party, and neither Party may hold itself out as having that authority.

21.4 **Staff.** Each Party remains solely responsible for its own staff and contractors, including their remuneration, tax, benefits and conduct. No staff member of one Party becomes an employee of the other Party because of the Initiative.

21.5 **Separate structure.** If the Parties decide to carry out the Initiative through a partnership, joint

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venture, company or other structure, they will create it only through a Definitive Agreement.

22. Non-exclusivity

22.1 **Freedom to deal with others.** Subject only to clause 16 (if it applies) and clause 17, this MOU is non-exclusive. Each Party may enter into similar arrangements with any other person, carry on its business as usual, and pursue opportunities that compete with the Initiative.

22.2 **No restraint.** Nothing in this MOU restrains either Party from carrying on any trade, profession or business, or from employing any person.

23. Compliance with laws, competition law and conflicts of interest

23.1 **Compliance with laws.** Each Party must comply with all laws that apply to it in connection with this MOU and the Initiative, including laws on anti-corruption, money laundering, sanctions, labour, health and safety, the environment and broad-based black economic empowerment.

23.2 **Competition law.** The Parties must not use this MOU, the Steering Committee or the exchange of information under it to agree, directly or indirectly, on prices or other trading conditions, to divide markets by customers, suppliers, territories or goods or services, or to engage in collusive tendering, and must not exchange competitively sensitive information unless their advisers have approved appropriate safeguards (such as a clean team) beforehand.

23.3 **Gun-jumping.** Each Party must comply with clause 15.5 and must not, before any required merger approval, direct the commercial strategy of the other Party or take any step that amounts to implementation of a merger.

23.4 **Anti-corruption.** Neither Party may offer, promise, give, request or accept any gratification in connection with this MOU or the Initiative that would be unlawful under any anti-corruption law that applies to either Party.

23.5 **Conflicts of interest.** Each Party must disclose to the other in writing, promptly after becoming aware of it, any actual or potential conflict of interest of its Representatives, Steering Committee members or officials in connection with the Initiative, and must take reasonable steps to manage it.

23.6 **Breach.** A material breach of this clause 23 entitles the other Party to terminate this MOU immediately by written notice under clause 26.3.

24. Public sector parties and procurement

24.1 **Application.** This clause 24 applies if either Party is an organ of state, a public entity, a municipality or a municipal entity (a "Public Party").

24.2 **Procurement not replaced.** The Parties acknowledge that a Public Party that contracts for goods or services must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. This MOU is not, and does not replace, a procurement process, and does not give the other Party a preferential right to be awarded any contract.

24.3 **Applicable framework.** Any procurement, grant or financial commitment by a Public Party in connection with the Initiative must comply with the public procurement and public finance laws that apply to it at the time, including the Public Finance Management Act 1 of 1999, the Local Government: Municipal Finance Management Act 56 of 2003 and the Preferential Procurement Policy Framework Act 5 of 2000 where they apply, their regulations, the Public Party's supply chain management policy, and any legislation that amends or replaces them.

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24.4 **Authority.** A Public Party confirms that its signatory acts within a delegation of authority that is in force on the date of signature.

24.5 **Access to records.** The other Party acknowledges that records held by a Public Party may be requested under PAIA, and that clause 17.5 then applies.

24.6 **No fettering of powers.** Nothing in this MOU fetters the exercise by a Public Party of any statutory power, function or duty, or its obligations to Parliament, a provincial legislature, a municipal council or the Auditor-General.

25. Term and renewal

25.1 **Term.** This MOU starts on the Effective Date and ends on the earliest of: (a) [Date the MOU ends: _____]; (b) the date on which a Definitive Agreement that covers the whole Initiative and states that it replaces this MOU is signed; and (c) the date on which this MOU is terminated under clause 26.

25.2 **Renewal.** The Parties may extend the Term by a written agreement signed by both Parties before the Term ends. An extension does not change the status of any provision.

26. Termination and wind-down

26.1 **Termination for convenience.** Subject to clause 14.4(e), either Party may terminate this MOU at any time for any reason by giving at least [Notice period to end the MOU: _____] days' written notice to the other Party.

26.2 **Termination for breach.** If a Party commits a material breach of a Binding Provision and does not remedy it within 14 days after receiving written notice that describes the breach and requires it to be remedied, the other Party may terminate this MOU immediately by written notice.

26.3 **Immediate termination.** Either Party may terminate this MOU immediately by written notice if the other Party: (a) is placed in liquidation, business rescue or under judicial management, or makes a compromise with its creditors; (b) commits a material breach of clause 17, clause 18 or clause 23; or (c) undergoes a change of control without the prior written consent of the terminating Party.

