

# NON DISCLOSURE AGREEMENT

This agreement is effective as from \_\_\_\_\_ until \_\_\_\_\_ 20 between (hereinafter referred to as “XXXX” or “**Party**”), and The University of KwaZulu-Natal, a higher education institution and a juristic person in terms of the Higher Education Act 101 of 1997, whose administrative offices are located at the Office of the Registrar, University Road, Chiltern Hills, Westville, 3629, KwaZulu-Natal, South Africa herein represented by XXXXX, in his capacity as XXXXX, duly authorized (hereinafter referred to as “**UKZN**” or “**Party**”) are hereinafter collectively referred to as the “**Parties**”.

## WHEREAS:

- A. During the course of discussions and collaboration the Parties will gain access to Confidential Information (as hereinafter defined) pertaining to the affairs of the Parties; and
- B. The Parties wish to regulate how such Confidential Information is to be treated while in the possession or control of (the Receiving Party as hereinafter defined) so as to protect the proper interests of either Party and/or (the Disclosing Party as hereinafter defined).

## NOW IT IS HEREBY AGREED AS FOLLOWS:

### 1. DEFINITIONS

1.1 The following words and phrases shall have the following meanings unless the context otherwise requires:

1.1.1 “**Business Day**” shall mean any day other than a Saturday, Sunday or a public holiday recognised as such under the Public Holidays Act, 1994.

1.1.2 "**Confidential Information**" shall mean-

- (a) in respect of Information provided in documentary form or by way of a model or in other tangible or intangible form, Information which at the time of disclosure to the Receiving Party is marked, or otherwise designated, to show expressly or by implication that it is imparted or disclosed in confidence; and
- (b) Information supplied by the Disclosing Party the nature of which, or circumstances in which it was supplied, implies that it should be treated as confidential, notwithstanding the absence of any mark or designation of confidentiality; and
- (c) in respect of Information that is imparted or disclosed orally or by demonstration or presentation, any Information that the Receiving Party has been expressly informed by the Disclosing Party at the time of disclosure to have been imparted or disclosed in confidence; and
- (d) in respect of Information imparted or disclosed orally or by demonstration or presentation, any note or record of the disclosure; and
- (e) any copy of any of the foregoing; and
- (f) Information that is acquired, directly or indirectly by the Receiving Party other than from the Disclosing Party.

1.1.3 "**Disclosing Party**" shall mean the Party who imparts or discloses the Confidential Information to the Receiving Party.

1.1.4 "**Information**" shall include information provided to or acquired by the Receiving Party in oral or documentary form or by way of models or other tangible or intangible form or by demonstrations or presentations.

1.1.5 "**Proper Use**" shall mean the use of Confidential Information wholly necessarily and exclusively for the purpose set out in recital A above.

1.1.6 "**Receiving Party**" shall mean the Party who receives or acquires the Confidential Information from the Disclosing Party.

## **2. OBLIGATIONS OF CONFIDENTIALITY**

2.1 In consideration of the provision of Confidential Information by the Disclosing Party or acquisition thereof by the Receiving Party, the Receiving Party shall:-

2.1.1 take proper and all reasonable measures to ensure the confidentiality of all Confidential Information, including keeping it separate from information belonging to the Receiving Party;

2.1.2 use such Confidential Information only for the Proper Use;

2.1.3 permit access to such Confidential Information only to such of its employees having a need to know such Confidential Information as are bound to confidentiality by their employment agreements or otherwise and inform each of such employees of the confidential nature of the Confidential Information and of the obligations on the Receiving Party in respect thereof;

- 2.1.4 make copies of the Confidential Information only to the extent that the same are strictly required for the Proper Use;
  - 2.1.5 treat all Confidential Information with the degree of care to avoid disclosure to any third party as is used with respect to the Receiving Party's own information of like importance which is to be kept confidential; and
  - 2.1.6 promptly return all Confidential Information to the Disclosing Party upon its written request or (at the Disclosing Party's option) destroy all such Confidential Information and provide to the Disclosing Party a certificate of such destruction signed by a duly authorised officer of the Receiving Party.
- 2.2 Where any Confidential Information is the subject of any national or governmental security regulations the Receiving Party shall, and hereby undertakes to, take such measures as may be required by such regulations to protect such Confidential Information.
- 2.3 Without prejudice to any obligations imposed on and assumed by the Receiving Party under any national or governmental security regulations the obligations of confidentiality herein shall not apply to any Confidential Information which the Receiving Party by its written records can show:-
- 2.3.1 was in the possession of the Receiving Party before such Confidential Information was imparted or disclosed by the Disclosing Party; or
  - 2.3.2 is independently developed by any servant, agent or employee of the Receiving Party without access to, use or knowledge of the Confidential Information and to whom no disclosure of the Confidential Information has been made; or

- 2.3.3 is in or subsequently comes into the public domain other than by breach by the Receiving Party of its obligations hereunder; or
- 2.3.4 is received by the Receiving Party without restriction on disclosure or use from a third party which the Receiving Party honestly believes is entitled to make such disclosure; or
- 2.3.5 is approved for release by the written agreement of the Disclosing Party; or
- 2.3.6 is required to be disclosed by law or the rules of any governmental organisation: provided that if the Receiving Party is to make such disclosure, it shall give the Disclosing Party as much prior notice thereof as is reasonably practicable so that the Disclosing Party may seek such protective orders or other confidentiality protection as the Disclosing Party, in its sole discretion, may elect and shall reasonably co-operate with the Disclosing Party in protecting the confidential or proprietary nature of the Confidential Information which is to be so disclosed.

