Non-Disclosure Agreement

1. Parties and effective date

1.1 **Parties.** This Non-Disclosure Agreement (the "Agreement") is entered into between **[Party A's full legal name: _____]**, [Party A's legal form and registration number: _____], of [Party A's physical address (domicilium): _____] ("Party A"), and **[Party B's full legal name: _____]**, [Party B's legal form and identity or registration number: _____], of [Party B's physical address (domicilium): _____] ("Party B"). Party A and Party B are each a "Party" and together the "Parties".

1.2 **Effective Date.** This Agreement takes effect on **[Effective date: _____]** (the "Effective Date"), whatever the date on which the last Party signs it.

1.3 **Earlier exchanges.** This Agreement also applies to Confidential Information that a Disclosing Party made available to a Receiving Party in connection with the Purpose on or after [Earliest date of covered earlier talks: _____] and before the Effective Date. A use or disclosure of that information before the Receiving Party signed this Agreement is not a breach of it, unless it breached another duty of confidence that applied at the time.

1.4 **Mutual undertakings.** Each Party gives the undertakings in this Agreement in return for access to the other Party's information, the opportunity to evaluate the Purpose and the undertakings of the other Party.

2. Background and permitted purpose

2.1 **Background.** The Parties intend to explore, negotiate or carry out the matter described in item 1 of Schedule A (the "Purpose"). To do so, one or both Parties will share information that is not public and that has commercial value because it is kept confidential.

2.2 **Use for the Purpose only.** A Receiving Party may use Confidential Information only for the Purpose. Any other use requires the prior written consent of the Disclosing Party.

2.3 **Widening the Purpose.** The Purpose may be widened only by a written variation under Section 38. Discussions about another project do not widen the Purpose. Information shared for another project is protected by this Agreement only if the Parties agree so in writing.

2.4 **Disclosure at the Disclosing Party's discretion.** Each Party decides what it shares, when and in what form. This Agreement does not oblige a Party to disclose any information, to continue disclosing it or to update it.

3. Type of agreement (mutual or one-way)

3.1 **Election.** The Parties choose the following type of agreement: **[Mutual or one-way: _____]**.

3.2 **Mutual agreement.** If the Parties choose "mutual", each Party is a Disclosing Party for the information it shares and a Receiving Party for the information it receives, and each undertaking binds both Parties equally.

3.3 **One-way agreement.** If the Parties choose "one-way", only **[Only disclosing party (one-way only): _____]** is the Disclosing Party and the other Party is the Receiving Party. Information that the Receiving Party sends to the Disclosing Party is then not protected by this

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Agreement, except to the extent that it contains the Disclosing Party's own Confidential Information. The Receiving Party should not share its own confidential material until the Parties have changed the election to "mutual" in writing.

3.4 **No clear election.** If no type is chosen, or the choice is unclear, this Agreement is mutual.

3.5 **Related Companies.** Information that a Related Company of a Party shares for the Purpose on behalf of that Party is treated as shared by that Party. That Party may enforce this Agreement for the benefit of its Related Company, and the Related Company may not claim separately for the same loss.

4. Definitions

4.1 **Defined terms.** In this Agreement, unless the context indicates otherwise:

(a) "AI Tool" means software that uses a machine learning or generative model to create, summarise, translate, classify or analyse content, including such a function inside other software;

(b) "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;

(c) "Clean Team" means the individuals named or described in item 5 of Schedule A who may receive Competitively Sensitive Information under Section 23;

(d) "Competitively Sensitive Information" means current or future prices, discounts, margins, costs, capacity, bids, tenders, customer-specific terms, marketing plans and similar information that a competitor would not normally have;

(e) "Confidential Information" has the meaning in Section 5, subject to Section 7;

(f) "Derived Materials" means notes, analyses, compilations, summaries, models, forecasts and other material prepared by a Receiving Party or its Representatives that contain or reflect Confidential Information;

(g) "Disclosing Party" and "Receiving Party" have the meanings in Section 3;

(h) "Personal Information" has the meaning given in section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA") and includes information relating to an identifiable, existing juristic person, and "process", "responsible party", "operator", "data subject" and "Regulator" have the meanings given in POPIA;

(i) "Protected Disclosure" means a disclosure described in Section 14;

(j) "Related Company" means a company that is a holding company or subsidiary of a Party, or a subsidiary of the Party's holding company, as those terms are used in the Companies Act 71 of 2008;

(k) "Representatives" means a Party's Related Companies and its and their directors, officers, employees, attorneys, auditors, accountants, financial advisers, funders, insurers, contractors and the further persons listed in item 4 of Schedule A, but only those who receive Confidential Information from or on behalf of that Party;

(l) "Trade Secret" means Confidential Information that has commercial value because it is secret, and that its owner takes reasonable steps to keep secret, such as source code, formulae, recipes, processes, customer lists and pricing models.

4.2 **Other defined terms.** A term defined in any other clause of this Agreement has that meaning throughout this Agreement and its Schedules.

