

**CONFIDENTIALITY AGREEMENT**

**BETWEEN**

**THE UNIVERSITY OF WITWATERSRAND, JOHANNESBURG**

a public higher education institution and a juristic person in terms of the Higher Education Act 101 of 1997 as amended by Section 25 of Act 23 of 2001, having its main place of business at 1 Jan Smuts Avenue Braamfontein, Johannesburg

(Hereinafter the Discloser)

**And**

.....

.....

(Hereinafter the Recipient)

**CONTEXT**

Whereas the Discloser possesses information of a private and confidential nature in the form of information relating to .....

Whereas the Recipient in his capacity as .....

Whereas the Discloser wishes to disclose the aforementioned confidential information to the Recipient with a view to conducting the Project.

Whereas the Parties agree that this agreement will supersede all previous Confidentiality Agreements concluded by the Parties relating to the Project.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS**

In this agreement unless inconsistent with the context the following words will bear the meanings set out hereunder:

- 1.1 “Confidential Information” includes, but is not limited in its interpretation to, all personal information and secret knowledge, technical information and specifications, manufacturing techniques, designs, circuit diagrams, instruction manuals, blueprints, electronic artwork, samples, devices, demonstrations, formulae, know-how, information concerning materials, scientific information generally, and other materials of whatever description in which the Discloser thereof has an interest in being kept confidential including scientific knowledge or general/personal information gathered during the course of research or legal processes and/or claimed as confidential by the Disclosing Party at the time of disclosure or promptly thereafter and includes information (whether oral, documentary, magnetic, electronic, graphic or digitised) containing or consisting of information or material of a technical, financial, operational, commercial, administrative or planning nature or in the nature of

intellectual property of any kind and relating (wholly or in part) to the Disclosing Party or any of its actual or projected projects, research activities, legal processes or businesses, including its suppliers, funder's, personnel, students, facilities, assets, financial condition or results, rights, obligations and liabilities.

- 1.2 "Discloser" means any Party disclosing Confidential Information pursuant to the terms of this Agreement.
- 1.3 "the Project" means the .....
- 1.4 "Parties" means the Discloser and Recipient.
- 1.5 "Recipient" means any Party receiving Confidential Information pursuant to the terms of this Agreement.
- 1.6 "Representatives" means consultants, professional advisers, insurers and subcontractors and any other person appointed to act on its behalf.
- 1.7 "Agreement" shall mean this written document together with all written appendices, annexures, exhibits or amendments attached to it from time to time.
- 1.8 "Commencement Date" shall be the date of signature of this Agreement.
- 1.9 "Writing" shall include any document whether available in print, on plain paper or in electronic format accessible in a manner usable for subsequent reference, and "written" shall have a corresponding meaning.

## **2. OWNERSHIP AND DISCLOSURE**

- 2.1 All rights in, and title to, Confidential Information disclosed in terms of this Agreement vests with the Discloser. The Recipient will not derive rights in, or title to, the Confidential Information as the result of any form of contribution to said information, unless such rights and / or title are specifically authorised by the Discloser.
- 2.2 Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder will be construed as granting, either expressly or by implication, any licenses to any other rights in any Intellectual Property owned or controlled by the Discloser.
- 2.3 Any Confidential Information communicated hereunder will be on loan only to the Recipient in accordance with the provisions of this Agreement.
- 2.4 The Discloser may disclose so much of its Confidential Information to the Recipient as it deems appropriate in the circumstances.

## **3. USE OF NON-DISCLOSURE**

- 3.1 The Recipient agrees that the Confidential Information disclosed to him hereunder will be held in strict confidence and will only be used for the Project.

