



NON DISCLOSURE AGREEMENT

ISSUE OF NON DISCLOSURE AGREEMENT TO PROSPECTIVE BIDDERS

This form is to be completed on receipt of the Non-Disclosure Agreement from Britam Holdings Limited . This page is to be completed immediately and scan copy in PDF format e-mailed to **procurement@britam.com** The data contained in this form will be used to send out any addenda that may arise. Firms that do not register their interest by completing this form may not be sent addenda that may arise.

Name of the firm's representative completing this form:

Firm's Name:

Address:

Tel No:

Email Address:

Signature: Date:

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made this.....day of.....2018.

BETWEEN

- (1) **Britam Holdings Plc.** of Post Office Box Number 30375-00100 in the Republic of Kenya (hereinafter referred to as "**the Disclosing Party**" which expression shall where the context so admits include its successors and assigns) of the one part; **AND**
- (2) _____
a Business Name registered in the said Republic and of Post Office Box Number _____ (hereinafter referred to as "**the Receiving Party**" which expression shall where the context so admits include its successors or personal representatives and assigns) of the other part.

WHEREAS:

1. The Disclosing Party is the owner of proprietary and confidential information and subject matter (hereinafter called "Confidential Material");
2. The Receiving Party shall receive Confidential information and/or Confidential Material in order to explore a business opportunity of mutual interest;
3. That such Confidential Information and/or Confidential Material is not public knowledge and is being disclosed to Recipient only under the terms and conditions of this Agreement;
4. Both parties to this Agreement consider the disclosure of confidential information and/or Confidential Material to the Recipient to be necessary and desirable for the purpose of exploring business opportunities and/or related activities.

WHEREAS this Agreement is being entered into by and between the parties in order to protect the confidentiality and non-disclosure of Confidential Material by the Recipient.

IT IS HEREBY AGREED AS FOLLOWS

1. Definitions:

- a. For purposes of this Agreement, "Confidential Information" shall include any information disclosed to by one party to the other, either directly or indirectly in writing, orally or by inspection of tangible or intangible objects, including without limitation documents, business plans, source code, software, documentation, financial analysis, marketing plans, customer names, customer list, customer data, projects, projections, cash flow charts, software

and copies, notes and extracts, and strategic plans, direction, manner, timing and implementation of any projects to be undertaken.

- b. For the purpose of this Agreement, the term "Receiving Party" shall include the Receiving Party, the company he or she represents, and all affiliates, subsidiaries, and related companies of Recipient.
- c. For purposes of this Agreement, the term "Representative" shall include Recipient's directors, officers, employees, agents, and financial, legal, and other advisors.

2. Use of the Confidential Information

The Receiving Party undertakes:

- a. Not to use any Confidential Information for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties hereto.
- b. Not to disclose the Confidential Information to any third parties, except where the confidential information is disclosed:
 - i. by the Receiving Party with the Disclosing Party's prior written approval; or
 - ii. necessarily by the Receiving Party in carrying out any obligations contained in any agreement between, inter alia, the Disclosing Party and the Receiving Party; or

by the Receiving Party after being obliged to disclose such information in terms of any law or regulations or by any judicial, governmental, supervisory or regulatory body, court of law or legal process; provided that, prior to such disclosure the form and content of the disclosure has been approved by the Disclosing Party (which approval shall not be unreasonably withheld or delayed)

- c. not to reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Disclosing Party's Confidential Information and which are provided to the Receiving Party hereunder.
- d. That it will not under any circumstances use or exploit the Confidential Information or any part thereof for a purpose other than the permitted purpose;
- e. To act in good faith at all times in performing its obligations under this Agreement, and that it shall protect the Confidential information disclosed pursuant to the provisions of this Agreement using the same standard of care that it applies to safeguard its own proprietary, secrets or confidential information .

3. Ownership of the Confidential Information

All Confidential Information is and remains the property of The Disclosing Party. The Recipient agrees to return such Confidential Information within five (5) days after The

Disclosing party makes a written request for part or all of its return or at the termination of this Agreement for any reason.

4. Maintenance of Confidential Information

The Receiving Party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Receiving Party shall take at least those measures that Receiving Party takes to protect its own most highly confidential information

5. No Additional Agreements

Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of Disclosing Party to enter into any other agreement with Recipient or prohibit Disclosing Party from providing the same or similar information to other parties and entering into agreements with other parties. Disclosing Party reserves the right, in its sole discretion, to reject any and all proposals made by Recipient or its Representatives with regard to a transaction between Recipient and Disclosing Party and to terminate discussions and negotiations with Recipient at any time. Additional agreements of the parties, if any, shall be in writing signed by Disclosing Party and Recipient.

6. Intellectual Property Rights

Nothing herein shall grant to The Recipient any intellectual property rights in the Disclosing Party's Confidential Information or Confidential Material. No commercial use, rights or any licences under any patent, trademark, know-how, trade secrets or any other proprietary rights are granted by the Disclosing Party to The Recipient by this Confidentiality Agreement. The Receiving Party agrees not to make any derivative works based on the Confidential Information

7. Term and Termination of Agreement and Continuation of Clauses

This Agreement will commence as of the effective date specified above and will continue for a period of Two (2 years) thereafter, at which time this Agreement shall automatically expire unless;

- a. terminated earlier by either party, with written notice of termination to the other party, or;
- b. the parties agree in writing to extend the term of this Agreement;
- c. upon expiration or termination of this Agreement, The recipient will immediately cease any and all disclosures or uses of Confidential Information and all such information obtained from The Disclosing Party and all copies thereof made by Recipient will be returned to The Disclosing Party within five (5) days.

