

Document Name	MG-NDA-LAG 20230601.01.00 MACROCOMM LEGAL AGREEMENT NDA
Document Date	5 January 2023
Revision	00 (Original)
Author	Legal Department
Approved	Head of Legal Department



## NON- DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("AGREEMENT")

Between:

<b>Party:</b>	
<b>Registration No:</b>	
<b>Address:</b>	
<b>Email / Fax:</b>	

And

<b>Party:</b>	Macrocomm Group (Pty) Ltd ("Macrocomm")
<b>Registration No:</b>	2012/030907/07
<b>Address:</b>	Waterfall Point Office Park, Building 1, Waterfall Drive, Jukskei Park, Gauteng, 2191, South Africa
<b>Email / Fax:</b>	<a href="mailto:legal@macrocomm.co.za">legal@macrocomm.co.za</a> Att: Legal

<b>Purpose</b>	Discussions regarding potential business opportunities
<b>Effective Date</b>	Unless agreed to the contrary, date of signature of this Agreement by Macrocomm

**Parties shall mean either \_\_\_\_\_ and/ or Macrocomm as the case may be.**

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## INTRODUCTION

- A. The Parties have commenced or may commence discussions and/or negotiations and/or investigations relating to a potential transaction between them relating to the Purpose.
- B. During the aforementioned discussions and/or negotiations and/or investigations certain Confidential Information (including in regard to proprietary sensitive Intellectual Property) may be exchanged between them, which the Parties wish to be kept strictly confidential.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 In this Agreement:

- 1.1.1 **Confidential Information** means information of a confidential nature disclosed by the Disclosing Party to the Receiving Party, and shall include (where applicable) information -
  - 1.1.1.1 relating to any Intellectual Property of the Disclosing Party or its Affiliates; and/or
  - 1.1.1.2 relating to the Purpose; and/or
  - 1.1.1.3 which relate to the Disclosing Party's business and, where appropriate, its clients' businesses; and/or
  - 1.1.1.4 which is disclosed by the Disclosing Party in circumstances of confidence or would be understood by the Parties, exercising reasonable business judgment, to be confidential, whether disclosed prior to or after the Effective Date, but not information which -
    - 1.1.1.5 is part of the public domain, otherwise than as a result of a breach or default of the Receiving Party in terms hereof; or
    - 1.1.1.6 was independently developed by the Receiving Party or the Receiving Party can show, beyond reasonable doubt, to have been lawfully in the possession of the Confidential Information prior to its disclosure by the Disclosing Party and is not subject to an existing confidentiality obligation between the Parties; or
    - 1.1.1.7 is acquired independently by the Receiving Party from a third party, who lawfully acquired such information without restriction and who had not previously obtained such information directly or indirectly under a confidentiality obligation from the Disclosing Party; or
    - 1.1.1.8 is disclosed or released by the Receiving Party to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at

the time or the requirements of any recognized stock exchange or regulatory authority or government agency; provided that, in these circumstances, the Receiving Party shall advise the Disclosing Party prior to any such disclosure, where at all possible and to the extent permitted to do so by law; or

- 1.1.2 **Disclosing Party** means any person giving or divulging any Confidential Information, and includes such person's Affiliates;
- 1.1.3 **Intellectual Property** means, among other things, all intellectual property rights, whether registered or not, including pending applications for registration of such rights and the right to apply for registration or extension of such rights including but not limited to patents, models, designs, registered and unregistered designs, copyright, trademarks, trading names, logos, the get-up of products and packaging, geographical indications, applications and other signs used in trade, internet domain names, unique marketing codes, rights in know-how, the corporate identity, brand, trade mark, business model, business plan, brochureware and any rights of the same or similar effect or nature as any of the foregoing anywhere in the world;
- 1.1.4 **Receiving Party** means such Party who receives any Confidential Information so given or divulged by a Disclosing Party or indirectly as a result of the Parties entering into this Agreement;
- 1.2 Any reference in this Agreement to:
  - 1.2.1 **"in writing"** shall also include fax and e-mail; and
  - 1.2.2 **"signed", "signing" or "signature"** shall be read and construed as excluding any form of electronic signature.
- 1.3 Unless the context indicates otherwise, an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.4 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the Party responsible for the drafting of the contract does not apply.