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5. Confidential Information

5.1 **Meaning.** "Confidential Information" means all information, in any form or medium, that a Disclosing Party or its Representatives make available to a Receiving Party or its Representatives in connection with the Purpose, whether before (as Section 1.3 provides) or after the Effective Date, and that:

(a) is marked or identified as confidential or proprietary;

(b) falls within a category listed in items 2 or 3 of Schedule A; or

(c) a reasonable person would understand to be confidential, given its nature and the circumstances in which it was shared.

5.2 **Examples.** Confidential Information includes, without limitation: business plans, strategies and forecasts; financial statements, management accounts and pricing; customer, supplier and distributor information; product designs, specifications, prototypes and samples; software, source code, object code, algorithms and data structures; know-how, inventions, research and test results; Trade Secrets; Personal Information; and the terms of any proposed transaction.

5.3 **Derived Materials and observations.** Derived Materials, and information obtained by visiting the Disclosing Party's premises, inspecting its systems or observing its operations, are Confidential Information of the Disclosing Party.

5.4 **Information of third parties.** Information that a Disclosing Party holds in confidence for a third party, including a customer or a Related Company, is Confidential Information of the Disclosing Party for this Agreement.

6. Marking and oral disclosures

6.1 **Written and electronic information.** The Disclosing Party should mark documents, files, data rooms and email messages that contain Confidential Information with the word "confidential" or a similar word.

6.2 **Oral and visual information.** Information shared orally, visually or by demonstration should be identified as confidential when it is shared. The Disclosing Party should confirm it in a short written summary within [Days to confirm oral disclosures in writing: _____] days after the disclosure. The summary must describe the information without repeating its substance.

6.3 **Failure to mark.** A failure to mark or confirm does not by itself mean that the information is not confidential. Information that falls within Section 5.1(b) or (c) remains protected. If the Receiving Party is uncertain, it must treat the information as confidential and ask the Disclosing Party.

6.4 **Over-marking.** Marking public or trivial information as confidential does not make it Confidential Information.

7. Exclusions from Confidential Information

7.1 **Exclusions.** Information is not Confidential Information to the extent that the Receiving Party can show, by written records made at the time, that the information:

(a) is or becomes generally available to the public, other than through a breach of this Agreement by the Receiving Party or its Representatives;

(b) was lawfully known to the Receiving Party, free of any duty of confidence, before the Disclosing Party shared it;

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(c) is lawfully received from a third party who is entitled to share it and who owes no duty of confidence to the Disclosing Party; or

(d) is developed independently by the Receiving Party, without use of or reference to the Confidential Information, as Section 22 describes.

7.2 **Combinations.** Information is not excluded only because individual parts of it are public or known to the Receiving Party. A combination of features is excluded only if the combination itself, and its principle of operation, is public or known.

7.3 **Personal Information.** The exclusions in Section 7.1 do not release a Party from a duty that POPIA places on it in respect of Personal Information.

7.4 **Burden.** The Party that relies on an exclusion bears the burden of proving it.

8. Confidentiality and non-use obligations

8.1 **Undertakings.** The Receiving Party undertakes that it will, and will procure that its Representatives will:

(a) keep the Confidential Information confidential and not disclose it to anyone except as this Agreement permits;

(b) use the Confidential Information only for the Purpose;

(c) not copy or reproduce the Confidential Information, except as reasonably necessary for the Purpose, and reproduce every confidentiality marking on each copy;

(d) not remove Confidential Information from the Disclosing Party's premises or systems without its consent;

(e) not use the Confidential Information to compete with the Disclosing Party, to solicit its customers, suppliers or employees, or to obtain a commercial advantage over it; and

(f) not seek to contact the Disclosing Party's employees, customers or suppliers about the Purpose, except through the contacts that the Disclosing Party has approved in writing.

8.2 **No circumvention.** The Receiving Party will not use Confidential Information about a business opportunity introduced by the Disclosing Party to pursue that opportunity without the Disclosing Party, unless the Disclosing Party agrees in writing.

8.3 **Protected Disclosures.** The undertakings in this Section 8 are subject to Section 14.

9. Standard of care and security measures

9.1 **Standard of care.** The Receiving Party will protect the Confidential Information with at least the degree of care that it uses for its own confidential information of a similar kind, and never with less than reasonable care.

9.2 **Security measures.** The Receiving Party will take appropriate, reasonable technical and organisational measures to prevent loss of, damage to, unauthorised destruction of and unlawful access to Confidential Information, including at least:

(a) storing electronic Confidential Information only on secured systems protected by access controls, current security updates and malware protection;

(b) encrypting Confidential Information when it is stored on portable devices or sent over public

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networks;

(c) limiting access to persons who need it for the Purpose and keeping a record of those persons;

(d) keeping physical documents in locked storage when they are not in use; and

(e) the additional measures listed in item 8 of Schedule A.

9.3 **Review.** The Receiving Party will regularly check its measures for new risks and update them as reasonably required.

9.4 **Sharing method.** Confidential Information will be shared by the method described in item 9 of Schedule A, unless the Parties agree otherwise in writing.

