



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Between

PUBLIC INVESTMENT CORPORATION SOC LIMITED

(Registration Number 2005/009094/30)

("Disclosing Party" or "PIC")

and

(Registration Number:

("Receiving Party")

(Hereinafter referred to as the Parties collectively and where the context requires, individually a "Party".)

Table of Content

PUBLIC INVESTMENT CORPORATION SOC LIMITED.....	1
1. Definition and Interpretation	3
2. Introduction	3
3. The Confidential Information	4
4. Disclosure of Confidential Information.....	4
5. Title.....	5
6. Restrictions on disclosure and use of the Confidential Information	5
7. Publicity	6
8. Standard of care.....	6
9. Return of material containing or pertaining to the Confidential Information	6
10. Excluded Confidential Information.....	7
11. Data Protection	8
12. Operator Warranty	8
13. Protection of Personal Information	9
14. Indemnity	9
15. Term	9
16. No Solicit.....	10
17. Additional Action.....	10
18. Breach.....	10
19. Amendments	10
20. Enforcement.....	10
21. Headings.....	10
22. Representations & Warranties	10
23. Entire agreement.....	11
24. Governing law	11
25. Dispute Resolution.....	2
25. Submission.....	12
26. Domicile (Physical Address)	12
27. Severability	13

1. Definition and Interpretation

- 1.1. **“Agreement”** means this written services agreement between the PIC and the Operator;
- 1.2. **“Data Subject”** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 1.3. **“Operator”** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 1.4. **“Parties”** means the parties to this Agreement being, together, the PIC and the Operator and **“Party”** means any one of them;
- 1.5. **“Personal Information”** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 1.6. **“POPI”** shall mean the Protection of Personal Information Act, No 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;
- 1.7. **“Privacy and Data Protection Conditions”** shall mean the 8 (eight) statutory prescribed conditions for the lawful Processing of Personal Information as listed in section 4(1) of POPI and dealt with in detail in Part A of Chapter 3 of POPI;
- 1.8. **“Processing”** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 1.9. **“Record”** shall have the meaning ascribed to it in Chapter 1 of POPI;
- 1.10. **“Public Investment Corporation SOC Limited”** is a state owned entity duly registered and incorporated in terms of the company laws of the Republic of South Africa, bearing registration number: 2005/009094/30.
- 1.11. **“Responsible Party”** shall have the meaning ascribed to it in Chapter 1 of POPI; and
- 1.12. **“Signature Date”** means the date of last signature of this Agreement provided that it is signed by both of the Parties.
- 1.13. **“Company name”**, a company duly registered and incorporated in terms of South African Law bearing registration number: 2419282.

2. Introduction

- 2.1. The Parties wish to record the terms and conditions upon which each shall disclose confidential information to the other, which terms and conditions shall constitute a binding and enforceable agreement between the Parties and their agents.

- 2.2. This agreement shall also bind the Parties, notwithstanding the date of signature hereof, in the event that either Party shall have disclosed any confidential information to the other Party prior to date of signature hereof.
- 2.3. For the purposes of this agreement the Party which discloses confidential information shall be referred to as "the Disclosing Party" and the Party which receives the confidential information shall be referred to as "the Receiving Party".
- 2.4. The purpose for which this information is being disclosed is in terms of the Transcription Services that will be provided by the Service Provider.

3. The Confidential Information

"Confidential Information" shall, for the purpose of this agreement include, without limitation, any technical, commercial or scientific information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, terms of agreements, details of investment strategies, organisational strategies or structure of either Party, products or services offered by either Party or any other matter which relates to the business of either Party in respect of which information is not readily available in the normal course of business which may come to the knowledge of the other Party in whatever form, disclosed to or assessed by either Party during the course of his relationship with the other Party.

4. Disclosure of Confidential Information

- 4.1. The Disclosing Party shall only disclose the Confidential Information to the Receiving Party to the extent deemed necessary or desirable by the Disclosing Party in its discretion.
- 4.2. The Receiving Party acknowledges that the Confidential Information is a valuable, special and unique proprietary asset to the Disclosing Party.
- 4.3. The Receiving Party agrees that it will not, during or after the course of their relationship and/or the term of this agreement as described in Clause 14, disclose the information to any third party for any reason or purpose whatsoever (except to its insurers and legal advisors in the event of a possible claim) without the prior written consent of the Disclosing Party, save in accordance with the provisions of this agreement. In this agreement "third party" means any party other than the Parties.

4.4. Notwithstanding anything to the contrary contained in this agreement the Parties agree that the Confidential Information may be disclosed by the Receiving Party to other related parties (including insurers and professional advisors) on a need-to-know basis; provided that Party takes whatever steps are necessary to procure that such other related parties agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the Confidential Information to third parties. For purposes of this clause, the Receiving Party's other related Parties and employees, directors or managers shall be deemed to be acting, in the event of a breach, as that Party's duly authorised agents.

4.5. The Receiving Party agrees:

4.5.1. not to utilise, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this agreement for any purpose whatsoever without the prior written consent of the Disclosing Party; and

4.5.2. 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, 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.

