

**NON-DISCLOSURE AGREEMENT**

entered into between

**TECHNOLOGY INNOVATION AGENCY**

a public entity established in terms of the Technology Innovation Agency Act, 2008  
(Act No. 26 of 2008)  
(hereinafter referred to as "TIA")

and

..... (PTY) LTD

a private company duly registered in terms of the laws of the Republic of South  
Africa, registration number ...../ adult male/female with full legal capacity,  
Identity number .....  
(hereinafter referred to as ".....")

(TIA and ..... hereinafter referred to individually as a "Party" and collectively  
as "Parties")

**PREAMBLE**

**WHEREAS** TIA has contracted with ..... to develop/provide xxxx ;

**AND WHEREAS** ..... will be assisting/ assessing / evaluating ..... will receive access to confidential information of TIA's .....records;

**AND WHEREAS** both TIA and ..... have agreed on the terms and conditions for the regulation and the treatment of the aforesaid confidential information and wish to reduce the aforesaid agreement to writing as they hereby do.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS**

1.1 Unless inconsistent with the context, the words and expressions as used in this Agreement shall have the following meaning:

1.1.1 **“Agreement”** means this non-disclosure agreement;

1.1.2 **“Confidential Information”** means confidential or other proprietary information that is disclosed by one Party to the other, including without limitation, know-how, formulae, statistics, processes, systems, business methods, marketing, trading and merchandising methods and information, promotional and advertising plans and strategies, financial plans and models, long-term plans, analyses, user or consumer data and profiles, ideas, hardware and software designs and code, product specifications and documentation, computer programmes, research and development data, inventions, drawings and any other information of a confidential nature of the divulging Party, in whatever form it may be. Confidential Information shall not include information which:

1.1.2.1 is or becomes public knowledge without any action by, or involvement of the Recipient; or

- 1.1.2.2 after disclosure by the Disclosing Party is published or becomes generally available to the public, otherwise than through any act or omission on the part of the Recipient; or
  - 1.1.2.3 is disclosed by either Party with the prior written approval of the other Party; or
  - 1.1.2.4 is disclosed pursuant to any judicial order or legislation, provided that the Disclosing Party gives the Recipient sufficient prior notice to contest such an order; or
  - 1.1.2.5 the Parties can show were in their possession at the time of disclosure and which was not acquired directly or indirectly from each other; and
- 1.1.3 “**Effective Date**” means the date of signature of this Agreement by the last of the Parties to do so;
- 1.1.4 “**Permitted Disclosers**” means the Recipient who is involved in the discussions relating to the Permitted Purpose and have a need to know such Confidential Information for the Permitted Purpose and any other person to whom the Recipient discloses Confidential Information with the prior written consent of the Disclosing Party; and
- 1.1.5 “**POPIA**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), and its Regulations.
- 1.2 As used herein the Party disclosing Confidential Information is referred to as the “Disclosing Party” and the Party receiving the Confidential Information is referred to as the “Recipient”.
- 1.3 Any reference in this Agreement to the singular includes the plural and vice versa.
- 1.4 Any reference in this Agreement to natural persons includes legal persons and references to any gender include references to the other gender and vice versa.

- 1.5 Annexures incorporated by reference shall form an integral part of this Agreement.
- 1.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.7 When any number of days is prescribed in this Agreement same shall be reference to calendar days exclusively of the first and inclusively of the last day unless that day falls on a Saturday, Sunday or public holiday in which case the day shall be the next succeeding working day which is not a Saturday, Sunday or public holiday.
- 1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.9 Expressions defined in this Agreement shall bear the same meanings in appendixes, schedules or annexures to this Agreement, which do not contain their own definitions.
- 1.10 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 1.11 Where a term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on the Effective Date and shall, subject to the provisions of this Agreement endure indefinitely.