10. Permitted recipients (Representatives)

10.1 **Need to know.** The Receiving Party may disclose Confidential Information to those of its Representatives who need to know it for the Purpose.

10.2 **Conditions.** Before disclosure, the Receiving Party will inform each Representative that the information is confidential, and ensure that the Representative is bound by written duties of confidence, or professional duties of confidence, at least as strict as those in this Agreement.

10.3 **Restricted persons.** The Receiving Party will not disclose Confidential Information to a person listed in item 6 of Schedule A without the Disclosing Party's prior written consent.

10.4 **Responsibility.** The Receiving Party is liable for every act or omission of its Representatives that would breach this Agreement if the Receiving Party had committed it, unless the Representative has signed a confidentiality undertaking directly in favour of the Disclosing Party.

10.5 **List of recipients.** On written request, the Receiving Party will give the Disclosing Party a list of the Representatives who received Confidential Information, except where that would reveal a Protected Disclosure.

11. No reverse engineering

11.1 **Prohibition.** The Receiving Party will not, and will not allow anyone else to, reverse engineer, decompile, disassemble, analyse the chemical or physical composition of, or test any sample, prototype, software or other material that embodies Confidential Information, unless item 7 of Schedule A permits the activity.

11.2 **Permitted testing.** Testing permitted in Schedule A must be limited to the Purpose, and its results are Confidential Information of the Disclosing Party.

11.3 **Mandatory rights.** This Section does not limit a right that the law gives a user of software or other material and that cannot be excluded by agreement.

12. Artificial intelligence tools and data handling

12.1 **Public AI Tools.** The Receiving Party will not enter Confidential Information into an AI Tool offered to the public on terms that allow the provider to use inputs or outputs to train or improve its models, to review them for its own purposes or to share them with other users.

12.2 **Approved AI Tools.** The Receiving Party may use an AI Tool for the Purpose only if:

(a) the provider is contractually bound to keep inputs and outputs confidential and not to use them to train models for others;

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(b) only persons who may receive the Confidential Information under Section 10 can access the inputs and outputs;

(c) the Receiving Party can delete the inputs and outputs as Section 25 requires;

(d) any Personal Information is processed in line with Section 16; and

(e) item 10 of Schedule A does not prohibit that use.

12.3 **No model training.** The Receiving Party will not train, fine-tune, evaluate or benchmark any model with Confidential Information unless item 10 of Schedule A expressly allows it. If it does so in breach of this Section, it will stop the use and remove the Confidential Information and every model trained with it, so far as technically possible.

12.4 **Service providers.** The Receiving Party may use cloud hosting, email and backup providers that are bound by duties of confidence and security. The Receiving Party is responsible for those providers as if they were its Representatives.

12.5 **Recording.** No Party will record a meeting, or use an automated transcription or note-taking tool in it, without the consent of every participant. A permitted recording or transcript that contains Confidential Information is Confidential Information.

13. Disclosure required by law or court order

13.1 **Disclosure required by law.** The Receiving Party may disclose Confidential Information to the extent that a law, a court order, a subpoena, a regulator or the rules of a stock exchange on which its securities are listed require it, if it follows this Section.

13.2 **Notice.** Where the law permits, the Receiving Party will promptly give the Disclosing Party written notice of the requirement, with a copy of the order or request, so that the Disclosing Party may seek a protective order or other appropriate relief.

13.3 **Assistance.** The Receiving Party will give the Disclosing Party reasonable assistance, at the Disclosing Party's cost, to resist or limit the disclosure, and will not oppose an application for a protective order or for the information to be treated as confidential.

13.4 **Minimum disclosure.** The Receiving Party will disclose only the part of the Confidential Information that its legal adviser confirms is legally required, and will inform the recipient that the information is confidential.

13.5 **Continuing status.** Information disclosed under this Section remains Confidential Information for every other purpose.

13.6 **Protected Disclosures.** Sections 13.2 to 13.4 do not apply to a Protected Disclosure.

14. Protected disclosures (Protected Disclosures Act and Companies Act s 159)

14.1 **Priority of this Section.** This Section overrides every other provision of this Agreement, including Sections 8, 10, 13, 17, 25, 29 and 31.

14.2 **Protected Disclosures Act.** Nothing in this Agreement excludes any provision of the Protected Disclosures Act 26 of 2000, or of any law that replaces it, or precludes or has the effect of discouraging an employee or worker (including an independent contractor, consultant or agent) from making a protected disclosure under that Act. To the extent that any provision of this Agreement would have that effect, it does not apply.

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14.3 **Companies Act.** Nothing in this Agreement limits, sets aside or negates the effect of section 159 of the Companies Act 71 of 2008. A shareholder, director, company secretary, prescribed officer, employee, registered trade union or other employee representative, supplier of goods or services, or employee of a supplier may make a disclosure that section 159 protects, including in good faith to the Companies and Intellectual Property Commission, the Companies Tribunal, the Takeover Regulation Panel, a regulatory authority, an exchange, a legal adviser, a person performing the internal audit function or another person named in that section.

14.4 **No consent or notice.** A person making a Protected Disclosure does not need the consent of a Party and need not notify a Party before or after making it.