8. Limitations on Confidentiality

Nothing in this Agreement shall be interpreted as placing any obligation of confidentiality and non use by the Recipient with respect to any information that:

- a. can be demonstrated to have been in the public domain as of the effective date of this agreement, or legitimately comes into the public domain through no fault of The Recipient;
- b. can be demonstrated to have been known to The Recipient prior to execution of this Agreement and was not acquired, directly or indirectly, from The Disclosing Party or from a third party under a continuing obligation of confidentiality;
- c. can be demonstrated to have been rightfully received by The Recipient after disclosure under this Agreement from a third party who did not require same to hold it in confidence or limit its use, and who did not acquire it, directly or indirectly, from The Disclosing Party under a continuing obligation of confidentiality;
- d. can be demonstrated to have been independently developed by personnel of The Recipient who had no substantive knowledge of any information provided by The Disclosing Party;
- e. is permitted to be disclosed or used pursuant to an express written consent from an authorized officer of The Disclosing Party; or
- f. is required to be disclosed pursuant to law or court order; provided that The Recipient provides prior notice to The Disclosing Party and provides sufficient time to The Disclosing Party to assert any exclusions or privileges that may be available by law.

9. Compliance with Legal Requirements

In the event that The Recipient is required by Law, regulation or Court Order to disclose any of the confidential information, The Recipient shall notify The Disclosing Party promptly and The Disclosing Party shall waive compliance to the terms of this agreement. The Recipient shall then furnish the Authorities with the portion of the Confidential Information required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so disclosed.

10. Dispute Resolution

- a. Should any dispute arise between the parties with regard to the interpretation, rights, obligations and/or implementation of any one or more of the provisions of this Agreement, the parties shall in the first instance attempt to resolve such dispute by amicable negotiation.
- b. Should such negotiations fail to achieve a resolution within Fifteen (15) days, either party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:-

- i. such arbitration shall be resolved under provisions of the Kenyan Arbitration Act 1995 (as amended from time to time);
- ii. the tribunal shall consist of one arbitrator to be agreed upon between the parties failing which such arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Chapter) upon the application of any party;
- iii. the place and seat of arbitration shall be Nairobi and the language of arbitration shall be English;
- iv. The award of the arbitration tribunal shall be final and binding upon the parties to the extent permitted by law and any party may apply to a court of competent jurisdiction for enforcement of such award. The award of the arbitration tribunal may take the form of an order to pay an amount or to perform or to prohibit certain activities; and
- v. Notwithstanding the above provisions of this clause, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

11. Remedies

Notwithstanding the provisions under Clause 9 above, the Parties acknowledge that, in the event of any breach of this Agreement by it, the Disclosing Party would be irreparably and immediately harmed and cannot be made whole by monetary damages. It is accordingly agreed that, In addition to any other remedy which it may be entitled, the Disclosing Party shall be entitled to seek an injunction to prevent breaches of, and compel specific performance of, this Agreement. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that this Agreement has been breached by either of these parties, then such breaching party will reimburse the non-breaching Party its costs and expenses (including and without limitation, reasonable legal fees and expenses) incurred in connection with all such litigation

12. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

13. No Warantees

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

14. Non-Assignment

This Agreement shall not be assigned or otherwise transferred in whole or in part by the Recipient without the prior written consent of the Disclosing Party

15. Notices

- a) The parties choose their respective addresses as set out in this clause, as their domicilium citandi et executandi ("Address") for the purposes of giving of any notice, the serving of any process and for any purpose arising from this Agreement.
- b) For the purpose of this Agreement the Parties' respective addresses are:

For the Disclosing Party

Britam Holdings Limited

P.O. Box 30375 – 00100

For the Receiving Party

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NAIROBI

- c. Each of the Parties shall be entitled, by written notice to the other, to vary its address from time to time to any other address within the Republic of Kenya or to vary the email address or facsimile number forming an element of such address.
- d. Any notice given by one Party to the other ("the Addressee") which:
 - i. Is delivered by hand during the normal business hours of the Addressee at the Addressee's address for the time being shall be deemed, (Unless the contrary is proved by the Addressee), to have been received by the addressee at the time of delivery;
 - ii. If transmitted by email or by facsimile to the facsimile number forming part of the Addressee's address, it shall be deemed to have been received by the Addressee (unless the contrary is proved by the Addressee) one Business Day after the date of dispatch.

16. Miscellaneous

- a. This Agreement supersedes all prior agreements, written or oral, between The Disclosing Party and The Recipient relating to the subject matter of this Agreement. The Agreement may not be changed, modified, or discharged, in whole or in part, except by a subsequent agreement in writing signed by authorized representatives of The Disclosing Party and The Recipient.

- b. This agreement does not intend or shall not in any way imply that an agency of partnership relationship exists between both parties.
- c. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
- d. The furnishing of Confidential Information hereunder will not constitute or be construed as a grant of any implied right or a covenant not to sue or forbearance from any other right of action (except as to permitted activities hereunder), by The Disclosing Party or The Recipient under any of The Disclosing Party's patents or other intellectual property rights.
- e. This Agreement will be construed and interpreted in accordance with the laws of the Republic of Kenya.

IN WITNESS WHEREOF the parties have set their respective hands hereto on the day and year first hereinbefore written.

SIGNED by _____)

for and on behalf of **Britam Holdings Plc.**

In presence of:)

NAME)

DESIGNATION)

SIGNATURE)

In Witness of:)

ADVOCATE)

SIGNED by)

for and on behalf of _____

in the presence of:)

NAME)

DESIGNATION)

SIGNATURE)

In Witness of:)

)

ADVOCATE)