

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

between

Modertech (Pty) Ltd

Identification number **2022/330552/07**

("the Disclosing Party")

and

Identification number _____
("the Receiving Party")

TABLE OF CONTENTS

1. INTERPRETATION AND DEFINITIONS.....	3
2. COMMERCIAL BASIS FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION	5
3. DISCLOSURE AND DUE DILIGENCE	5
4. RESTRICTIONS ON DISCLOSURE AND USE	5
5. TITLE.....	6
6. STANDARD OF CARE	6
7. RETURN OF INFORMATION	6
8. NON-CIRCUMVENTION	6
9. EXCLUSIONS.....	6
10. POPI.....	7
11. MISCELLANEOUS MATTERS	7

1. INTERPRETATION AND DEFINITIONS

In this Agreement, unless the context otherwise indicates:

- 1.1 the singular shall import and include the plural and vice versa;
- 1.2 words indicating one gender shall import and include the other gender;
- 1.3 words indicating natural persons shall import and include artificial persons;
- 1.4 the head notes to this Agreement are used for the sake of convenience only and shall not govern the interpretation of the clause to which they relate;
- 1.5 the following words and expressions shall, in addition to their respective ordinary meanings, bear the following meanings assigned to each of them respectively:
 - 1.5.1 **"Agreement"** means this Agreement and all annexures thereto;
 - 1.5.2 **"discussions"** means the discussions referred to in clause 2 below
 - 1.5.3 **"Disclosing Party"** means **Modertech (Pty) Ltd**, identification number **2022/330552/07**;
 - 1.5.4 **"Confidential Information"** means information, documentation or data, whether written, oral or graphic and whether electronically stored or otherwise, provided by the Disclosing Party to the Receiving Party, which is disclosed or provided to the Receiving Party by the Disclosing Party, subject to the exclusions set out in clause 8 below and including Personal Information as envisaged by POPIA;
 - 1.5.5 **"Identification number"** means the identifying number of a Party, being either its registration number in relation to an incorporated entity, or the identity or passport number in relation to a natural person;
 - 1.5.6 **"POPIA"** means the Protection of Personal Information Act, 2013;
 - 1.5.7 **"Receiving Party"** means _____ identification number _____;
 - 1.5.8 **"Party"** means any party to this Agreement; and

“Parties” means both parties to this Agreement;

- 1.5.9 **“Signature Date”** means the date of last signature of this Agreement by the Parties;
- 1.6 if any provision in the aforesaid definitions is or contains a substantive provision imposing rights and/or obligations on a Party/ies, effect shall be given to such provision as if it were a substantive provision in the body of this Agreement;
- 1.7 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.8 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday, or public holiday. The term “business day” shall mean any day other than a Saturday, Sunday or public holiday;
- 1.9 where any term is defined within the context of any particular clause in this Agreement (other than definitions appearing in clause 1), unless it is clear from the clause in question that the term so defined has application to the entire Agreement, that defined term shall bear the meaning ascribed to it for the entire main parent clause wherein it is defined (i.e. clause 1 or 2 or 3 etc), including all sub-clauses thereto, and not for the entire Agreement;
- 1.10 a reference to a Party includes that Party’s successors and permitted assigns;
- 1.11 in annexures to this Agreement that do not themselves contain their own definitions expressions defined in this Agreement shall bear the same meanings in such annexures;
- 1.12 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for such;
- 1.13 the use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.14 the rule of interpretation that a contract, or any part of a contract, is to be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

2. COMMERCIAL BASIS FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION

- 2.1 The Parties have entered into discussions in relation to the Parties exploring their respective co-operation in relation to their respective businesses and the advancement thereof.
- 2.2 This Agreement regulates any disclosure of Confidential Information by the Disclosing Party to the Receiving Party with effect from_____.
- 2.3 The Parties have agreed to record the terms and conditions that will apply to all Confidential Information that is disclosed by the Disclosing Party to the Receiving Party, including the protection and return thereof.

3. DISCLOSURE AND DUE DILIGENCE

- 3.1 The Disclosing Party undertakes to allow the Receiving Party reasonable access to the financial and business records relating to its business for the purposes of advancing the discussions.
- 3.2 The provisions of this Agreement shall at all times govern the access to, utilization and retention of Confidential Information.

4. RESTRICTIONS ON DISCLOSURE AND USE

- 4.1 The Receiving Party hereby irrevocably undertakes to the Disclosing Party that, during the discussions, and thereafter in perpetuity, it will:
 - 4.1.1 keep all Confidential Information strictly confidential, and not disclose, publish or communicate any such Confidential Information to any third party (save as is provided for elsewhere in this Agreement) without the prior written consent of the Disclosing Party;
 - 4.1.2 use all Confidential Information which may come into its possession as a result of, or arising from the discussions, solely for the purposes for which such information was disclosed to the Receiving Party and not publish, utilise, employ, exploit or in any other manner whatsoever (directly or indirectly) use the Confidential Information for any purpose whatsoever, without the Disclosing Party's prior written consent.
- 4.2 The provisions of this clause 4 shall not be construed as prohibiting the communication of any Confidential Information by the Receiving Party to any employee of the Receiving Party or any of its related companies or to any consultant or contractor engaged by the Receiving Party, provided that such communication is necessary for the performance of such employee's, consultant's or contractor's duties in the course of his/its engagement; and provided that such employee, consultant or contractor has

bound himself/itself in writing to hold such information confidential.