## **4. OBLIGATIONS OF THE RECIPIENT**

The Recipient shall:

- 4.1 use the Confidential or Disclosed Information only for the Project;
- 4.2 treat and safeguard the Confidential or Disclosed Information as private and confidential;
- 4.3 ensure proper and secure storage of all Confidential or Disclosed information;

- 4.4 not at any time without the prior written consent of the Discloser:
  - 4.4.1 disclose or reveal the Confidential or Disclosed Information to any other person or party whatsoever;
  - 4.4.2 disclose or reveal to any person or party whatsoever either the fact that discussions or negotiations are taking place, or have taken place between the Recipient, the Researcher and the Discloser or the content of any such discussions or other facts relating to the Project, except where required by law or any governmental, international or regulatory body;
  - 4.4.3 remove the confidential information in documentary, electronic or in any other form the precincts of Discloser;
- 4.5 not in any way force the Discloser to be obliged to disclose, reveal or exchange any information to the Recipient;
- 4.6 not create the impression with or lead any third party to interpret or construe any condition contained in this Agreement, that this Agreement is an Agency Agreement and/or Partnership Agreement and/or a Joint Venture and/or any other similar arrangement;
- 4.7 not allege that this Agreement grants it, either directly, or by implication, or by estoppel or otherwise a license under any patent, or patent application, or that it is entitled to utilise the Confidential or Disclosed Information in any way contrary to the stipulations contained in this Agreement;
- 4.8 on termination of this Agreement, act with the Confidential or Disclosed Information, in accordance with a Notice delivered to it by the Discloser and if no such Notice was delivered to the Recipient it shall destroy the Confidential or Disclosed Information in a similar manner to which it would destroy information that it would consider to be its own Confidential or Disclosed Information.

## **5. RETURN AND DESTRUCTION OF INFORMATION**

- 5.1 The Discloser undertakes to furnish the Recipient at least 7 (seven) calendar days prior to this Agreement being terminated, for whatever reason, with a Notice instructing the Recipient what it should do with the Confidential or Disclosed Information once the agreement has been terminated.

## **6. SCOPE AND APPLICATION**

- 6.1 This Agreement applies to Confidential and Disclosed Information that may have been communicated by either Party to the other prior to the date of this Agreement or during the subsistence of this Agreement.
- 6.2 Neither the Discloser makes any warranty or representation as to the sufficiency or accuracy of its Confidential Information or the use thereof, nor shall it incur any responsibility, liability or obligation by reason of the communication of the same by it to the Recipient hereunder.

## **7. DURATION**

The term of this Agreement during which the disclosure of Confidential Information is covered by the terms hereof shall commence on the date set forth above and remain in force for five (5) years or such period required to complete the Project, whichever period expires last. The Recipient shall however continue to be bound by the obligations of confidentiality and non-use set forth herein for an indefinite period from the date of termination of this Agreement

## **8. REMEDY**

The Recipient accepts and agrees that the Confidential Information disclosed or to be disclosed to it by the Discloser pursuant to this Agreement is, by its nature, confidential and sensitive information and that the misuse or unauthorised disclosure of which is likely to cause the Discloser considerable damage for which monetary compensation is likely to

be inadequate and accordingly that, without prejudice to other rights and remedies, the Discloser is entitled to relief by way of injunction including interim injunction.

## **9. APPLICABLE LAW, DISPUTE RESOLUTION AND JURISDICTION**

- 9.1 This Agreement shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.
- 9.2 In the event of any dispute or differences arising between the Parties relating to, or arising out of, this agreement, the Parties shall make every effort to settle such dispute or difference amicably.
- 9.3 If the dispute or difference is not resolved or settled in 14 (fourteen) days, the said dispute or difference will be submitted for resolution to a competent court with jurisdiction to hear the matter, unless otherwise agreed by the Parties.
- 9.4 The provisions of this clause will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.

## **10. ENTIRE AGREEMENT AND VARIATIONS**

- 10.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.
- 10.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.
- 10.3 Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.

## **11. ASSIGNMENT, CESSION AND DELEGATION**

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

## **12. RELAXATION**

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

## **13. WAIVER**

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

## **14. SEVERABILITY**

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be executed by themselves or their duly authorised representatives as follows;

Signed for and on behalf of

Signed by the

\_\_\_\_\_  
**("Discloser")**

\_\_\_\_\_  
**("Recipient")**

at \_\_\_\_\_ on \_\_\_\_\_

**Name** \_\_\_\_\_

**Name** \_\_\_\_\_

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

**Witness** \_\_\_\_\_

**Witness** \_\_\_\_\_

**Witness** \_\_\_\_\_

**Witness** \_\_\_\_\_