## **3. RESTRICTIONS ON USE**

### **3.1 Restrictions**

The Parties agree that as a condition to the receipt of Confidential Information by the Recipient from the Disclosing Party, both Parties shall:

- 3.1.1 not disclose, directly or indirectly to any third party any portion of the Confidential Information without the prior written consent of the other Party;
- 3.1.2 not use or exploit the Confidential Information in any way except for purpose of internal review of the Confidential Information;
- 3.1.3 promptly return or destroy at the Disclosing Party's option all materials and documentation regarding the Confidential Information received from the Disclosing Party upon completion of the Recipient's internal review or upon request of the Disclosing Party;
- 3.1.4 take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as the Party would with its own Confidential Information; and
- 3.1.5 promptly advise the other Party in writing upon learning of any unauthorised use or disclosure of the Confidential Information.

### **3.2 Affiliates**

The Parties shall take all necessary steps to ensure that their affiliates comply with the foregoing confidentiality restrictions and obligations.

## **4. OBLIGATIONS OF X FOUR**

4.1 The ..... shall:

- 4.1.1 observe the confidentiality of all information (the "Confidential Information") relating to TIA's ..... services as disclosed. In this regard, ..... hereby undertakes in favour of TIA that, in order to protect said Confidential Information, they shall not use the

Confidential Information or disclose it, directly or indirectly, to any person or entity without TIA's prior written approval;

- 4.1.2 take all such steps as may be reasonably necessary to prevent said Confidential Information falling into the hands of unauthorised third Parties. The Service provider shall use the Confidential Information disclosed to it solely for the purposes of their contracted tasks;
- 4.1.3 not use, exploit or in any other manner whatsoever apply the Confidential Information disclosed to it for any purpose whatsoever other than for the purpose for which it was disclosed, nor otherwise than in accordance with the provisions of this Agreement, save with the prior written consent of TIA; and
- 4.1.4 on request by TIA, return or destroy any material containing, pertaining to or relating to the Confidential Information disclosed pursuant to the terms of this Agreement and furnish a written statement to the effect that, upon such return or destruction, the Service Provider has not retained in its possession, or under its control, either directly or indirectly, any such material.

## 5. EXCLUSION OF CONFIDENTIALITY

- 5.1 The obligations of the Parties pursuant to the provisions of this Agreement shall not apply to any Confidential Information that ..... can prove:
  - 5.1.1 was already known to them on a non-confidential basis from a source other than TIA prior to the conclusion of this Agreement;
  - 5.1.2 is, or becomes part of the public domain other than as a result of a breach of this Agreement;
  - 5.1.3 otherwise lawfully becomes available to ..... from sources independent of TIA;
  - 5.1.4 is disclosed by ..... with the prior written consent of TIA;

5.1.5 is developed independently by ..... in circumstances that do not amount to a breach of the provisions of this Agreement;

5.1.6 or is disclosed by ..... to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time,

Provided that in these circumstances, the Service Provider shall advise TIA to take whatever steps it deems necessary to protect its interests in this regard; provided further that the Service Provider will disclose only that portion of the information which it is legally required to disclose and will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances.

## **6. OWNERSHIP**

### **6.1 Ownership**

All Confidential Information furnished by the Disclosing Party to the Recipient shall unless otherwise specified in writing, remain the property of the Disclosing Party.

### **6.2 No License**

Except for purposes of its internal evaluation of the Confidential Information neither Party grants the other Party any license by implication or otherwise to use the Confidential Information or any other license rights in any patent, copyright or other intellectual property rights owned by the Party regarding the Confidential Information.

## **7. DISCLAIMER**

The Confidential Information is disclosed by one Party to the other on a “as is” basis. Nothing contained in this Agreement or any Confidential Information shall constitute any express or implied warranty of any kind including, without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement of any patent, copyright or other third parties’ intellectual property right.