5. TITLE

All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party to be proprietary to the Disclosing Party and such disclosure shall not confer any rights of whatsoever nature in such Confidential Information upon the Receiving Party.

6. STANDARD OF CARE

The Receiving Party shall protect the Confidential Information in the same manner and with the same endeavour that a reasonable man in the Receiving Party's position would use to protect his own confidential information.

7. RETURN OF INFORMATION

The Disclosing Party may at any time request that the Receiving Party return any material containing pertaining to or relating to the Confidential Information, and may in addition request that the Receiving Party furnish a written statement to the effect that upon such return, the Receiving Party has not retained in its possession, or under its control, any such material.

8. NON-CIRCUMVENTION

The Parties intend pursuing the discussions, and in good faith they undertake not to enter into any agreement, arrangement or understanding with any third party/parties aimed at, or having the effect of, excluding or partly excluding, the other Party, or aimed at taking advantage of the Confidential Information to the detriment, or with the intention of excluding the other Party.

9. EXCLUSIONS

9.1 The provisions of this Agreement shall not apply to any Confidential Information which comes into the possession of the Receiving Party, if such information:

9.1.1 is lawfully in the public domain at the time of disclosure to the Receiving Party;
or

9.1.2 subsequently becomes lawfully part of the public domain by publication or otherwise; or

- 9.1.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party; or
- 9.1.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order, provided that the Receiving Party shall in such circumstances disclose only so much of the Confidential Information as the Receiving Party is legally obliged to disclose and shall take all reasonable steps to procure that the persons to whom such disclosure is made treat the information as confidential.

10. POPI

- 10.1 To the extent that the Disclosing Party discloses Personal Information (as envisaged and defined in POPIA) to the Receiving Party:
 - 10.1.1 the Disclosing Party warrants and represents that it has obtained all necessary approvals, in writing, from any Data Subject, to disclose such Personal Information to the Receiving Party; and
 - 10.1.2 in addition to any obligations imposed on the Receiving Party in this Agreement, the Receiving Party undertakes that:
 - 10.1.2.1 it will only process such Personal Information for the purposes outlined in this Agreement;
 - 10.1.2.2 it will not disseminate such Personal Information to any third party; and
 - 10.1.2.3 it will ensure that such Personal Information is stored in a manner that is consistent with POPIA.

11. MISCELLANEOUS MATTERS

11.1 Limitation of Liability

The Disclosing Party will not be liable to the Receiving Party for indirect or consequential losses, howsoever arising.

11.2 Negotiated Terms

The Parties agree that the terms and conditions of this Agreement are the result of negotiations between them and that this Agreement shall not be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

11.3 Entire Contract

This Agreement contains all the express provisions agreed on by the Parties relating to the subject matter of the agreement and the Parties waive the right to rely on any express provisions not contained in such documents.

11.4 Variation, Cancellation and Suspension

No variation of any of the terms and conditions of this Agreement will be binding on the Parties unless committed to writing and signed by them respectively.

11.5 Waivers

No indulgence which any Party/ies may grant to any other shall prejudice or constitute a waiver of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or might arise in the future.

11.6 Cession

Except as specifically contemplated in this Agreement, no Party may cede any rights nor delegate any obligations in terms of this Agreement without the prior written consent of all of the other Parties.

11.7 Successors

The provisions of this Agreement shall be binding upon the successors-in-title and assigns of the Parties.

11.8 Governing Law

This Agreement and all matters or disputes arising therefrom or incidental thereto, shall be governed and construed in accordance with the laws of the Republic of South Africa.

11.9 Signature in Counterparts

This Agreement shall be capable of execution in two or more counterparts, each of which shall be deemed to be an original but which together shall constitute one document.

11.10 Notices

- 11.10.1 Any notices to be given to the Parties in terms of this Agreement shall be in writing and delivered: (1) by hand during ordinary business hours or (2) posted by prepaid registered post to the addresses mentioned hereunder or (3) where applicable, by email to the address below, which addresses the Parties choose as *domicilium citandi et executandi* for all purposes arising out of this Agreement.

The Disclosing Party

Email: @admin@logmitec.com

The Receiving Party

Email:

or any other such address within the Republic of South Africa as either Party may choose by written notice to the other.

11.11 Every notice shall be deemed to have been properly given:

11.11.1 if delivered by hand, on the date of delivery;

11.11.2 if sent by prepaid registered post 7 (seven) days after the date on which the notice is posted;

11.11.3 if sent by email, upon the successful transmission thereof to the Receiving Party.

11.12 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

Signed at _____ on _____ 20____

Modertech (Pty) Ltd

Duly represented by: _____

Signature: _____

Witness Full Name: _____

Witness Signature: _____

Signed at _____ on _____ 20____

Signature: _____

Witness Full Name: _____

Witness Signature: _____