**Confidentiality and Non-Disclosure Agreement**

Entered into by and between

**CODEDIGM (Pty) Ltd**

(“**CODEDIGM**”)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Description and Registration Number** | | | | CODEDIGM is a private company registered in accordance with the laws of South Africa with registration number **2019/276708/07** | | | | |
| **Physical Address** | | | | Suite 5 Pepper Tree Lane, 55 1st Street, Linden, Gauteng,  2104 | | | | |
| **Email** | | | |  | | | | |
| **Marked for the Attention of** | | |  | | | | | |
| **Signed at** | | | |  | **Date** |  | | |
|  | Signature | | | | | | |  |
|  |  | | | | | | |  |
| **Name** | |  | | | | | who warrants that they are duly authorised to sign | |
| **Designation** | |  | | | | |

and

**xxxxxxxxxxxxxxxxx**

(“**short client name**”)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Description and Registration Number** | | |  | | | | |
| **Physical Address** | | |  | | | | |
| **Email** | | |  | | | | |
| **Marked for the Attention of** | | |  | | | | |
| **Signed at** | | |  | **Date** |  | | |
|  | Signature | | | | | |  |
|  |  | | | | | |  |
| **Name** | |  | | | | who warrants that they are duly authorised to sign | |
| **Designation** | |  | | | |

**In terms of which the Parties agree as follows:**

1. INTERPRETATION

In this Agreement the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

* 1. "**Affiliate**" means the Discloser's holding companies and subsidiary companies and the subsidiary companies of the Discloser's holding companies;
  2. "**Agreement**" means this agreement and all amendments thereto agreed between the Parties in writing from time to time;
  3. "**Confidential Information**" means all information or data of the Discloser, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or has the necessary quality of confidence about it and includes, without limitation, any Personal Information or information relating to the Discloser's (and its Affiliates'):
     1. business, business policies, business plans, pricing models and other business and commercial information;
     2. know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts,
     3. business relationships, products, services, customers and clients (both existing and potential) sales and sales figures;
     4. technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein), architectural information, demonstrations, processes and machinery and related material and documentation;
     5. past, present and future research and development;
     6. strategic objectives and planning;
     7. plans, designs, drawings, functional and technical requirements and specifications;
     8. data that contains personal information as defined in POPI that can be used on its own or with other information to identify, contact or locate an identifiable person, natural or juristic, or to identify such person in context;

but excluding information or data which:

* + 1. is at the time of disclosure to the Recipient lawfully and without breach of any confidentiality obligations, within the public domain;
    2. is, at the time of such disclosure, already within the possession of the Recipient, or it has been independently developed by the Recipient; or
    3. is obliged to be produced under order of a court or government agency of competent jurisdiction, or in terms of statute;

provided that the onus shall at all times rest on the Recipient to establish that such information falls within the exceptions contained in clauses 1.4.8 to 1.4.10 inclusive and provided further that information disclosed in terms of this Agreement will not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in the Recipient's possession.

* 1. "**Discloser**" means the Party who discloses Confidential Information pursuant to this Agreement and a reference to the Discloser in this Agreement shall include a reference to each Affiliate of the Discloser;
  2. "**Disclosing Purpose**" means the purpose or reason for which the Parties have entered or will enter into discussions resulting in the disclosure of Confidential Information by the Discloser to the Recipient, as specified on the signature page of this Agreement;
  3. "**Parties**" means the parties to this Agreement, as set out on the cover page, and "**Party**" means any one of the Parties (as the context may require);
  4. "**Personal Information**" shall have the meaning set out in POPI, as same applies to the Discloser and any data subject whose Personal Information is disclosed by the Discloser to the Recipient;
  5. "**POPI**" meansthe Protection of Personal Information Act, 2013;
  6. "**Recipient**" means the Party who receives Confidential Information from the Discloser pursuant to this Agreement;
  7. "**Signature Date**" means the date of the last-dated signature of this Agreement by a Party, provided that all the Parties have signed the Agreement; and
  8. "**Staff**" means any director, employee, agent, consultant, contractor or other representative of the Party in question.

1. RECITALS
   1. The Parties wish to hold discussions for the Disclosing Purpose, during the course of which certain confidential and proprietary information will be disclosed.
   2. The Parties wish to record the basis on which the Recipient will honour and protect the Confidential Information of the Discloser.
2. RESTRICTIONS ON DISCLOSURE AND USE

The Recipient hereby acknowledges and agrees

* 1. that it shall only be entitled to use the Confidential Information of the Discloser for the specific purposes set out in the Disclosing Purpose, and it shall not utilize, employ, exploit or in any other manner use the Confidential Information of the Discloser for any purpose other than the Disclosing Purpose;
  2. subject to clause 3.3, not to disclose the Confidential Information to any third party or publish such information in any manner, for any reason or purpose whatsoever without the prior written consent of the Discloser, which consent may be withheld in the sole discretion of the Discloser;
  3. it will restrict the dissemination of the Confidential Information of the Discloser to only those of its Staff who are actively involved in the Disclosing Purpose and/or who are exposed to the Confidential Information and then only on a "need to know" basis and will take all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof.