**8. SEVERABILITY**

In the event of any provision of Agreement being invalid, unlawful or otherwise unenforceable under any other applicable law, that provision shall be deemed to be severed from this Agreement and of no force or effect, provided that such invalidity shall not affect the remaining provisions of this Agreement which shall continue to be valid and enforceable. In such event, the Parties shall as soon as reasonably possible after becoming aware of the unenforceability of the severed provision negotiate in good faith an alternative mechanism or provision which would achieve a commercial effect which is the same or as close as reasonably possible that which the Parties intended to achieve by means of the severed provision.

**9. NOTICES AND DOMICILIA**

9.1 The Parties choose as their *domicilia 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 processes and notices arising out of or in connection with this Agreement, its breach or termination thereof may validly be served upon or delivered to the Parties.

9.2 For the purpose of this Agreement the Parties' respective addresses shall be:

**9.2.1** .....

**Attention:**

**Email:**

9.2.2 TIA:  
83 Lois Avenue  
Menlyn  
Pretoria  
0181  
Attention: Acting Chief Executive Officer  
Email: [Patrick.krappie@tia.org.za](mailto:Patrick.krappie@tia.org.za)

or at such other address not being a post office box or *poste restante* of which the Party concerned may notify the other in writing.

9.3 Any notice given in terms of this Agreement shall be in writing and shall:

9.3.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery; and

9.3.2 if transmitted by email, be deemed to have been received by the addressee on the date of the email.

9.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of successful facsimile transmission, shall be adequate written notice or communication to such Party.

## **10. BREACH**

10.1 Without prejudice to the other rights of the Disclosing Party, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this Agreement, the Recipient shall, at the sole cost of the Recipient:

10.1.1 immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and

10.1.2 use all reasonable commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.

10.2 The Parties acknowledge and agree that cancellation is not an appropriate remedy for breach of this Agreement and this Agreement

may not be cancelled or terminated save by written agreement between the Parties.

10.3 The Recipient accepts full liability for the maintenance of the confidentiality of the Confidential Information and hereby unconditionally and irrevocably indemnifies and holds the Disclosing Party harmless against any and all direct loss, action, expense, claim, harm or damages of whatsoever nature suffered or sustained by the Disclosing Party pursuant to:

10.3.1 a breach or threatened breach by the Recipient of the provisions of this Agreement; and

10.3.2 any Permitted Disclosee failing to keep the Confidential Information confidential.

10.4 Should any unauthorised disclosure of Confidential Information take place in breach of the provisions of this Agreement, the Disclosing Party shall, in addition to the foregoing, be entitled by written notice to the Recipient to terminate all obligations to provide information to the Recipient with immediate effect and no further information will be disclosed to the Recipient in terms of this Agreement.

10.5 It is acknowledged that the breach of this Agreement by the Recipient would cause the Disclosing Party irreparable injury not compensable in monetary damages alone. Accordingly, in the event of a breach or a threat of a breach, the Disclosing Party, in addition to its other remedies is entitled to a restraining order, preliminary injunction or similar relief so as to specifically enforce the terms of this Agreement or prevent, cure or reduce the adverse effects of the breach. The Disclosing Party will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).

## **11. RETURN AND/OR DESTRUCTION OF THE CONFIDENTIAL INFORMATION**

11.1 The Recipient shall, at its own expense, within 10 (ten) business days of the date of written demand from the Disclosing Party:

11.1.1 return or destroy (as stipulated by the Disclosing Party), and procure the return or destruction of all Confidential Information disclosed by the Disclosing Party and/or its Associated Companies and all copies of it (whether in paper, electronic or other format) held by the Recipient or by a Permitted Disclosee without keeping any copies or partial copies thereof;

11.1.2 delete or procure the deletion of all Confidential Information disclosed by the Disclosing Party and/or its Associated Companies from any computer, word processor or other device in the possession or control of the Recipient or any Permitted Disclosee; and

11.1.3 confirm in writing to the Disclosing Party that the Recipient and that to the best of the Recipient's knowledge, information and belief having made all reasonable enquires all Permitted Disclosees have complied with the provisions of this clause 11.1.