14.5 **No claim or detriment.** No Party will institute a civil claim, impose a penalty under Section 29, claim costs under Section 31, take disciplinary action, or threaten any of these, against a person because of a Protected Disclosure. This does not affect any liability that the law preserves, including liability for a person's own participation in the wrongdoing that was disclosed.

14.6 **Legal advice.** A Party or Representative may disclose this Agreement, and Confidential Information reasonably required for the purpose, to a legal adviser in confidence to obtain legal advice.

14.7 **Other rights.** A right to disclose information that another law protects and that cannot be excluded by agreement remains in force, even if this Section does not name it.

15. Notice of unauthorised use or disclosure

15.1 **Immediate notice.** The Receiving Party will notify the Disclosing Party in writing immediately, and in any event within [Outer limit for leak notice, in hours: _____] hours, after it becomes aware of, or has reasonable grounds to believe that there has been, any loss of Confidential Information or any access to, use or disclosure of it by an unauthorised person.

15.2 **Content of the notice.** The notice will describe, as far as then known, the nature of the incident, the information affected, the persons involved, the likely consequences and the steps taken. The Receiving Party will update the notice as it learns more.

15.3 **Containment and cooperation.** The Receiving Party will promptly take all reasonable steps to contain the incident, recover the information and prevent a repetition, and will cooperate with the Disclosing Party, including in any legal proceedings to protect the information.

15.4 **Personal Information.** Where the incident affects Personal Information, Section 16.6 also applies.

15.5 **Protected Disclosures.** This Section does not apply to a Protected Disclosure.

16. Personal information (POPIA operator terms and cross-border transfer)

16.1 **Minimum sharing.** Each Party will share Personal Information only to the extent necessary for the Purpose, and will comply with POPIA when it processes Personal Information received under this Agreement.

16.2 **Operator terms.** To the extent that a Receiving Party processes Personal Information for the Disclosing Party under this Agreement, without coming under the Disclosing Party's direct authority, the Receiving Party acts as an operator and the Disclosing Party as the responsible party. This Section 16 is then the written contract that section 21(1) of POPIA requires.

16.3 **Authorised processing.** An operator under Section 16.2 will process Personal Information only

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with the knowledge or authorisation of the Disclosing Party and only for the Purpose. It will treat the Personal Information as confidential and not disclose it, unless the law requires disclosure or it is necessary for the proper performance of its duties.

16.4 **Security.** An operator will establish and maintain the security measures referred to in section 19 of POPIA and in Section 9, so as to secure the integrity and confidentiality of the Personal Information.

16.5 **Sub-operators.** An operator will not appoint another person to process the Personal Information without the Disclosing Party's prior written consent. It will bind any approved person by written terms at least as protective as this Section 16.

16.6 **Security compromise.** An operator will notify the Disclosing Party immediately where there are reasonable grounds to believe that Personal Information has been accessed or acquired by an unauthorised person. It will give the Disclosing Party the information and help it reasonably needs to notify the Regulator and the affected data subjects. Where a Receiving Party processes Personal Information as a responsible party in its own right, it will itself notify the Regulator and the data subjects as section 22 of POPIA requires, and inform the Disclosing Party.

16.7 **Cross-border transfers.** A Receiving Party will not transfer Personal Information to a third party in a foreign country unless the transfer is permitted under section 72 of POPIA and the country is listed in item 11 of Schedule A or the Disclosing Party has consented in writing.

16.8 **Data subject requests.** Each Party will promptly pass on to the other any request, objection or complaint from a data subject or the Regulator that relates to Personal Information shared by the other Party, and will cooperate in answering it.

16.9 **Return.** At the end of the processing, an operator will return or destroy the Personal Information under Section 25, unless the law requires it to keep a record.

17. Existence of discussions and publicity

17.1 **Confidential discussions.** Without the other Party's prior written consent, no Party will disclose to anyone other than its Representatives that the Parties are in discussions, that Confidential Information has been shared, the terms of this Agreement or the status of the Purpose.

17.2 **Announcements.** No Party will issue a press release, social media post or other public statement about the Purpose or the other Party, or use the other Party's name, logo or trade marks, without the other Party's prior written consent.

17.3 **Exceptions.** This Section does not restrict a disclosure permitted by Section 13 or Section 14.

18. Ownership and no licence; feedback

18.1 **Ownership.** All Confidential Information remains the property of the Disclosing Party or its licensors. Derived Materials do not transfer any rights in the underlying Confidential Information to the Receiving Party.

18.2 **No licence.** Except for the limited right to use Confidential Information for the Purpose, this Agreement does not grant the Receiving Party any licence or other right in any patent, copyright, design, trade mark, Trade Secret or other intellectual property.

18.3 **Feedback.** If the Receiving Party gives the Disclosing Party comments or suggestions about the Disclosing Party's products or plans ("Feedback"), the Disclosing Party may use the Feedback without payment, but the Feedback does not give the Disclosing Party any right in the Receiving

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Party's own Confidential Information or intellectual property.