1. TITLE

The Recipient shall acquire no right, title or interest in any Confidential Information disclosed to it by the Discloser and it shall not remove any proprietary legends from materials containing the Confidential Information. In addition, the Recipient shall further, upon written request from the Discloser, add any proprietary legend to such materials.

1. STANDARD OF CARE
   1. ***Standard of Care***. The Recipient shall protect the Confidential Information in the same manner and with the same endeavour which a reasonable person would use to protect its own confidential information. Should the Recipient become aware of any unauthorised copying, disclosure or use of the Confidential Information, it shall immediately notify the Discloser thereof in writing and, without in any way detracting from the Discloser's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof. The Recipient shall comply with all applicable laws relating to the protection and processing of Personal Information, including, without limitation, POPI.
   2. ***Personal Information.*** Without limiting the Recipient's obligations under clause 5.1, the Recipient shall implement administrative, physical and technical safeguards in compliance with POPI, and shall ensure that all such safeguards, including the manner in which the Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, complies with POPI.
   3. ***Forced Disclosure***. To the extent that the Recipient is ordered to disclose any of the Confidential Information pursuant to a judicial or government request, requirement or order (hereafter called the "**Forced Disclosure**"), the Recipient shall promptly notify the Discloser thereof and take any and all reasonable steps to assist the Discloser in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect the Discloser's rights prior to Forced Disclosure.
2. RETURN OF INFORMATION
   1. ***On Request***. The Discloser may at any time request the Recipient to return any material containing, pertaining to, or relating to the Confidential Information of the Discloser and may, in addition, request the Recipient to furnish a written statement to the effect that upon such return, the Recipient has not retained in its possession, or under its control, either directly or indirectly, any such material.
   2. ***Destruction***. Alternatively, to clause 9.1, the Recipient shall, at the instance of the Discloser of the Confidential Information, destroy such material and furnish the Discloser with a written statement to the effect that such material has been destroyed.
   3. ***Compliance with request***. The Recipient shall comply with a request in terms of this clause 9 within 3 days of receipt of such request, or such shorter period as the Discloser may demand, so long as this allows the Recipient adequate time to comply.
3. DURATION

The obligations imposed by this Agreement shall remain in force for a period of 5 years from the Signature Date.

1. NOTICES
   1. ***Addresses***. Each Party hereby chooses as the address at which documents in legal proceedings in connection with this Agreement may be served on it (its *domicilium citandi et executandi)* the physical address stipulated under such Party's name on the first page of this Agreement.
   2. ***Change of Address***. A Party may give written notice to the other Party, to change its domicilium to any other address, provided that such change shall take effect 14 days after delivery of such written notice.
   3. ***Deemed Receipt***. Any notice given by a Party pursuant to this Agreement shall be deemed to have been duly received by another Party if delivered to the addressee’s domicilium by hand during business hours on a business day, on the date of delivery thereof.
   4. ***Notice actually received***. Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.
2. INTERPRETATION

This Agreement shall be subject to the following rules of interpretation.

* 1. ***Headings***. Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
  2. ***References***. Unless otherwise stated, references to clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement.
  3. ***References to persons***. References to:
     1. persons shall include companies, corporations and partnerships;
     2. any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
     3. the singular shall include the plural and vice versa; and
     4. any one gender shall include a reference to all other genders.
  4. ***Calculation of days***. 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 day which is not a business day, in which case the last day shall be the next business day.
  5. ***Neutral construction***. The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
  6. ***Eiusdem generis***. The eiusdem generis rule will not apply and wherever the term “including” (or any derivation thereof) is used followed by specific examples, such examples will be interpreted to be illustrative only.

1. GENERAL
   1. ***Stipulation***. Each Discloser by its signature hereto, accepts the benefits of this Agreement for and on behalf of each of its Affiliates.
   2. ***Entire agreement***. This Agreement, together with the schedules hereto and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Parties in respect of the subject matter hereof.
   3. ***Variation***. No amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of the Parties.
   4. ***Waiver***. No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
   5. ***Inadequacy of damages***. The Recipient acknowledges and accepts that damages may not be an adequate remedy for any breach by it of this Agreement and that, without prejudice to all other remedies available to the Discloser as a matter of law, the Discloser shall be entitled to seek the remedies of interdict, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement.
   6. ***Severability***. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
   7. ***Applicable Law***. This Agreement shall be governed and construed according to the laws of the Republic of South Africa.
   8. ***Costs***. Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of this Agreement.