11.2 The Recipient shall not be required to return, destroy or delete Confidential Information disclosed by the Disclosing Party to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the Recipient or any Permitted Disclosee is subject. For the avoidance of

doubt, the obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.

## **12. FORCED DISCLOSURE**

12.1 In the event that the Recipient is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will:

12.1.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible;

12.1.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

12.1.3 in the case of any disclosure required in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA), apply the principles of Chapter 4 of the PAIA in order to avoid and/or limit the extent of any such disclosure;

12.1.4 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;

12.1.5 comply with the Disclosing Party's reasonable requests, if allowable, as to the manner and terms of any such disclosure; and

12.1.6 notify the Disclosing Party of the receipt of, and the form and extent of, any such disclosure or announcement immediately after it is made.

## **13. DATA PROTECTION**

All Parties agree that they will comply with POPIA and process all the information and/or personal data in respect of this Agreement being in accordance with POPIA and only for the purpose of fulfilling their obligations in terms of this Agreement.

## **14. DISPUTE RESOLUTION**

- 14.1 In the event of any disputes which may arise out of or in connection with this Agreement, the Parties shall in the first instance promptly refer the matter to their respective senior representatives to facilitate a resolution of the dispute. Should the Parties be unable to facilitate a resolution of the dispute within 10 (ten) business days of the matter having been referred to them, then the Parties shall seek assistance from a mutually agreed upon appropriately qualified mediator within 5 (five) business days.
- 14.2 Should the Parties be unable to agree upon such mediator or the mediation process fails within 14 (fourteen) business days of such mediator being appointed, then either Party may submit the said dispute or difference on written demand to arbitration in Johannesburg before an arbitrator appointed by agreement between the Parties, or failing agreement within 14 (fourteen) business days of the demand for arbitration. Any Party shall be entitled to forthwith call upon the chairperson of the Arbitration Foundation of South Africa (AFSA) to nominate the arbitrator, provided that the person so nominated shall be an advocate or other independent people appropriately qualified expert as agreed by the Parties of not less than 10 (ten) years standing. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties.
- 14.3 Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 14.4 Any arbitration in terms of this clause 14 (including any appeal proceedings) shall be conducted in camera, and the Parties shall treat as confidential details of the dispute submitted to arbitration, the

conduct of the arbitration proceedings and the outcome of the arbitration.

14.5 This clause 14 will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.

14.6 The Parties agree that the written demand by a Party in terms of this clause 14 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969).

## **15. MISCELLANEOUS**

15.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

15.2 This Agreement is the only and exclusive agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all prior or contemporaneous representations, promises, inducements, proposals, discussions and other communications.

15.3 No indulgence by one Party for the non-compliance of any obligation by the other Party in terms of this Agreement shall operate as a waiver of the rights of the Party allowing the indulgence or as a novation of the rights of the Parties to this Agreement.

15.4 No provision of this Agreement may be amended or waived without a written agreement signed by both Parties.

15.5 This Agreement shall be governed by the laws of the Republic of South Africa.

15.6 This Agreement is the only and exclusive agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all prior or contemporaneous representations, promises, inducements, proposals, discussions and other communications.

15.7 No indulgence by one Party for the non-compliance of any obligation by the other Party in terms of this Agreement shall operate as a waiver of

the rights of the Party allowing the indulgence or as a novation of the rights of the Parties to this Agreement.

15.8 Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement and the Annexures to it.

***[signature page follows on the next page]***

Thus done and signed at \_\_\_\_\_ on \_\_\_\_\_ 2024.

As witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

**TIA**

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Who warrant that he/she is duly  
authorised thereto

Thus done and signed at \_\_\_\_\_ on \_\_\_\_\_ 2024.

As witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Who warrants that he/she duly is  
authorised thereto