18.4 **No registration.** The Receiving Party will not apply to register any patent, design, trade mark or domain name that is based on, or contains, Confidential Information of the Disclosing Party.

19. Patent rights and public disclosure

19.1 **Confidential disclosure.** The Parties acknowledge that information about an invention that is made available to the public, in the Republic or elsewhere, before a patent application is filed may form part of the state of the art and may prevent the invention from being regarded as new.

19.2 **Undertaking.** The Receiving Party will not publish, present, demonstrate, sell or use in public any invention, design or technical information disclosed to it, and will not do anything else that could make it available to the public, until the Disclosing Party has confirmed in writing that it has filed the patent or design applications it intends to file, or that it does not intend to file them.

19.3 **Breach.** A disclosure in breach of Section 19.2 is a material breach of this Agreement, whether or not a patent is later refused or revoked as a result.

19.4 **Joint developments.** Any invention made jointly by the Parties in the course of the Purpose will be dealt with in a separate written agreement before either Party files for protection or uses it commercially.

20. No warranty

20.1 **As is.** Confidential Information is provided "as is". The Disclosing Party gives no warranty or representation, express or implied, about its accuracy, completeness, fitness for a purpose or freedom from third-party rights, except as a later signed agreement provides.

20.2 **No reliance.** No Party is liable to the other for a decision taken in reliance on Confidential Information, except as a later signed agreement provides or in the case of fraud.

20.3 **Authority to disclose.** Despite Section 20.1, each Disclosing Party confirms that, to its knowledge, it is entitled to share the Confidential Information that it shares for the Purpose.

21. No obligation to proceed

21.1 **No duty to proceed.** This Agreement does not oblige any Party to enter into a further agreement, to continue negotiations or to carry out the Purpose.

21.2 **Binding transactions.** A Party is bound to a transaction only by a further written agreement signed by both Parties. Until then, either Party may end discussions at any time for any reason, without liability, but this Agreement continues to apply.

21.3 **Costs.** Each Party bears its own costs in connection with the Purpose and this Agreement, unless Section 31 applies.

22. Independent development; no restraint of trade

22.1 **Independent development.** This Agreement does not prevent a Receiving Party from developing, or obtaining from third parties, products, services or information that are similar to or compete with the Confidential Information, if it does so without using or referring to the Confidential Information.

22.2 **Records.** A Receiving Party that relies on Section 22.1 must be able to show, by records made at the time, that the work was done by persons who did not have access to the relevant Confidential

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Information.

22.3 **No restraint of trade.** This Agreement does not restrain any Party or its Representatives from carrying on business, from competing with the other Party or from employing any person. The Parties will agree any restraint of trade separately in writing.

22.4 **General knowledge.** A Receiving Party's employees may use the general skill, knowledge and experience that they hold in their memories, but not Confidential Information that they deliberately memorise or record, and not Trade Secrets.

23. Competition law compliance (clean team for competitor information)

23.1 **Competition compliance.** If the Parties compete with each other, or may do so, they will share Competitively Sensitive Information only to the extent necessary for the Purpose and only in compliance with the Competition Act 89 of 1998.

23.2 **Clean Team.** Competitively Sensitive Information will be made available only to the Clean Team, or to external advisers who will share it with the Parties only in aggregated or anonymised form. Clean Team members will not use it for pricing, bidding, sales or marketing decisions.

23.3 **No coordination.** Nothing in this Agreement permits the Parties to agree on, or to coordinate, prices or other trading conditions, the division of markets, customers or territories, or tenders.

23.4 **Legal advice.** Each Party will seek competition law advice before sharing any Competitively Sensitive Information that it is uncertain about.

24. Term and duration of obligations

24.1 **Commencement.** This Agreement begins on the Effective Date.

24.2 **Disclosure period.** The Parties may share Confidential Information under this Agreement for [Sharing window: _____] from the Effective Date (the "Disclosure Period"). Either Party may end the Disclosure Period earlier by giving the other Party [Notice to end the sharing window early, in days: _____] days' written notice.

24.3 **Duration of obligations.** The duties of the Receiving Party in respect of Confidential Information shared during the Disclosure Period continue for [How long duties last after the sharing window: _____] after the end of the Disclosure Period.

24.4 **Trade Secrets and Personal Information.** Despite Section 24.3, the duties in respect of a Trade Secret continue for as long as it remains a Trade Secret, and the duties in respect of Personal Information continue for as long as the Receiving Party or any of its Representatives holds that Personal Information.

24.5 **Accrued rights.** The end of the Disclosure Period or of this Agreement does not affect any right or remedy that has already arisen.

25. Return and destruction of materials

25.1 **Request or end.** Within [Days to return or destroy materials: _____] days after the Disclosing Party's written request, or after the end of the Disclosure Period, whichever is earlier, the Receiving Party will, at the Disclosing Party's choice, return or destroy all Confidential Information of the Disclosing Party in its possession or under its control.

25.2 **Derived Materials.** The Receiving Party will destroy Derived Materials instead of returning them.

