*D05 Parkview Villas1*

*19 Rogers Street*

*Cape Town 7530*

*South Africa*

TEL: +27 21 974 9061

**Non-Disclosure Agreement**

**Between**

**KARISANI (Pty) Ltd**

**(t/a KARISANI IT)**

**Company Registration: 2013 / 154675 / 07**

**and**

**Partner Company Registered Name**

**Company Registration - --------------**

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

1. PARTIES AND EFFECTIVE DATE

This Non-Disclosure and Confidentiality Agreement (the “**NDA**”) dated and effective as of **05/04/2022** (the “**Effective Date**”) is entered into by and between:

**KARISANI (PTY) LTD**, a company incorporated and existing under the laws of South Africa, having its principal place of business at D05 Parview Villas 1, 19 Rogers street, Cape Town 7530, South Africa (herein referred to as “**KARISANI**”);

and

**PARTNER ,** a company incorporated and existing under the laws of South Africa, having its principal place of business at ------------------------------------------------------------------------- South Africa(herein referred to as **“Partner”**);

**KARISANI**, and **Partner** are collectively referred to herein as the “Parties” and individually as a “Party”.

**RECITAL**

1. The Parties have concluded or intend to conclude an agreement (“**Agreement**”)
2. During the course of, and prior to the execution of the Agreement, it may be necessary for either or both of the Parties to provide the other Party with confidential business and technical information.
3. In consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree with each other as follows.
4. DEFINITIONS

For the purposes of this NDA:

“**Affiliate**” means, in relation to a Party, any entity that directly or indirectly controls, or is controlled by, or is under common control with the Party in question.

For the purpose of this definition, "controlled by" or "control" with respect to any entity, shall mean:

* + 1. the ability, directly or indirectly, to exercise, or control the exercise of, a majority of the general voting rights associated with issued securities of that entity, whether pursuant to a shareholder agreement or otherwise; or
    2. the right to appoint or elect, or control the appointment or election of, directors of that entity who control a majority of the votes at a meeting of the board of directors of that entity; or
    3. possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity whether through the ownership of voting securities, by agreement or otherwise; or
    4. in the case of a partnership, or unincorporated entity, the authority to elect more than one half of the management members or other individuals exercising similar authority to that of a director in a company, with respect to such partnership, or unincorporated entity; or
    5. the beneficial ownership of more than 10% of the issued securities, shares or participating interest in the charter capital or equity of such entity;

“**Confidential Information**” means any information, whether tangible or intangible, in whatever form or medium embodied in data, technical knowledge, specifications, chemical make-up, materials and/or other communications, as well as current propritery and contractual business relationships, relating to or useful in connection with the business, affairs, operations, activities, commercial and financial information, technology or processes of the Disclosing Party (and in the case of KARISANI, its Confidential Information shall be deemed to include information of or pertaining to KARISANI' clients and customers and their respective Affiliates).

* + - 1. disclosed or provided by the Disclosing Party to the Receiving Party; or,
      2. that may be learned, acquired or derived by the Receiving Party during any examination of the said information or during any negotiation or discussions concerning the Subject; or
      3. which has been identified by, or on behalf of, the Disclosing Party as confidential;

“**Disclosing Party**” and “**Receiving Party**” mean any Party respectively disclosing and receiving Confidential Information pursuant to the terms of this NDA. Either Party may be a Disclosing Party or a Receiving Party as the context may require; and

“**Representatives**” means a Party’s Affiliates, and the respective directors, employees, agents, subcontractors, consultants and advisers of the Party or its Affiliates or any of the aforegoing.

1. RULES OF INTERPRETATION

For all purposes of this NDA, unless the context otherwise requires:

Words in the singular include the plural and vice versa and words in a particular gender include all genders.

The expressions “hereunder”, “herein” and “hereof” refer to the provisions of this NDA in its entirety.

Any reference to an agreement means a reference to such agreement as amended, modified, supplemented, restated or replaced from time to time.

Any reference to an entity includes any successor to such entity and its permitted assigns.

Headings of Clauses in this NDA are for convenience and shall not be taken into account in the construction or interpretation of this NDA.

Where a term is defined herein, a derivative of that term shall have a corresponding meaning unless the context otherwise requires.

The word “including” and “includes” is not limiting, irrespective of whether non-limiting language such as “without limitation” or “but not limited to” or words of similar import are used with reference thereto.

Any rule of construction or interpretation that this NDA shall be construed or interpreted against the Party responsible for the drafting or preparation of the NDA, shall not apply.

If any provision of this NDA is found to be invalid, illegal or unenforceable in any respect, in whole or in part, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1. DISCLOSURE AND CONFIDENTIALITY ARRANGEMENTS

**Disclosure**

The Disclosing Party shall disclose so much of its Confidential Information to the Receiving Party as the Disclosing Party deems appropriate in the circumstances. The Disclosing Party shall disclose such Confidential Information on a non-exclusive basis, either directly or indirectly.