26.4 **Missed Target Date.** If no Definitive Agreement is signed by the Target Date, either Party may terminate this MOU by written notice, subject to clause 14.4 while a deadlock reference is pending.

26.5 **Wind-down.** On termination or expiry: (a) each Party will stop using the other Party's Confidential Information, Background IP and name; (b) each Party will comply with clause 17.6; (c) the Parties will settle any approved shared costs incurred before the date of termination in the proportions set out in Schedule 2, within 30 days after receiving a reconciliation with supporting documents; and (d) the Parties intend to agree reasonable steps to wind down joint activities in an orderly way and to inform affected stakeholders.

26.6 **No compensation.** Termination in accordance with this clause gives neither Party a claim for compensation, lost profit or wasted expenditure, except under clause 16.4 or for a breach of a Binding Provision before termination.

27. Survival

27.1 **Surviving provisions.** Clauses 3, 5, 6, 13, 14.4(c) and 14.4(d) (for a reference already made), 16.4 and 16.5, 17, 18, 19, 20, 21, 26.5, 26.6, 27, 28 and 30 to 39 survive the termination or expiry of this MOU, together with any other provision that by its nature is intended to survive.

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27.2 **Accrued rights.** Termination or expiry does not affect any right or remedy that accrued to a Party before termination or expiry.

28. Liability and reliance

28.1 **No reliance.** Each Party enters into this MOU, and makes its own decisions about the Initiative, on the basis of its own investigation and advice. Except as expressly set out in a Binding Provision or a Definitive Agreement, neither Party gives any warranty or representation about the accuracy or completeness of information it provides, and the other Party relies on that information at its own risk.

28.2 **No implied terms.** The Parties have set out in this MOU all the terms they intend to be binding. No term is to be implied or imported into this MOU, whether by trade usage, course of dealing or otherwise, that the Parties have not expressly agreed.

28.3 **Exclusion of indirect loss.** Neither Party is liable to the other under or in connection with this MOU for any indirect or consequential loss, loss of profit, loss of revenue or loss of opportunity, whether in contract, delict or otherwise.

28.4 **Cap.** The total liability of each Party under or in connection with this MOU is limited to [Liability cap: _____].

28.5 **Exceptions.** Clauses 28.3 and 28.4 do not limit liability for: (a) fraud or dishonesty; (b) a breach of clause 17 or clause 18; (c) the break fee under clause 16.4; (d) death or bodily injury caused by negligence; or (e) any liability that cannot be limited or excluded by law.

28.6 **Indemnity.** Each Party indemnifies the other against all third-party claims, and the related losses and reasonable legal costs on the scale as between attorney and own client, that arise from its breach of clause 17, clause 18 or clause 23, or from the wilful misconduct of its staff in carrying out the Initiative.

29. Insurance and risk of own activities

29.1 **Own risk.** Each Party carries out its activities under this MOU at its own risk and is responsible for the acts and omissions of its own staff, contractors and visitors.

29.2 **Insurance.** Each Party intends to maintain, for the Term, public liability insurance and any professional indemnity or other insurance that a prudent organisation of its kind would carry for its activities in the Initiative, and to provide proof of cover on reasonable request.

29.3 **Site rules.** When on the premises of the other Party, a Party must ensure that its staff and contractors comply with that Party's reasonable health, safety, security and access rules, as notified to it in advance.

29.4 **Force majeure.** Neither Party is responsible for a delay or failure in carrying out an activity under this MOU caused by an event beyond its reasonable control, including natural disasters, epidemics, war, civil unrest, strikes not limited to its own workforce, load-shedding or other failures of the public electricity supply, or acts of government. The affected Party must notify the other promptly and take reasonable steps to limit the effect. If the event continues for more than 60 days, either Party may terminate this MOU by written notice.

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30. Dispute resolution

30.1 **Scope.** This clause 30 applies to any dispute arising out of or in connection with this MOU, including a dispute about its existence, validity, interpretation, breach or termination, or about which provisions are binding (a "Dispute").

30.2 **Escalation.** A Party may notify the other in writing of a Dispute. The Representatives must meet within ten Business Days after that notice to try to resolve it. If they do not resolve it within a further ten Business Days, either Party may refer it to the chief executive officers or heads (or their nominees) of the Parties, who must meet within ten Business Days to try to resolve it.

30.3 **Mediation.** If the Dispute is not resolved under clause 30.2 within 30 Business Days after the first notice, the Parties may agree in writing to refer it to mediation by a mediator agreed between them or, failing agreement, appointed by [Who appoints the mediator or arbitrator: _____]. Each Party bears its own costs of the mediation, and the Parties share the mediator's fees equally.