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25.3 **Electronic records.** Destruction of electronic records means permanent deletion from active systems, AI Tools and accessible storage, so that they cannot be recovered by ordinary means.

25.4 **Permitted retention.** The Receiving Party may keep: (a) copies that the law or the rules of a professional body require it to keep; (b) copies in automatic backups that are not readily accessible, until they are overwritten in the ordinary course; and (c) one copy held by its legal adviser to show compliance with this Agreement. Kept copies remain subject to this Agreement for as long as they are kept.

25.5 **Representatives.** The Receiving Party will ensure that its Representatives return or destroy their copies in the same way.

25.6 **Certificate.** Within 5 Business Days after the return or destruction, a director or other authorised officer of the Receiving Party will sign and deliver a certificate substantially in the form of Schedule B.

25.7 **Protected Disclosures.** This Section does not require any person to return or destroy material that is held for, or is the subject of, a Protected Disclosure.

26. Legal privilege

26.1 **No waiver.** Confidential Information may include material protected by legal professional privilege, litigation privilege or a similar protection. The sharing of that material for the Purpose is not a waiver of the privilege.

26.2 **Common interest.** To the extent that the Parties share a common legal interest in the Purpose, they share privileged material on the basis of common interest privilege, and neither Party will disclose that material to a third party or rely on the sharing as a waiver.

26.3 **Return of privileged material.** If a Party shares privileged material by mistake, the Receiving Party will return or destroy it promptly on request and will not argue that the mistake waived privilege.

27. Inside information and listed securities

27.1 **Listed securities.** Each Party acknowledges that some Confidential Information may be inside information about a company whose securities are listed on a stock exchange.

27.2 **Undertaking.** While a Party or its Representatives hold such information, they will not deal in the relevant securities, encourage another person to deal in them or disclose the information to any person except as the securities laws of the Republic, including the Financial Markets Act 19 of 2012, and the listings requirements of the relevant exchange permit.

27.3 **Insider list.** On request, the Receiving Party will keep and give the Disclosing Party a list of Representatives who have received such information, subject to Section 14.

28. Interdict and specific performance

28.1 **Inadequacy of damages.** Each Party acknowledges that a breach of this Agreement may cause the Disclosing Party harm that damages alone cannot adequately repair.

28.2 **Urgent relief.** The Disclosing Party may apply to a competent court for an interdict, an order for specific performance or other urgent relief to prevent or stop a breach or threatened breach of this Agreement, without first following Section 33.2 and without proving actual damage.

28.3 **Other remedies.** Relief under this Section is in addition to any other remedy available under

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this Agreement or at law, subject to Section 29.3.

29. Pre-estimated damages (penalty) clause

29.1 **Penalty.** If the Receiving Party or any of its Representatives intentionally discloses or uses Confidential Information in breach of Section 8, the Receiving Party will pay the Disclosing Party a penalty of [Penalty per intentional breach: _____] for each such breach, within 10 Business Days after written demand.

29.2 **Not applicable.** If item 12 of Schedule A states that no penalty applies, or the amount in Section 29.1 is left as "not applicable", Sections 29.1, 29.3 and 29.4 do not apply.

29.3 **Penalty or damages.** For the same act or omission, the Disclosing Party may recover either the penalty or damages, but not both. The Parties expressly agree that the Disclosing Party may elect to claim damages proven by it instead of the penalty.

29.4 **Conventional Penalties Act.** This Section is subject to the Conventional Penalties Act 15 of 1962, including the power of a court to reduce a penalty that is out of proportion to the prejudice suffered by the Disclosing Party.

29.5 **Interdicts unaffected.** Payment of the penalty does not entitle the Receiving Party to continue the breach, and does not affect the Disclosing Party's right to an interdict under Section 28.

29.6 **Protected Disclosures.** No penalty is payable for a Protected Disclosure.

30. Limitation of liability (no limit for wilful breach)

30.1 **Indirect loss.** No Party is liable to the other for indirect or consequential loss, or for loss of profit, except where the loss is caused by a breach of Sections 8, 10, 12, 16, 19 or 23.

30.2 **Cap.** Subject to Section 30.3, the total liability of each Party under or in connection with this Agreement is limited to [Overall liability cap: _____].

30.3 **No limit.** Sections 30.1 and 30.2 do not limit liability for:

(a) fraud, dishonesty or wilful misconduct;

(b) an intentional or grossly negligent breach of Sections 8, 10, 12, 16 or 19;

(c) the penalty under Section 29;

(d) legal costs under Section 31; or

(e) any liability that the law does not permit a Party to limit or exclude.

30.4 **Mitigation.** Each Party will take reasonable steps to limit its loss after it becomes aware of a breach.

31. Legal costs on the attorney-and-client scale

31.1 **Attorney-and-client scale.** A Party that successfully enforces this Agreement against the other Party, in court or in arbitration, may recover its legal costs on the scale as between attorney and client, including collection charges, counsel's fees and the fees of expert witnesses.

31.2 **Arbitration costs.** In an arbitration, the arbitrator may make an order on costs that departs from Section 31.1 if fairness requires it.