**Undertakings**

In consideration of any Confidential Information received, learned, acquired or derived pursuant to this NDA, each Receiving Party undertakes, and will ensure that its Affiliates and Representatives undertake:

* + - 1. to treat the Confidential Information as strictly confidential, not to divulge to any third party or sell, trade, publish, reproduce or reverse engineer any of the Confidential Information, in any manner, without the Disclosing Party’s prior written consent;
      2. not to put the Confidential Information in use for any purpose not related to the Subject in any manner, without the Disclosing Party’s prior written consent;
      3. not to make known or cause to be made known to any third party knowledge of the Subject unless such knowledge previously was of public record; and
      4. in the event Confidential Information received must be disclosed pursuant to the operation of law, stock exchange requirements, governmental regulation or court order, to give the Disclosing Party sufficient notice prior to disclosure and co-operate with the Disclosing Party in any attempt to test the disclosure requirement and/or to obtain a protective order, to the extent permitted by law.

**Exclusions**

Confidential Information shall not include information that the Receiving Party can establish:

* + - 1. at the time of disclosure is, or after disclosure becomes, generally known or available to the public through no act or failure to act by the Receiving Party;
      2. was known to it or its Affiliates or was possessed by it or its Affiliates without restriction prior to the disclosure by the Disclosing Party;
      3. was rightfully acquired and free from restrictions from a third party having an unrestricted right to disclose the same; and
      4. was independently developed by it or any of its Affiliates.

Specific Confidential Information shall not be deemed to be within any of these exclusions merely because it is embraced by more general published or available information. In addition, any combination of features shall not be deemed to be within the exclusions merely because individual features are

within the exclusions, but only if the combination itself and its principle of operation are within the exclusions.

**Access**

The Receiving Party shall limit disclosures of the Confidential Information to those of its Representatives:

* + - 1. who are directly involved in the Receiving Party’s appraisal of the Subject;
    1. whose knowledge of the Confidential Information is essential because of such involvement;
    2. who are first informed and advised by an authorised representative of the Receiving Party of the confidential nature of the Confidential Information; and
    3. who are under written obligation, not less onerous than the obligation in this NDA, of sufficient scope to obligate them to maintain the confidentiality of confidential information of third parties in the Receiving Party’s possession.

Receiving Party shall be responsible for any non-compliance by any Representative with the terms and conditions of this NDA to the same extent the Receiving Party would have been responsible under applicable law for its own breach of the same obligations.

1. RIGHTS AND PROCEDURAL ARRANGEMENTS

**Rights**

Neither this NDA nor the disclosure of any Confidential Information in accordance herewith shall be construed to grant any rights in or licenses to the Confidential Information to the Receiving Party.

**Return**

All rights to the Confidential Information shall remain vested in the Disclosing Party and the Disclosing Party may demand the return thereof at any time upon giving written notice to the Receiving Party. Within (seven) 7 working days of receipt of such notice, or of termination of the Agreement, as the case may be, the Receiving Party shall return all of the original Confidential Information and shall destroy all copies and reproductions (including in electronic form) in its possession and in the possession of its Representatives to whom it was disclosed pursuant to the Agreement. The Receiving Party may however retain one (1) copy of the Confidential Information in its confidential legal files for the sole purpose of identifying and maintaining its obligations under the Agreement, including in order to comply with any applicable laws or internal governance policies. Any and all such copies may be kept for a period of 3 (three) years, following which it must be destroyed.

**Duration**

The term of this NDA during which the disclosure of Confidential Information will take place shall commence on the Effective Date and continue for the duration of the Agreement, provided that the Receiving Party shall continue to be bound by the obligations of confidentiality and non-use set forth herein for a period of 5 (five)years from the date of termination of the Agreement.

**Warranties**

The Disclosing Party hereby represents and warrants that it has the right and authority to disclose the Confidential Information to the Receiving Party. The Disclosing Party, however, makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information disclosed hereunder. Any authorised use of, or reliance upon, the Confidential Information by the Receiving Party shall be solely at its own cost, risk and expense.

**Limitation of Liability**

Neither Party shall be liable to other, whether in delict or contract, for any indirect or consequential loss or damages (including loss of production, loss of prospective economic advantage or loss of business opportunity), punitive or exemplary damages or loss of profits.

**Liability and Remedies**

* + 1. The Receiving Party acknowledges the sensitive, proprietary nature and competitive value of the Confidential Information and that the Disclosing Party and its Affiliates may be irreparably damaged if any of the restrictions on disclosure or use of the Confidential Information in this NDA are not fully observed or performed by the Receiving Party and its Representatives. The Receiving Party further acknowledges that monetary damages alone may not be a sufficient remedy for any breach of this NDA by the Receiving Party or its Representatives, and that the Disclosing Party may be entitled to seek to obtain specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this NDA but shall be in addition to all other remedies available at law or equity to the Disclosing Party. The Receiving Party will take and cause its Representatives to take all such actions as is reasonably necessary to safeguard the Confidential Information from disclosure to anyone other than as permitted herein and the Receiving Party will be responsible for any of the breaches of this undertaking whether by it or any of its Representatives.
    2. Subject to the terms of the Agreement, the Receiving Party shall be liable to and shall indemnify and hold harmless the Disclosing Party and its Representatives (and where the Receiving Party is the Service Provider).