30.4 **Arbitration.** A Dispute that is not resolved under clause 30.2 or 30.3 within 60 Business Days after the first notice, and a deadlock referred under clause 14.4(c), must be finally resolved by arbitration under [Arbitration rules: _____], by one arbitrator agreed between the Parties or, failing agreement within ten Business Days, appointed by [Who appoints the mediator or arbitrator: _____]. The seat of the arbitration is [Seat of the arbitration: _____], and the language is English.

30.5 **Award.** The arbitrator's award is final and binding on the Parties, and may be made an order of any competent court at the request of either Party.

30.6 **Written agreement and legislation.** This clause 30 is a written arbitration agreement. It is governed by the Arbitration Act 42 of 1965 for a domestic arbitration, or by the International Arbitration Act 15 of 2017 (and the UNCITRAL Model Law that it applies) if the arbitration is an international commercial arbitration.

30.7 **Separability.** This clause 30 is separate from the rest of this MOU and remains effective even if the rest of the MOU is found to be non-binding, invalid or terminated. It may be cancelled only by written agreement of both Parties.

30.8 **Urgent relief and prescription.** Nothing in this clause 30 prevents a Party from applying to a court for urgent interim relief, or from taking any step needed to protect a claim against prescription.

30.9 **Confidentiality.** The Parties must keep the arbitration, and all documents and evidence produced in it, confidential, except where disclosure is needed to enforce or set aside an award.

31. Governing law and jurisdiction

31.1 **Governing law.** This MOU and every non-contractual obligation that arises out of or in connection with it are governed by the law of the Republic of South Africa.

31.2 **Jurisdiction.** Subject to clause 30, the Parties consent to the non-exclusive jurisdiction of the [High Court division: _____] for any application for urgent relief, for making an arbitration award an order of court, or for any matter that cannot lawfully be referred to arbitration.

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32. Notices and domicilium

32.1 **Domicilium.** Each Party chooses the physical address set out below as its domicilium citandi et executandi, at which all legal documents and notices under this MOU may be delivered or served:

(a) Party A: [Party A's domicilium (physical address): _____], email [Party A's notice email: _____], for the attention of [Party A's notice contact: _____];

(b) Party B: [Party B's domicilium (physical address): _____], email [Party B's notice email: _____], for the attention of [Party B's notice contact: _____].

32.2 **Change of address.** A Party may change its domicilium to another physical address in the Republic of South Africa, or change its email address, by written notice to the other Party, effective seven Business Days after the notice is received.

32.3 **Form and delivery.** A notice under this MOU must be in writing and in English. It is presumed, unless the contrary is proved, to have been received: (a) on the day of delivery if delivered by hand to the domicilium on a Business Day during normal business hours; or (b) on the first Business Day after it was sent if sent by email to the address in clause 32.1, unless the sender receives an automated message that the email was not delivered.

32.4 **Actual receipt.** A written notice actually received by a Party is adequate notice, even if it was not sent to the chosen domicilium or email address.

32.5 **Legal process.** Court process and notices of termination, breach or a Dispute must be delivered by hand to the domicilium, with a copy by email.

33. Assignment

33.1 **No assignment without consent.** Neither Party may cede, assign, delegate or otherwise transfer any right or obligation under this MOU without the prior written consent of the other Party.

33.2 **Change of control.** A change of control of a Party is a ground for termination under clause 26.3(c).

34. Amendment and waiver

34.1 **Non-variation.** No amendment, variation, addition to or cancellation of this MOU, including of this clause 34.1, has any effect unless it is in writing and signed by an authorised signatory of each Party. An exchange of emails or minutes of a meeting is not enough, unless the Parties have each applied an advanced electronic signature to the amendment.

34.2 **No waiver.** No relaxation, indulgence or extension of time that a Party grants to the other Party waives any right of the Party granting it, or prevents it from enforcing its rights later. A waiver is effective only if it is in writing and signed by the Party giving it.

35. Entire understanding and supersession

35.1 **Entire understanding.** This MOU, with its Schedules, records the entire understanding between the Parties about its subject matter at the Effective Date, and supersedes all earlier discussions, proposals, letters of intent and understandings about that subject matter.

35.2 **Representations.** Neither Party is bound by any representation, warranty, undertaking or promise that is not recorded in this MOU.

35.3 **Later agreements.** A Definitive Agreement prevails over this MOU to the extent of any conflict

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about the matters that it covers.

36. Severability

36.1 **Severability.** If a court or arbitrator finds any provision of this MOU invalid, unlawful or unenforceable, that provision is to be treated as severed, and the remaining provisions continue in full force, as long as the purpose of this MOU can still be achieved.

36.2 **Replacement.** The Parties will then negotiate in good faith to replace the severed provision with a lawful provision that comes as close as possible to its original commercial effect.

37. No stipulation for the benefit of a third party

37.1 **No stipulation alteri.** Nothing in this MOU is a stipulation for the benefit of a third party (stipulatio alteri), and no person who is not a Party may accept a benefit under it or enforce any of its provisions.

37.2 **Affiliates.** A Party may obtain the benefit of this MOU for its affiliates only by signing it, or a written accession, as provided in clause 1.3.

38. Authority

38.1 **Authority to sign.** Each signatory confirms that he or she is duly authorised to sign this MOU on behalf of the Party that he or she represents, and each Party confirms that all resolutions and approvals required for that authority have been passed or given.

38.2 **Evidence of authority.** On request, each Party will provide the other with a certified copy of the board resolution, delegation of authority or other document that authorises its signatory.

38.3 **Internal formalities.** Each Party is entitled to rely on the confirmation given by the other Party in clause 38.1, and is not required to enquire into the internal procedures of the other Party, unless it knows or reasonably ought to know that those procedures were not followed.

39. Counterparts and electronic signatures

39.1 **Counterparts.** This MOU may be signed in any number of counterparts, each of which is an original, and which together form one document.

39.2 **Electronic signature.** The Parties agree that this MOU may be concluded and signed by electronic means, including an electronic signature applied through an electronic signature platform or a signed copy scanned and sent by email. An electronic signature or a scanned signature has the same effect as a handwritten signature.

39.3 **Advanced electronic signature.** Clause 39.2 does not apply to any document for which the law requires a signature, or an advanced electronic signature, in a specific form.

39.4 **Immovable property.** If the Initiative concerns the purchase, sale or other alienation of land, this MOU is not an agreement of sale. Any sale or other alienation of land must be recorded in a separate written deed of alienation that complies with the Alienation of Land Act 68 of 1981, and the electronic signature provisions of clause 39.2 do not apply to it.

Signed by the Parties on the dates set out below. Each signatory confirms the authority given in clause 38 and that the Party he or she represents accepts that only the Binding Provisions listed in clause 6.1 are legally binding.

For and on behalf of [Party A's full legal name: _____]

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Signature:
Full name: [Party A signatory's full name: _____]
Designation: [Party A signatory's designation: _____]
Place: [Where Party A signs: _____]
Date:

For and on behalf of [Party B's full legal name: _____]
Signature:
Full name: [Party B signatory's full name: _____]
Designation: [Party B signatory's designation: _____]
Place: [Where Party B signs: _____]
Date:

SCHEDULE 1: WORKPLAN, MILESTONES AND OPEN ISSUES (NON-BINDING, EXCEPT PART B UNDER CLAUSE 14.4(b))

Part A: Workplan and milestones

Phase 1: Planning and scoping
Activities: [Phase 1 activities: _____]
Lead Party: [Phase 1 lead Party: _____]
Target date: [Phase 1 target date: _____]

Phase 2: Due diligence and feasibility
Activities: [Phase 2 activities: _____]
Lead Party: [Phase 2 lead Party: _____]
Target date: [Phase 2 target date: _____]

Phase 3: Approvals and negotiation
Activities: [Phase 3 activities: _____]
Lead Party: [Phase 3 lead Party: _____]
Target date: [Phase 3 target date: _____]

Phase 4: Signing of the Definitive Agreement or decision not to proceed
Target Date: [Target date for a Definitive Agreement: _____]

Part B: Agreed terms (binding only if Option B applies under clause 14)
[Terms already agreed: _____]

Part C: Open issues to be settled in the Definitive Agreement
[Open issues: _____]

SCHEDULE 2: COST ALLOCATION

1. Costs borne by each Party alone: each Party's own staff, advisers, travel and due diligence costs, unless listed in item 2.

2. Shared costs (only if approved in writing before they are incurred): [Shared costs: _____]

3. Sharing ratio for shared costs: Party A [Party A's share of shared costs: _____], Party B [Party B's share of shared costs: _____].

4. Budget ceiling for shared costs during the Term: [Budget ceiling for shared costs: _____], excluding VAT.

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5. Competition Commission filing fee (if any) borne by: [Who pays any merger filing fee: _____]

6. Invoicing and payment: the Party that pays a shared cost may invoice the other Party for its share, with supporting documents, at the end of each calendar quarter, and the invoice is payable within 30 days.

SCHEDULE 3: REPRESENTATIVES

Party A Representative
Name: [Party A Representative's name: _____]
Position: [Party A Representative's position: _____]
Email: [Party A Representative's email: _____]
Telephone: [Party A Representative's telephone: _____]

Party B Representative
Name: [Party B Representative's name: _____]
Position: [Party B Representative's position: _____]
Email: [Party B Representative's email: _____]
Telephone: [Party B Representative's telephone: _____]

Steering Committee members: [Steering Committee members: _____]

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