

# MUTUAL NON-DISCLOSURE AGREEMENT

## 1. PREAMBLE

The Parties as identified in Annexure A attached hereto are engaged in discussions relating to their potential collaboration in the Field as likewise described therein; are by virtue thereof are required to disclose Confidential Information to one another, and have agreed to do so subject to the terms and conditions as set out in this agreement.

## 2. DEFINITIONS

2.1 The following words and/or phrases, when used in this agreement, shall have the following meanings:

2.1.1 "**Confidential Information**" shall mean all scientific, technical, business, financial, past, present or future research, development, business activities, products, services and technical knowledge or marketing information, whether inside or outside the Field, which one party (the "Disclosing Party") discloses to the other party (the "Receiving Party") in connection with the discussions, and either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the Receiving Party that it constitutes Confidential Information. (Without limiting the generality of the foregoing, "Confidential Information" shall include any information that falls within the definition of 'Personal Information' (as defined in the Protection of Personal Information Act) ("POPI");

2.1.2 "**Disclosing Party**" shall mean the Party disclosing Confidential Information under this agreement;

2.1.3 "**Disclosing Purpose**" shall mean, as pertains to any particular joint opportunity(ies) in the Field, the discussions held or to be held between the Parties regarding their possible collaboration and future working relationship with regards to any such opportunity(ies);

2.1.4 "**Effective Date**" shall mean the date of the commencement of this agreement as indicated in Annexure "A";

2.1.5 "**Notice**" shall mean a written document addressed by one Party to the other and either delivered by hand; sent per registered post or telefaxed to the addresses as indicated in Annexure "A";

2.1.6 "**Receiving Party**" shall mean the Party receiving Confidential Information under this agreement.

## 3. OBLIGATION OF CONFIDENTIALITY

3.1 The Receiving Party undertakes and agrees:

3.1.1 to use the Disclosing Party's Confidential Information only to give effect to the Disclosing Purpose;

3.1.2 to hold in strict confidence and not to publish or disclose to any unauthorised third parties any of the Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party;

3.1.3 to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own information of like kind;

3.1.4 to limit any disclosure of such Confidential Information only to those of its employees and professional advisors who have a specific need –to- know to access such Confidential Information and either entered into a written agreement which impose, or are otherwise bound by the same restrictions as those imposed upon it by virtue of this agreement;

3.1.5 treat any Personal Information in a manner compliant with the POPI Act once in force;

3.1.6 not to disclose or reveal to any third party, whomsoever, either the fact that discussions or negotiations are taking, or have taken, place between the Parties; the content of any such discussions, or other facts relating to the Disclosing Purpose;

3.1.7 on termination of this agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a similar manner to which it would destroy its own Confidential Information.

## 4. EXCLUSIONS

4.1 The Receiving Party recognises that this agreement is not intended to restrict use or disclosure of any portion of the Disclosing Party's Confidential Information which:

4.1.1 is as at the Effective Date, or later, made known to the public or otherwise enters the public domain through no default by the Receiving Party of its obligations under this Agreement;

4.1.2 it can show was in its possession prior to the earliest disclosure by the Disclosing Party, as evidenced by written documents in its files;

4.1.3 is rightfully received by it from a third party having no obligation of confidentiality to the Disclosing Party;

4.1.4 is independently developed by the Receiving Party by a person(s) who did not have access to the Confidential Information of the Disclosing Party;

4.1.5 is disclosed by the Receiving Party after receipt of written permission from the Disclosing Party; or

4.1.6 it is requested or required by subpoena, court order, or similar process to disclose, provided that, in such an event, it will provide the Disclosing Party with prompt written notice of such request(s) so that the latter may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this agreement.

## 5. OWNERSHIP AND PROVISION OF INFORMATION

5.1 The Disclosing Party shall retain ownership of all its Confidential Information as disclosed hereunder.

5.2 Nothing contained in this agreement or in any disclosures made hereunder shall create or imply, or be construed as to grant to the Receiving Party any license or other rights in or to the Confidential Information and/or any intellectual property rights attached thereto, or act as a waiver of any rights that the Disclosing Party may have to prevent infringement or misappropriation of any patents, patent applications, trademarks, copyright, trade secrets, know-how or other intellectual property rights owned or controlled by the Disclosing Party as at the Effective Date.

5.3 The Disclosing Party provides the Confidential Information "as is" and accordingly no disclosure thereof by it hereunder shall constitute any representation, warranty, assurance, guarantee or inducement by such Disclosing Party with respect to infringement of patents or other rights of third parties, nor is any warranty or representation as to the accuracy, completeness, or technical or scientific quality of any of the Disclosing Party's Confidential Information provided hereunder. (For the avoidance of doubt it is stated expressly that the Disclosing Party neither makes, nor have made, any representation or warranty as to the merchantability or fitness for a particular purpose of any Confidential Information disclosed hereunder)

## 6. TERM OF OBLIGATION

The Parties' obligations concerning non-disclosure of Confidential Information contained in the above clauses shall commence on the Effective Date and shall continue for five (5) years from the date of each disclosure, unless otherwise agreed between the parties in writing, where after such obligations shall forthwith terminate.

## 7. NO VIOLATION

Each party represents that its compliance with the provisions of this agreement will not violate any duty which such party may have towards any third party, including obligations concerning the provision of services to others, confidentiality of information and assignment of inventions, ideas, patents or copyright.

## 8. BREACH

It is acknowledged that the breach of this agreement by the Receiving Party 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.

## 9. DOMICILIUM CITANDI ET EXECUTANDI

The Parties hereto respectively choose as their *domicilium citandi et executandi* for all purposes of, and in connection with this agreement, the physical addresses and contact details stated in the attached annexure A.

**10. NOTICES**

Any Notice to be given hereunder shall be given in writing and may be given either personally or may be sent by post or facsimile and addressed to the relevant party at its *domicilium citandi et executandi* address as chosen in Annexure "A". Any notice given by post shall be deemed to have been served on the expiry of 7 (seven) working days after same is posted by recorded delivery post or air mail. Any notice delivered personally or sent by facsimile shall be deemed to have been served at the time of delivery or sending.

**11. GOVERNING LAW AND JURISDICTION**

This agreement will be governed and construed by the laws of the Republic of South Africa and the Parties hereby submit to the exclusive jurisdiction of the South African courts to hear any dispute arising therefrom which the Parties are unable to settle amicably.

**12. GENERAL**

- 12.1 This agreement and Annexure "A" comprise the entire agreement between the parties concerning the subject matter and supersedes all prior oral and written agreements between them.
- 12.2 No waiver, alteration or cancellation of any of the provisions of the Agreement shall be binding unless made in writing and signed by the party to be bound.
- 12.3 The parties hereby warrant that the officials signing this agreement have the power to do so on behalf of the parties.
- 12.4 No public announcement, such as a media release, or disclosure beyond those disclosures authorised for Confidential Information hereunder may be made by either party concerning this agreement without the prior written approval of the other party.
- 12.5 Neither party is, by virtue of this agreement, authorised to use the name, logo(s) or trademarks of the other in connection with any advertising, publicity, marketing or promotional materials or activities, or for any other purpose whatsoever, without the prior written consent of the other party. For purposes of this clause, it is also recognised that, under the provisions of section 15 (1) of the Merchandise Marks Act, Act No 17 of 1941 of the Republic of South Africa, the use of the abbreviation of the name of the Council for Scientific and Industrial Research, "WNNR" and CSIR, is prohibited in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to goods, other than with the consent of the CSIR.
- 12.6 Both Parties shall remain free to use, in the normal course of its business, its general knowledge, skills and experience incurred before, during or after the discussions envisaged hereunder. (To this end, it is also recorded that nothing in this Agreement shall be construed as constituting an exclusive arrangement between the parties and both Parties shall remain free to explore market opportunities in the Field, unless otherwise agreed to in writing in a subsequent agreement.)

**ANNEXURE A: MUTUAL NDA**

**1. PARTIES TO THE NDA:**

**THE CSIR**, A statutory council, duly established under Act 46 of 1988 through its Operating Unit of .....herein represented by .....in his/her capacity as Executive Director and he/ she being duly authorised thereto; **and**

**XXXX**, registration number:..... a ....., with limited liability duly incorporated under the applicable laws of the Republic of South Africa herein represented by .....in his/her capacity as .....and he/she being duly authorised thereto

**2. CONTACT DETAILS FOR PURPOSES OF CLAUSE 11:**

**2.1 The CSIR**

Meiring Naude Road

Brummeria

Pretoria,0002

FOR ATTENTION:.....

Postal Address :

PO BOX 395

PRETORIA, 0001

FOR ATTENTION:.....

Telefax Communication :

FOR ATTENTION:.....

**2.2 XXXXXX**

Physical Address :

FOR ATTENTION:.....

Postal Address :

FOR ATTENTION:.....

Telefax Communication :

FOR ATTENTION:.....

**3. EFFECTIVE DATE: .....**

**3.1 THE FIELD:.....**

SIGNED ON THIS THE.....DAY OF.....AT..... IN THE PRESENCE OF THE FOLLOWING WITNESSES:

1. ....

2. ....

.....  
FOR THE CSIR

SIGNED ON THIS THE.....DAY OF.....AT..... IN THE PRESENCE OF THE FOLLOWING WITNESSES:

1. ....

2. ....

.....  
FOR XXXX