### **3. OWNERSHIP OF INFORMATION**

Any Confidential Information imparted, disclosed or acquired hereunder shall remain the property of the Disclosing Party or the originator of such Confidential Information and shall be applied for the Proper Use only. No licence under any trade-mark, copyright, patent, design rights or any other intellectual property right is granted, whether expressly or by implication, to the Receiving Party by the disclosure or acquisition of such Confidential Information. The disclosure of such Confidential Information shall not constitute any representation or warranty, express or implied with respect to the non-infringement of trade-marks, patents, copyright, design rights or any other intellectual property rights belonging to third parties.

**4. NO WARRANTY**

No representation or warranty of any kind is given by the Disclosing Party with respect to Confidential Information provided to the Receiving Party by the Disclosing Party or otherwise acquired by the Receiving Party, including but not limited to any representation or warranty as to its accuracy or completeness or as to the purpose for which the Confidential Information may be used. The Disclosing Party shall have no liability to the Receiving Party for any claim by the Receiving Party arising out of the Receiving Party's use of such Confidential Information or to indemnify the Receiving Party in respect of any claim made against the Receiving Party by any third party arising out of use of the Confidential Information.

**5. DURATION**

The obligations of confidentiality hereunder shall survive and continue for a period of 5 (five) years from the date of this Agreement.

**6. AMENDMENTS AND NO WAIVER**

6.1 The provisions of this Agreement shall not be modified, amended or waived except by a written instrument duly executed by the Parties. The requirement of written form can only be waived in writing.

6.2 The failure or neglect by the Disclosing Party to enforce at any time any of the provisions hereof shall not be construed and shall not be deemed to be a waiver of the Disclosing Party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Disclosing Party's rights to take subsequent action. No waiver by a Party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or

breach in other instances or a waiver of any other term, covenant, representation or warranty.

6.3 If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby and the Parties shall use reasonable endeavours to negotiate, in good faith, with a view to substituting for the provision in question a valid, legal and enforceable provision as similar as possible to the provision in question.

## **7. NOTICES**

Any notice required to be given hereunder by either Party to the other shall be in writing and shall be deemed to have been sufficiently given if transmitted by telex or facsimile or delivered by hand or sent by registered or recorded delivery post to the address of the Party as stated herein. Any notice so given shall be deemed to have been duly given, if sent by telex or facsimile, at 10 a.m. local time in the place of receipt on the first Business Day after completion of the transmission; and, if delivered by hand, at 10 a.m. local time in the place of receipt on the first Business Day after being left at the address of the Party as stated herein; and, if sent by registered or recorded delivery post, on the third Business Day after posting it.

## **8. NO POACHING**

The Parties shall, and shall procure that its subsidiaries shall, not solicit to hire or hire any employee of the other Party with whom the Parties first had contact or learned of during the activities connected with the purpose referred to in recital A above, without the prior written consent of the other Party: provided, however, that nothing in this Agreement shall restrict or preclude the rights of the Parties or its subsidiaries to make general solicitations for employees by way of advertisements in the media (including, without limitation, trade media) or by engaging search firms to engage in solicitations that are not targeted or

focused on the employees of a Party and to hire any employees responding to such solicitations.

**9. BREACH**

In the event that the terms and conditions of this Agreement are breached by the Receiving Party, the Disclosing Party may, at its option, elect to institute proceedings in court to obtain damages, to enforce specific performance thereof, or to otherwise enjoin the disclosure or unauthorised use of its Confidential Information.

**10. NO ASSIGNMENT**

Neither Party shall assign this Agreement or any part thereof without the prior written consent of the other.

**11. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by, and construed in accordance with, the laws of the Republic of South Africa and the Parties hereto submit to the exclusive jurisdiction of the courts of the Republic of South Africa for all purposes connected with it save that the Disclosing Party reserves the right to institute legal proceedings or take any other actions in any jurisdiction as the Disclosing Party believes is necessary to protect its Confidential Information and other intellectual property rights and trade secrets.



In witness of which the Parties have executed this Agreement the day and year first written above.

As witnesses:

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

\_\_\_\_\_

\_\_\_\_\_

for and on behalf of XXXX who warrants that he is duly authorised to sign hereto

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

Name: XXXX

Title: XXXXXXXX

As witnesses:

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

\_\_\_\_\_

\_\_\_\_\_

for and on behalf of UKZN who warrants that he is duly authorized to sign hereto

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

Name: XXXXXXXXXX

Title: