



NON-DISCLOSURE AGREEMENT

between

STELLENBOSCH UNIVERSITY

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Contact Person	Anita Nel
Email Address	ajnel@sun.ac.za
Signature(s) <i>(For the University who warrants that s/he is duly authorised to sign)</i>	
Name	Anita Nel
Position	Director: Innovation & Business Development
Date	

(hereinafter "the University")

and

Company Registration Number	
Physical Address	
Postal Address	
Telefax Number	
Telephone Number	
Contact Person	
Email Address	
Signature(s) <i>(For Business Partner who warrants that s/he is duly authorised to sign)</i>	
Name	
Position	
Date	

(hereinafter "Business Partner")

The Parties agree to be bound by this cover sheet and by the attached terms and conditions which are incorporated in this cover sheet by this reference. The Business Partner acknowledges that it has read and understands the attached terms and conditions.

NON-DISCLOSURE AGREEMENT REFERENCE NUMBER	
EFFECTIVE DATE	

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** For purposes of the Agreement, the following terms shall have the following meanings -

- 1.1.1 "**Affiliate**" means, with respect to any entity, any other entity controlling, controlled by or under common control therewith;
- 1.1.2 "**Agreement**" means this document and the cover sheet hereto as amended from time to time in terms hereof;
- 1.1.3 "**Confidential Information**" means any information of a confidential nature, which has been, or may be obtained directly or indirectly by one Party hereto from the other Party hereto, whether in writing or in electronic format, or pursuant to discussions held between the Parties, or which can be obtained by examination, testing, visual inspection or analyses, including, without limitation a Party's Know-How, all materials, technologies, inventions, information relating to a Party's past, present and future research and development or to a Party's business activities, opportunities, products, services, clients, suppliers, or to a Party's technical knowledge, including, without limitation, all such Party's trade secrets, as well as the terms and conditions of this Agreement, any information identified as confidential, and any other material which contain or otherwise reflect, or are generated or derived from any such information as is specified in this definition;
- 1.1.4 "**Effective Date**" means the date specified as such on the cover sheet failing which it will be the Signature Date;
- 1.1.5 "**Improvement**" means any improvement, enhancement, alteration or modification to or of the Intellectual Property or Confidential Information of one Party wholly or partly developed by the other Party pursuant to or in the course of the Project;
- 1.1.6 "**Intellectual Property**" means any and all intellectual property rights of a Party (which for the University shall include all intellectual property rights pertaining to the Technology), including without limitation, patents, utility models, plant breeders' rights, design rights, trade marks (whether registered or otherwise), copyright and all similar and related rights in all jurisdictions that grant similar rights as the foregoing, and the right to apply for registration of any of the foregoing;
- 1.1.7 "**Know-How**" means any and all concepts, ideas, methods, methodologies, procedures, processes, know-how, formulae, techniques, models (including, without limitation, function, process, system and data models), templates, business rules, product architecture, utilities and routines; and logic, coherence and methods of operation of systems that a Party has created, acquired or otherwise has rights in (including for the University as it may pertain to the Technology);
- 1.1.8 "**Loss**" means all losses, liabilities, damages and claims, and all related costs and expenses (including legal fees at an attorney and own client scale and disbursements and costs of investigation, settlement, interest and penalties);
- 1.1.9 "**Materials**" means the material made available by the one Party to the other Party pursuant to this Agreement;
- 1.1.10 "**NIPMO**" means the National Intellectual Property Management Office established pursuant to the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 or such other replacement body;
- 1.1.11 "**Parties**" means the University and the Business Partner and "**Party**" means either one of them;
- 1.1.12 "**Personnel**" means any director, employee, student, agent, consultant, contractor or other representative of an entity;
- 1.1.13 "**Project**" has the meaning ascribed to it in Clause 2 below;
- 1.1.14 "**Signature Date**" means the date of signature of this Agreement by the Party signing last;
- 1.1.15 "**Technology**" means the technology of the University identified in Clause 2 below, as well as any Improvements thereto or derivative versions thereof that may arise in the course of the Project.

1.2 **Contra proferentum excluded.** No rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to this Agreement.

2. **PROJECT**

2.1 **Project Scope.** The Parties enter into this Agreement for the purposes of evaluating, exploring and/or negotiating a possible business arrangement between them ("the **Project**") regarding the exploitation of the following technology:

2.2 **Project Termination.** Either Party may terminate the Project at any time by giving the other Party a written notice thereto.

3. **TERM**

Notwithstanding the success or failure of the Project, or the termination of a Party's involvement with it, this Agreement shall commence on the Effective Date and shall remain in force and effect until expiry of a period of 5 (five) years following termination of the Project, unless replaced by another agreement concluded between the Parties superseding this Agreement.

4. **THE MATERIAL**

4.1 **Licence to Use.** Each Party is hereby granted a non-transferable, non-exclusive right to use the Materials (and the information pertaining to such Materials that is made available to it by the other party) solely for the purposes of evaluating the Technology in the pursuit of the Project. Save as aforesaid all rights are reserved and neither Party shall use or permit the use of the Material provided by the other Party for any other purpose, save with the other Party's prior written consent.

4.2 **Ownership of the Material.** Each Party acknowledges and agrees that notwithstanding delivery of Materials to it by the other Party, all Materials will remain and constitute the sole and exclusive property (including all Intellectual Property Rights therein) of the Party from which it originates.

4.3 **Return of the Material.** Upon request by a Party or completion of the Project, each Party will dispose of the Material of the other Party as reasonably directed by the other Party and shall certify such disposal upon request.