5. Title

5.1. All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party:

5.1.1. to be proprietary to the Disclosing Party; and

5.1.2. not to confer any rights to the Receiving Party of whatever nature in the Confidential Information.

6. Restrictions on disclosure and use of the Confidential Information

6.1. The Receiving Party undertakes not to use the Confidential Information for any purpose other than:

6.1.1. that for which it is disclosed; and

6.1.2. in accordance with the provisions of this agreement.

7. Publicity

Receiving Party may not generate any promotional materials, nor use the PIC's name, logo or other information in any manner without the PIC's prior written consent. Receiving Party may not issue any press releases regarding its engagement/relationship with the PIC without the PIC's prior written consent.

8. Standard of care

The Receiving Party agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this agreement using the same standard of care that the Receiving Party applies to safeguard its own proprietary, secret or Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

9. Return of material containing or pertaining to the Confidential Information

9.1. The Disclosing Party may, at any time, request the Receiving Party to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this agreement 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. Notwithstanding the foregoing, Receiving Party may retain any Confidential Information included in its working papers for record purposes which shall remain subject to the provisions of this agreement.

9.2. As an alternative to the return of the material contemplated in clause 8.1 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 all such material has been destroyed. Notwithstanding the aforesaid, the Receiving Party will be entitled to retain such documents as they are reasonably required to retain in order to fulfil their professional obligation with regard to document retention, imposed on them by the professional body of which they are a member. Notwithstanding the foregoing, the obligation of the Receiving Party to return or destroy the Confidential Information shall not apply to computer records and files which have been created pursuant to automatic archiving and back-up procedures.

- 9.3. The Receiving Party shall comply with a request in terms of this clause, within 5 (five) Business Days of receipt of such a request.

10. Excluded Confidential Information

- 10.1. The obligations of the Receiving Party pursuant to the provisions of this agreement shall not apply to any Confidential Information that:

10.1.1. is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;

10.1.2. is or becomes publicly known, otherwise than as a result of a breach of this agreement by the Receiving Party or after disclosure to the Receiving Party becomes part of the public domain lawfully and without breach of any confidentiality obligations;

10.1.3. is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of this agreement;

10.1.4. is disclosed by the Receiving Party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation, or governing body code of which it is a member in force from time to time; provided that in these circumstances, the Receiving Party shall advise the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard and 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 greatest extent possible in the circumstances;

10.1.5. is disclosed to a third party pursuant to the prior written authorisation of the Disclosing Party;

10.1.6. is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

11. Data Protection

- 11.1. Ownership of all the PIC Data whether under its control or not shall continue to vest in the PIC and the Service Provider shall not obtain any proprietary rights in such data.
- 11.2. The PIC Data in the possession of the Service Provider, or to which the Service Provider may have access during the currency of this Agreement, may not be used by the Service Provider for any purposes whatsoever other than as may be specifically required to enable the Service Provider to comply with its obligations in terms of this Agreement and for the completion of the Project.
- 11.3. The PIC Data is and shall remain the property of the PIC and shall be deemed Confidential Information of the PIC.
- 11.4. Both Parties shall take reasonable precautions having regard to the nature of their obligations in terms of this Agreement, to preserve the integrity of the PIC Data and to guard the integrity of the PIC Data and to prevent any corruption or loss of such data.
- 11.5. The provisions of this clause 10 are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force.

12. Operator Warranty

- 12.1. The Operator warrants that when processing any Personal Information for and on behalf of the PIC it shall:
 - 12.1.1. process such Personal Information only with the knowledge and authorisation of the PIC;
 - 12.1.2. not disclose Personal Information to any third parties without the written consent of the PIC unless required by law or in the course of the proper performance of the Operator's duties;
 - 12.1.3. have due regard to generally accepted information security practices and procedures which may apply to the Operator generally or be required in terms of specific industry or professional rules and regulations;
 - 12.1.4. notify the PIC immediately where there are reasonable grounds to believe that Personal Information has been accessed or acquired by any unauthorised person;

12.1.5. establish and maintain security measures to secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of Personal Information and unlawful access to, or processing of, Personal Information and shall take reasonable measures to:

- 12.1.5.1. identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;
- 12.1.5.2. establish and maintain appropriate safeguards against the risks identified;
- 12.1.5.3. regularly verify that the safeguards are effectively implemented; and
- 12.1.5.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

13. Protection of Personal Information

The Operator shall fully comply with the statutory obligations contained in POPI, with which the Operator warrants that it is fully conversant with as at the Signature Date, when Processing Personal Information obtained by the Operator from the PIC. Without limiting the generality of the aforesaid the Operator shall ensure that the Privacy and Data Protection Conditions are strictly adhered to when Processing the Data Subject's Personal Information.

14. Indemnity

The Operator hereby indemnifies and holds the PIC harmless from any liability whatsoever arising from the Operator's failure to comply with the warranties contained in this Agreement and its statutory obligations contained in POPI.