1. MISCELLANEOUS

**Law**

This NDA shall be governed by and interpreted in accordance with the laws of South African law excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.

1. DISPUTE RESOLUTION

All disputes arising under this NDA will be governed in accordance with dispute resolution provisions set forth in the Agreement.

* 1. This clause is a separate, divisible agreement from the rest of this Agreement and shall:
     1. not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause;
     2. remain in effect even if the Agreement terminates or is cancelled.
  2. Any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement shall be submitted to and decided by arbitration as set out in this clause.
  3. In the event that a Party becomes aware or suspects that there has been a breach of any clause of this Agreement, the Party concerned may issue notice to the breaching Party, detailing the said breach. The aggrieved Party may elect to resolve the said breach internally (but is not obligated to do so) by issuing notice to the defaulting Party and providing them an outline in terms of which they must respond.
  4. In the event that the aggrieved Party is not satisfied with the said response, or elects to take the matter directly to the arbitrator, the following will terms apply:
     1. The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("**AFSA**"). If agreement is not reached within 10 (ten) Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Chairman of AFSA for the time being.
     2. The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 (seven) Business Days, submit written comments on the request to the addressee of the request with a copy to the first Party.
     3. The arbitration shall be held in Cape Town and the Parties shall endeavour to ensure that it is completed within 90 (ninety) Business Days after notice requiring the claim to be referred to arbitration is given.
     4. The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.
  5. Nothing contained in this clause 8  shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief.

1. **Entire agreement**
   1. This NDA comprises the entire agreement between the Parties concerning disclosure of Confidential Information with regard to the Subject and no representations, warranties or negotiations between the Parties with regard to the subject matter hereof or concerning the Subject shall have any legal effect whatsoever unless contained in this NDA.
   2. In the event that KARISANI and **Partner** have agreed to any other provision and/or agreement which protects the confidentiality of KARISANI' Confidential Information ("Other Confidentiality Agreement"), then KARISANI and **Partner** hereby agree that the provisions of this NDA will apply in addition to the provisions of the Other Confidentiality Agreement, provided that if any provision of the Other Confidentiality Agreement conflicts with any provision of this NDA in relation to protection of KARISANI' Confidential Information, then the more onerous provision will prevail. to the extent necessary, the Parties hereby amend the Other Confidentiality Agreement to provide for the aforegoing.
2. **Assignment**

Neither this NDA nor any rights or obligations hereunder may be assigned, novated or otherwise transferred by either Party to any third party, without the prior written consent of the other Party. In the event a Party consents in writing to an assignment, novation or transfer of rights or obligations under this NDA, the assigning Party and the assignee shall be jointly and severally liable for compliance with all confidentiality and restricted use obligations related to the interests assigned.

1. **Indulgences**

No indulgence granted by any Party to any other Party, or failure to pursue any remedy for breach of this NDA, shall constitute a waiver of any of that Party's rights under this NDA; accordingly, that Party shall not be precluded, as a consequence of having granted such indulgence, or in failing to pursue any remedy, from exercising any rights or pursuing any remedy against the other Party which may have arisen in the past or which may arise in the future.

1. **Variations**

No amendments, changes or modifications to this NDA, including amendments to this clause, shall be valid except if the same are in writing and signed by a duly authorised representative of each of the Parties.

1. **Notices**

All notices to be given to a Party hereto pursuant to this NDA shall be in writing and delivered personally, by registered mail or internationally recognised overnight courier or by facsimile, addressed to the address for service of the addressee Party as described below:

* + 1. If to **partner**: to its address as stated in the Agreement or as otherwise specified here:

-------------------------------------------------------------------------------------------------------------,

South Africa for attention: CEO);

* + 1. If to KARISANI:

7th Floor, Mandela Rhodes Place, Corner Wale Street and Burg Street, Cape Town 8000, South Africa (for attention: CEO).

Any notice so given shall be conclusively deemed to have been given and received, if delivered personally or sent by registered mail or overnight courier, on the day of receipt.

1. **Counterpart Execution**

This NDA may be executed by electronic PDF copy, and in counterparts, and all such counterparts shall, together, form one and the same agreement.

1. **Independence of Obligations**

It is a material term of this NDA that each Party’s obligations under the Agreement are separate from and independent of the other Party’s obligations hereunder. Accordingly, any breach of the terms of this NDA by a Party shall not be just cause for the other Party to repudiate, breach this NDA or to stop complying with the confidentiality obligations and use restrictions placed upon it in terms of the NDA.

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| **Partner**  Name: **PARTNER REPRESENTATIVE**  Date of signature: dd/mm/yyyy  Signature\*:………………………………………  \*Duly authorised and warranting such authority | **KARISANI**  Name: Miss Portia Masimula  Date of signature: ----/-----/-------  Signature\*:…………………………………………  \*Duly authorised and warranting such authority |