4.4 **Handling.** Each Party shall comply with applicable Law in handling the Material, including as may be applicable to the import and export, transport, use, storage and disposal of the Material.

4.5 **No Warranties.** Each Party acknowledges that the Materials provided to it may have defects or hazardous properties and are provided without warranty of any kind, whether express or implied. Use of Materials will be at the sole and exclusive risk of the user.

5. **CONFIDENTIAL INFORMATION**

5.1 **Confidentiality obligation.** Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information which they may receive from the other Party ("**Disclosing Party**") or which becomes known to it during the term of this Agreement.

5.2 **The Receiving Party's obligations.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's Confidential Information, unless the Disclosing Party has expressly agreed otherwise in writing, the Receiving Party will not and will ensure that its Personnel and the Personnel of its Affiliates does not at any time, whether during this Agreement or thereafter, use or disclose any Confidential Information of the Disclosing Party other than as allowed in terms hereof. Without limiting the aforesaid, the Receiving Party shall:

5.2.1 notify the Disclosing Party of all persons to whom the Disclosing Party's Confidential Information is to be disclosed or who are to be granted access to the Disclosing Party's Confidential Information before those persons are permitted access to the Disclosing Party's Confidential Information;

5.2.2 if required by the Disclosing Party, arrange for any persons who are permitted access to the Disclosing Party's Confidential Information to give a written confidentiality undertaking to the Disclosing Party to be bound to the terms of this Agreement;

5.2.3 ensure that its Affiliates, its Personnel and the Personnel of its Affiliates, its subcontractors, professional advisers and any other person that it allows to or provides with access to the Disclosing Party's Confidential Information comply with the provisions of this Agreement;

5.2.4 procure that, upon request by the Disclosing Party, any materials containing Confidential Information of the Disclosing Party will be returned or otherwise disposed of as the Disclosing Party may direct, provided that in the event the Receiving Party

- is instructed to dispose of or destroy such materials, the Receiving Party shall provide the Disclosing Party with an acceptable certification of such destruction;
- 5.2.5 initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof; and
- 5.2.6 promptly notify the Disclosing Party if it becomes aware of any breach of confidence in respect of Confidential Information of the Disclosing Party by any person to whom it has disclosed such Confidential Information and shall give the Disclosing Party all reasonable assistance in connection with any actions and proceedings which it may institute as a result.
- 5.3 **Use of Confidential Information.** The Receiving Party may disclose the Disclosing Party's Confidential Information to its Personnel who are actively involved in the Project on a 'need to know basis' only, and such Personnel may be permitted to use such Confidential Information to the extent reasonably necessary for the pursuit of the Project only.
- 5.4 **Exceptions.** The obligations of the Receiving Party hereunder shall not apply to any information which -
- 5.4.1 can be demonstrated to have been lawfully in the public domain at the time of disclosure or subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 5.4.2 can be demonstrated through documentary proof to have been lawfully in the Receiving Party's possession prior to disclosure;
- 5.4.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such information; or
- 5.4.4 is disclosed pursuant to a requirement or request by a regulatory authority (including NIPMO), by operation of law or by any court of competent jurisdiction, provided that the Receiving Party gives as much notice of such impending disclosure as is reasonably possible and provides the Disclosing Party with all reasonable assistance in preventing and/or limiting such disclosure.
- 5.5 **Retention of Rights.** Unless otherwise agreed in writing, no right or licence is granted to a Party or its Affiliates in respect of the Confidential Information or Intellectual Property of the other Party. Each Party acknowledges that the Party from which the Confidential Information and Intellectual Property originates shall, remain solely entitled to all right, title and interest in and to such Confidential Information and Intellectual Property and that it has no claim of any nature in and to such Confidential Information or Intellectual Property or in respect of any of the Know-How pertaining thereto. Each Party undertakes that it shall not take any action to impute any right, title or interest in and to the other Party's Confidential Information or Intellectual Property.
- 5.6 **Improvements.** If a Party creates any Improvement, such Party shall promptly inform the other Party of such Improvement. No Party may register or apply for the registration of any Intellectual Property right with respect to any Improvement (including without limitation under patent, utility model or design) without the prior written consent of the other Party.
6. **GENERAL**
- 6.1 **Warranty of Authority.** Each Party warrants that it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under this Agreement
- 6.2 **Entire Agreement.** The Agreement constitutes the entire agreement between the Business Partner and the University in respect of the subject matter thereof and no agreements, representations or warranties between the Parties other than those set out therein are binding on the Parties.
- 6.3 **Variation.** No amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of both the Business Partner and the University.
- 6.4 **Waiver.** No latitude, granting of time or forbearance of a Party hereto regarding the performance of the other Party shall constitute a waiver of any term or condition of this Agreement and no waiver of any breach shall be a waiver of any continuing or subsequent breach. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.
- 6.5 **Governing Law and jurisdiction.** This Agreement shall be governed and construed according to the laws of the Republic of South Africa and the Parties agree to submit to the non-exclusive jurisdiction of the Western Cape High Court of South Africa, Cape Town to adjudicate disputes which may arise in connection with this Agreement. This will not prevent the Disclosing Party from seeking urgent or injunctive relief from any court with competent jurisdiction.
- 6.6 **Remedies.** The Parties agree that, in the event of a breach or threatened breach of this Agreement, the Disclosing Party is entitled to seek injunctive relief or specific performance, in order to obtain immediate remedies. Any such remedy shall be in addition to and not in lieu of any other remedies available at law, including monetary damages.