31.3 **Protected Disclosures.** No costs are recoverable under this Section in respect of a Protected

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Disclosure.

32. Governing law

32.1 **Law.** This Agreement is governed by and must be interpreted under the law of the Republic of South Africa.

32.2 **No conflict rules.** The Parties exclude any rule of private international law that would lead to the application of another legal system.

33. Jurisdiction and dispute resolution (negotiation, arbitration, urgent interdicts)

33.1 **Method.** The Parties choose the following method for resolving disputes: **[Dispute method: _____]**.

33.2 **Negotiation.** A Party may refer any dispute arising from or in connection with this Agreement, including its validity, interpretation or termination, to the other Party in writing. Senior representatives of both Parties will meet, in person or online, within 10 Business Days after the referral and try in good faith to resolve the dispute.

33.3 **Arbitration.** If the chosen method is arbitration and the dispute is not resolved within 20 Business Days after the referral, either Party may refer it to arbitration. The arbitration will be held in [Seat of arbitration: _____] under the Arbitration Act 42 of 1965 or, if the arbitration is international, the International Arbitration Act 15 of 2017, in accordance with the rules of [Arbitration rules: _____] in force at the time, before a single arbitrator who is a practising senior attorney or advocate of at least 10 years' standing. The arbitration will be confidential. The award will be final and binding, and may be made an order of court on the application of either Party.

33.4 **Courts.** If the chosen method is the courts, or if the dispute cannot lawfully be arbitrated, each Party consents to the jurisdiction of the [Court with jurisdiction: _____].

33.5 **Urgent relief.** Nothing in this Section prevents a Party from applying to a competent court for urgent interim relief, including an interdict under Section 28.

33.6 **Survival.** This Section is a separate agreement, and survives the end of this Agreement or a finding that it is invalid.

34. Prescription and claims

34.1 **Prescription.** Each claim arising from this Agreement prescribes as the Prescription Act 68 of 1969 provides. Nothing in this Agreement shortens or extends a period of prescription.

34.2 **No concealment.** The Receiving Party will not conceal, and will procure that its Representatives do not conceal, a breach of this Agreement from the Disclosing Party. Its duty to give notice under Section 15 applies to every breach of which it is aware.

34.3 **Separate breaches.** Each disclosure or use of Confidential Information in breach of this Agreement is a separate breach, and a continuing breach gives rise to a new claim for each day on which it continues.

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35. Domicilium citandi et executandi and notices

35.1 **Domicilium.** Each Party chooses the physical address set out next to its name in Section 1.1 as its domicilium citandi et executandi, at which it will accept service of legal process and notices.

35.2 **Email.** Each Party also chooses the following email address for notices under this Agreement: Party A, [Party A's email for notices: _____]; Party B, [Party B's email for notices: _____].

35.3 **Form of notice.** A notice must be in writing. A notice sent by email is a written notice. Legal process must be served at the domicilium address.

35.4 **Deemed receipt.** Unless the contrary is proved, a notice is regarded as received: (a) if delivered by hand to a responsible person at the domicilium address during business hours, on the day of delivery; (b) if sent by courier, on the third Business Day after dispatch; and (c) if sent by email, on the first Business Day after it was sent, unless the sender receives a message that it could not be delivered.

35.5 **Change.** A Party may change its domicilium or email address by notice to the other Party, effective 5 Business Days after the notice is received. A new domicilium address must be a physical address in the Republic of South Africa.

35.6 **Actual receipt.** A written notice actually received by a Party is effective even if it was not sent in the manner set out in this Section.

36. Cession and delegation

36.1 **No cession or delegation.** No Party may cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which may not be unreasonably withheld.

36.2 **Group reorganisation.** Despite Section 36.1, a Party may cede its rights and delegate its obligations to a Related Company or to a successor to the business to which the Purpose relates, on written notice to the other Party, if the transferee agrees in writing to be bound by this Agreement.

36.3 **Binding effect.** This Agreement binds and benefits the Parties and their permitted successors and cessionaries.

37. Relationship of the parties; authority

37.1 **Independent parties.** The Parties are independent contracting parties. Nothing in this Agreement creates a partnership, joint venture, agency or employment relationship between them.

37.2 **No authority.** No Party may bind the other Party or incur any obligation on its behalf.

37.3 **Authority to sign.** Each person who signs this Agreement for a company or other juristic person warrants that he or she is duly authorised to do so.

37.4 **No stipulation for another.** No provision of this Agreement is a stipulation for the benefit of a third party, except Section 3.5 for Related Companies.

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38. Whole agreement, variation and non-waiver (no oral variation)

38.1 **Whole agreement.** This Agreement, including its Schedules, is the whole agreement between the Parties about its subject matter. It replaces any earlier agreement or understanding about confidentiality for the Purpose, but does not release a Party from a breach of an earlier agreement.

38.2 **No other representations.** No Party relies on any representation, warranty or undertaking that is not recorded in this Agreement.

38.3 **No oral variation.** No variation, addition, cancellation or consensual termination of this Agreement, including this Section 38.3, is of any force unless it is reduced to writing and signed by or on behalf of both Parties. For this Section, a signature includes an electronic signature applied through an electronic signature platform, but not a name or signature block typed into an email or message.