15. Term

Subject to clause 1 this agreement shall commence upon the date of signature of the last signing Party hereto ("the effective date") and shall endure for a period of 12 (twelve) months ("the term") thereafter, or for a period of one year from the date of the last disclosure of Confidential Information to the Receiving Party, whichever is the longer period, whether or not the Parties continue to have any relationship for that period of time. In the event that the Parties extend the term by mutual and written agreement, then the provisions hereof shall endure for a further minimum period of 12 (twelve) months mutatis mutandis.

16. No Solicit

Both Parties agree that they will not solicit, interfere with, or entice or endeavour to solicit, interfere with or entice away from the other Party, any employee or consultant of the other Party, or of either Parties consultant(s) or sub-contractor, for the duration of this agreement.

17. Additional Action

Each Party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

18. Breach

In the event that the Receiving Party should breach the provisions of this agreement and fail to remedy such breach within 7 (seven) days from date of a written notice to do so, then the Disclosing Party shall be entitled to invoke all remedies available to it in law including the institution of urgent interim proceedings and/or an action for damages.

19. Amendments

No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by both Parties.

20. Enforcement

The failure by the Disclosing Party to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of the Disclosing Party to enforce the provisions of this agreement.

21. Headings

The headings of the clauses of this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement.

22. Representations & Warranties

Each Party represents that it has authority to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

23. Entire agreement

This agreement contains the entire agreement of the Parties with respect to the subject matter of this agreement and supersedes all prior agreements between the Parties, whether written or oral, with respect to the subject matter of this agreement.

24. Governing law

This agreement and the relationship of the Parties in connection with the subject matter of this agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

25. Dispute Resolution

25.1. Should any dispute of whatever nature arise from or in connection with this agreement, then the dispute shall, unless the Parties otherwise agree in writing:

25.1.1. In the first instance be referred to internal dispute resolution. The matter will be addressed to the contact persons for each respective party. Should the dispute not be resolved within 5 business days, it would then be referred to the heads of department of each respective party. Should the dispute not be resolved within 5 business days, it would then be referred to the Chief Executive Officers ("CEO") of each respective party. Failing resolution by way of internal dispute resolution at the level of CEO in 5 calendar days, the parties shall refer the dispute for confidential mediation.

25.1.2. Confidential mediation shall take place by written notice to the Parties, by a mediator appointed by the Parties. Failing resolution by mediation or agreement in respect of a mediator, within 60 (sixty) days after the date of the aforementioned written notice (or such longer period, if the Parties so agree in writing), the dispute shall be finally resolved by way of binding arbitration.

25.1.3. The arbitration shall be conducted before an arbitrator jointly appointed by the Parties. Failing appointment of the arbitrator by the Parties within 10 (ten) Business Days from the date the matter was first referred to arbitration, the secretariat of the Arbitration Foundation of Southern Africa will appoint the arbitrator.

25.1.4. The arbitration shall be conducted in English and in accordance with the rules to be determined by the arbitrator.

25.1.5. The arbitrator will make an appropriate cost order in relation to the costs incurred by the Parties in respect of the mediation and arbitration. Should the arbitrator fail to do so then, subject to the other provisions of this agreement, each Party shall bear its own costs in both the mediation and the arbitration; however, the Parties shall share the fees and expenses of both the mediator and the arbitrator equally.

25.1.6. Nothing in this clause 25 shall preclude any Party from seeking urgent interim relief from a court of competent jurisdiction, which the Parties have submitted to in clause 26 below.

26. Submission

The Parties hereby submit to the non-exclusive jurisdiction of the Northern - Gauteng High Court.

27. Domicile (Physical Address)

27.1. Any written notice in connection with this agreement may be addressed:

27.1.1. in the case of **PIC** to –

Physical Address

Menlyn Maine Central Square
Corner Aramist & Corobay Avenue
Waterkloof Glen Extension 2
0181

Email:

and shall be marked for the attention of: -----

27.1.2. in the case of -----

Physical Address

Email:

and shall be marked for the attention of: -----

27.1.3. A Party may change that Party's address, by prior notice in writing to the other Party.

27.2. If any notice is to be sent by mail, it shall be sent by prepaid registered mail and shall then be deemed until and unless the contrary is proved, to have been received 10 (ten) days after the date of posting.

27.3. If any notice is sent by email, it will be deemed, until and unless the contrary is proved, to have been received on the date recorded as delivered if during business hours, or the next business day if sent after hours.

27.4. If any notice is delivered by hand, it will be deemed to have been received on proof of the date of delivery if delivered during business hours or the next business day if after hours.

28. Severability

In the event of any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, and this agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

SIGNED at _____ on _____ 20__

For and on behalf of

PUBLIC INVESTMENT CORPORATION SOC LIMITED

Name:-----

Capacity:-----

Who warrants that s/he is duly authorised
thereto-----

WITNESSES

1. -----
2. -----

SIGNED at _____ on _____ 20____

For and on behalf of

RECEIVING PARTY

Name:-----

Capacity-----

Who warrants that s/he is duly authorised

thereto-----

WITNESSES

1. -----

2. -----