**CONFIDENTIALITY AND NON-DISCLOSURE**

**AGREEMENT**

This Non-disclosure agreement is entered into as of

Day/Month/Year

# BY AND BETWEEN,

**Company Name**

a company duly incorporated under the laws of the Republic of South Africa

with business address at ………………………………………………….

(Hereinafter referred to as ………) and herein represented by

……………………………………………..………………………………………

# AND,

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ID/Passport NO.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An individual under the laws of the Republic of South Africa

with a residential address at:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PREAMBLE**

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. **PARTIES**
   1. The parties to this agreement are as set out above.
   2. The parties agree as set out below.
2. **INTRODUCTION**
   1. The parties are entering into negotiations which will result in the disclosure of information confidential to the disclosing party. Such negotiations will require information of a confidential nature to be shared between the parties.
   2. This agreement sets out the conditions under which such confidential information can be communicated.
3. **INTERPRETATION**
   1. In this agreement, unless inconsistent with or otherwise indicated by the context:
      1. **“**the/this agreement” means the agreement as set out herein;
      2. **“**confidential information” means without limiting the generality of the term, any:
         1. technical, scientific, commercial, financial or market information, know-how or trade secrets;
         2. data concerning business relationships, samples, devices, demonstrations, processes or machinery;
         3. design, drawings and technical specifications;
         4. and all other information in whatever forms, whether or not subject to or protected by common law or statutory laws relating to copyright, patent, trademarks, registered or unregistered, or otherwise, disclosed or communicated to the receiving party or acquired by the receiving party from the disclosing party pursuant to this agreement;
      3. “the parties” means the parties to this agreement;
      4. “the receiving party” means the party receiving the confidential information.
      5. “the disclosing party” means the party disclosing the confidential information.
4. **RESTRICTIONS ON DISCLOSURE AND USE OF THE INFORMATION**
   1. The receiving party may disclose the confidential information only to its officers and employees and then only to such officers and employees to whom such access is reasonably necessary, provided the receiving party agrees:
      1. Not to disclose the confidential information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement;
      2. Not to utilise, employ or *in any* other manner whatsoever use the confidential information disclosed pursuant to the provisions of this agreement for any purpose whatsoever other than for purposes of this agreement, without the prior written consent of the disclosing party;
      3. That the unauthorised disclosure of the confidential information to a third party may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, expense, claim, harm or damage, of whatever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement.
   2. Unless the parties otherwise agree to in writing, any documentation or records relating to the disclosing party’s confidential information which comes into the possession of the receiving party during the existence of this agreement or at any time thereafter:
      1. Shall be deemed to form part of the confidential information of the disclosing party;
      2. Shall not be copied, reproduced, published or circulated by the receiving party;
      3. Shall be surrendered to the disclosing party on request and in any event on the termination of this agreement, and the receiving party shall not retain any extracts therefrom.
   3. The receiving party shall ensure that any of its employees, professional advisors, agents, consultants or other persons who may have the opportunity of receiving or having access to any of the confidential information of the disclosing party are bound by this agreement. The receiving party agrees to use its best endeavours to ensure that such employees, professional advisors, agents, consultants and persons will be bound by this agreement even after their relationship with the receiving party has been terminated.
5. **TITLES**
   1. All information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:
      1. to be proprietary to the disclosing party; and
      2. not to confer any rights of whatever nature in such confidential information to the receiving party.
6. **STANDARD OF CARE**
   1. The receiving party agrees to protect the confidential information of the disclosing party using the same standard of care used to safeguard its own information of a confidential nature and that the confidential information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
7. **RETURN OF INFORMATION**
   1. The disclosing party may, at any time, request the receiving party to return any material containing, pertaining to, or relating to the confidential information and may, in addition request the receiving party to furnish a written statement to the effect that, upon such return, the receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material.
   2. As an alternative to the return of the material contemplated in 7.1 above, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that such material has been destroyed.
   3. The receiving party shall comply with a request, in terms of this clause 7 within 7 days of receipt of such a request.
8. **EXCLUDED INFORMATION**
   1. The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any information that:
      1. is known to or in possession of the receiving party prior to disclosure thereof by the disclosing party;
      2. is or becomes publicly known, otherwise than pursuant to a breach of this agreement by the receiving party;
      3. is acquired independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;
      4. is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulations in force from time to time, provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interest in this regard; provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstance;
      5. is disclosed to a third party pursuant to the prior written authorisation from the disclosing party;
      6. is received by a party in good faith from a third party in circumstance that do not amount to a breach of the provisions of this agreement or to a breach by the third party of any undertaking it may have made to a party to this agreement in relation to such confidential information.
9. **GOVERNING LAW**
   1. This agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa. The parties hereby consent and submit to the jurisdiction of a relevant magistrate’s court, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction without prejudice to the rights of either party to initiate action elsewhere or in a court of superior jurisdiction.
10. **NOTICES AND DOMICILIUM**
    1. The parties choose as their domicilium citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
    2. For the purpose of this agreement the parties' respective addresses will be:  
       1. as set out on the first page of this agreement,
       2. or at such other address in the Republic of South Africa, not being a post office box or poste restante, of which the party concerned may notify the others in writing.
    3. Any notice given in terms of this agreement will be in writing and will:  
       1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
       2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) business day following the date of such posting;
       3. if given by telefax be deemed to have been received by the addressee 1 (one) business day after dispatch.
    4. Notwithstanding anything to the contrary contained in this agreement, a written notice or communication actually received by one of the parties from another will be adequate written notice or communication to such party.
11. **WARRANTY OF AUTHORITY**
    1. Each party warrants to the other party that it has power, authority and legal right to sign and perform this agreement and that this agreement has been duly authorised by all necessary actions of its Directors and constitutes valid and binding obligations on it in accordance with the terms of this agreement.
12. **SEVERABILITY**
    1. The agreements and undertakings of the parties contained in this agreement will each be construed as an agreement and undertaking independent of any other provision of this agreement. The parties hereby expressly agree that it is not the intention of any party to violate any public policy, statutory or common law, and that if any sentence, paragraph, clause or combination of the same is in violation of the law of the Republic of South Africa, such sentence, paragraph, clause or combination of the same alone will be void in the jurisdiction where it is unlawful, and the remainder of such clause and this agreement will remain binding upon the parties hereto. The parties further acknowledge that it is their intention that the provisions of this agreement be binding only to the extent that they may be lawful under existing applicable law of the Republic of South Africa, and in the event that any provision hereof is determined to be overly broad or unenforceable, the parties hereto agree to the modification of such provisions to the minimum extent required to make them valid and enforceable.
13. **WHOLE AGREEMENT**
    1. This agreement constitutes the whole agreement between the parties as to the subject-matter hereof and no agreement, representations or warranties between the parties other than those set out herein are binding on the parties.
14. **VARIATION**
    1. No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.
15. **RELAXATION**
    1. No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this agreement and no single or partial exercise of any right by any party will under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise effect any of that party's rights in terms of or arising from this agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
16. **COSTS**
    1. The cost of and incidental to the negotiation and drafting of this agreement will be borne and paid by the party incurring such costs.

In WITNESS WHEREOF, the parties have executed this agreement.

SIGNED at ………………………………………… on this ……….…… day of ……………..………….., 2023.

For **Company Name** For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: ….…………………………..………………. Name: ……………………………………………….

Signature: …………………………………………. Signature: ………………………………………..

Designation: ………………………………….….. Designation:………………………………….…