38.4 **Non-waiver.** No relaxation, extension of time or indulgence that a Party gives to the other is a waiver of its rights, and it does not prevent that Party from enforcing this Agreement strictly at any time.

39. Severability

39.1 **Severability.** Each provision of this Agreement is separate and severable. If a court or arbitrator finds any provision to be invalid, unlawful or unenforceable, that provision will be treated as deleted to the extent necessary, and the rest of this Agreement remains in force.

39.2 **Replacement.** The Parties will negotiate in good faith to replace a deleted provision with a valid one that comes as close as possible to its original commercial intention.

40. Survival

40.1 **Survival.** Sections 1.3, 4, 5, 7, 8, 9, 10, 11, 12, 14 to 20, 22 to 41 and Schedule B continue to apply after the end of the Disclosure Period and of this Agreement for as long as necessary to give effect to them, and in any event for as long as Section 24 provides.

41. Interpretation

41.1 **Interpretation.** In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

(b) words in the singular include the plural and the other way round, and a reference to a person includes a juristic person and any other association or body;

(c) the words "include" and "including" are not words of limitation;

(d) a reference to a law includes that law as amended or replaced, and any regulation made under it;

(e) a reference to days means calendar days, unless Business Days are stated, and a period is calculated by excluding the first day and including the last day, but if the last day is not a Business Day, the last day is the next Business Day;

(f) the rule that a contract is interpreted against the party that drafted it does not apply; and

(g) amounts are in South African rand (R) and exclude value-added tax, unless otherwise stated.

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42. Counterparts and electronic signatures

42.1 **Counterparts.** This Agreement may be signed in counterparts, each of which is an original, and which together form one agreement.

42.2 **Electronic signatures.** The Parties agree that this Agreement may be concluded and signed electronically. A signature by electronic means, including through an electronic signature platform, or a scanned copy of a handwritten signature, has the same effect as a handwritten signature for this Agreement. Neither Party requires an advanced electronic signature.

42.3 **Electronic copies.** An electronic copy of the signed Agreement that is accessible for later reference is as valid as the original.

Each Party signs this Agreement, including its Schedules, on the date and at the place shown below. Each person signing confirms that he or she has read Section 14.

SIGNED for PARTY A: [Party A's full legal name: _____]
Signed at: [Place where Party A signs: _____]
Signature:
Full name: [Party A's signatory: _____]
Capacity: [Party A signatory's capacity: _____], who warrants that he or she is duly authorised
Date:

As witnesses:
Witness 1, signature and full name:
Witness 2, signature and full name:

SIGNED for PARTY B: [Party B's full legal name: _____]
Signed at: [Place where Party B signs: _____]
Signature:
Full name: [Party B's signatory: _____]
Capacity: [Party B signatory's capacity: _____], who warrants that he or she is duly authorised
Date:

As witnesses:
Witness 1, signature and full name:
Witness 2, signature and full name:

SCHEDULE A: PURPOSE AND CONFIDENTIAL INFORMATION

1. Purpose: [Purpose: _____]

2. Main categories of Party A's Confidential Information: [Party A's main categories of information: _____]

3. Main categories of Party B's Confidential Information: [Party B's main categories of information: _____]

4. Further Representatives who may receive Confidential Information: [Further permitted recipients: _____]

5. Clean Team (only if the Parties compete): [Clean team members: _____]

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6. Restricted persons who may not receive Confidential Information without consent: [Persons who may not receive information: _____]

7. Permitted testing of samples, prototypes or software: [Permitted testing: _____]

8. Additional security measures: [Additional security measures: _____]

9. Method of sharing Confidential Information: [How information is shared: _____]

10. AI Tools that may or may not be used: [AI tool rules: _____]

11. Foreign countries to which Personal Information may be transferred: [Countries Personal Information may go to: _____]

12. Penalty under Section 29: [Penalty per intentional breach: _____]

Describe each category in general terms. Do not write the Confidential Information itself in this Schedule.

SCHEDULE B: CERTIFICATE OF RETURN OR DESTRUCTION

This certificate is given under Section 25.6 of the Non-Disclosure Agreement between [Party A's full legal name: _____] and [Party B's full legal name: _____] with effect from [Effective date: _____].

1. Name of the Receiving Party:

2. Date of the Disclosing Party's request or of the end of the Disclosure Period:

3. Material returned, with the date and method of return:

4. Material destroyed or deleted, with the date and method:

5. Material kept under Section 25.4, and the reason for keeping it:

6. Representatives instructed to return or destroy their copies:

I, the undersigned, a director or authorised officer of the Receiving Party, certify that after reasonable enquiry the information above is true and correct, and that the Receiving Party and its Representatives have returned or destroyed the Confidential Information as Section 25 requires, except for the material listed in item 5. The kept material remains subject to the Agreement. This certificate does not cover material held for, or as the subject of, a Protected Disclosure.

Signed at:
Signature:
Full name:
Capacity:
Date:

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