## 2 USE OF CONFIDENTIAL INFORMATION

- 2.1 The Receiving Party may only use the Confidential Information disclosed by the Disclosing Party (whether disclosed prior to or subsequent to the Effective Date), strictly to explore the Purpose and for no other purpose.
- 2.2 The Receiving Party undertakes in favour of the Disclosing Party that it -

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- 2.2.1 shall treat the Disclosing Party's Confidential Information as private and strictly confidential and safeguard it in the manner, and with the endeavor, of a reasonable person protecting its own Confidential Information; and
- 2.2.2 shall not copy or reproduce, except for internal studying of such information (in any manner or form) or publish or circulate or reverse or engineer, whether directly or indirectly, the Confidential Information of the Disclosing Party; and
- 2.2.3 shall not disclose, whether directly or indirectly, the Confidential Information of the Disclosing Party to any third party, unless it is a Representative ("Permitted Third Parties"), and the Receiving Party has procured that such Permitted Third Parties abide by the provisions of this Agreement. If any Confidential Information is disclosed to a Permitted Third Party without them agreeing to abide by the provisions of this Agreement, and such Permitted Third Party has used the Confidential Information other than as allowed for in this Agreement, such unauthorized use shall be deemed to be a material breach of this Agreement by the Receiving Party; and
- 2.2.4 shall, on request from the Disclosing Party, and in any event if the discussions regarding the Purpose should not result in any further agreement or action, cease to use the Confidential Information and promptly return to the Disclosing Party all of the Disclosing Party's Confidential Information which is in physical form (including all copies) and shall use reasonable efforts to delete or destroy any other records (including, without limitation, those in electronic or machine readable form) as far as they contain the Disclosing Party's Confidential Information, subject to all applicable laws and/or regulations in respect of retention of information, provided that the Receiving Party may retain a copy of the Confidential Information to the extent it is required to do so by law.

### 3 COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the earlier of the Effective Date or the date on which any disclosure is made in respect of the Purpose and shall remain in force for a period of 36 months thereafter, save to the extent that matters contemplated herein are expressly regulated between the Parties by any subsequent agreement concluded between the Parties which has the effect of substituting this Agreement.

### 4 LIMITATIONS

- 4.1 This Agreement shall not be construed as –

- 4.1.1 granting any rights in respect of any Confidential Information or Intellectual Property of the Disclosing Party (or any third party), nor shall the Receiving Party be entitled to compel the Disclosing Party to disclose any information (for the sake of clarity, the Disclosing Party shall in its sole and absolute discretion decide what information it will disclose to the Receiving Party and in what form and in what manner it shall disclose such information); or
- 4.1.2 an offer or invitation by the Disclosing Party to enter into any further arrangement or agreement whatsoever.
- 4.2 No interest whatsoever in Confidential Information or Intellectual Property disclosed shall vest in or pass to the Receiving Party.
- 4.3 Confidential Information is provided by the Disclosing Party in good faith, but without representation, warranty or guarantee of any kind, whether express or implied, statutory or otherwise.
- 4.4 The Parties agree and understand that all rights, title and interests in respect of the Disclosing Party's Intellectual Property shall remain vested in the Disclosing Party, and nothing in this Agreement shall permit the transfer of any such rights to the Receiving Party or any third party.

### 5 RETURN OF INFORMATION

- 5.1 The Disclosing Party may at any time request the Receiving Party to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this Agreement and may, in addition, request the Receiving Party to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in possession, or under its control, either directly or indirectly, any such material.
- 5.2 As an alternative to the return of the material contemplated in 5.1 above, the Receiving Party shall, at the instance of the Disclosing Party, destroy such material and furnish the Disclosing Party with a written statement to the effect that all such material has been destroyed.
- 5.3 The Receiving Party shall comply with a request, in terms of this clause 5, within 5 (five) days of receipt of such a request.

### 6 WARRANTIES

- 6.1 Each of the Parties represents and warrants that its actions with respect to this Agreement do not conflict with any prior obligations to any third party.
- 6.2 The Disclosing Party makes no representation, warranty, assurance, guarantee or endorsement to the Receiving Party that any of the Confidential Information is accurate, complete or correct and

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the Receiving Party shall not be entitled to rely thereon save as may be recorded in writing between the Disclosing Party and Receiving Party, and the Disclosing Party shall have no liability to the Receiving Party or any other Party arising from or in connection with any such representation, warranty, guarantee, assurance or the like.

- 6.3 Each Party to this Agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this Agreement.

## 7 NOTICES

- 7.1 All notices, demands or other communication under this Agreement must be given or made in writing and must be delivered personally, sent by email / fax or by registered mail to the address of the Parties nominated on the cover page of this Agreement or otherwise nominated in writing by notice from the relevant Party to the other from time to time.

## 8 ENFORCEMENT, ARBITRATION GOVERNING LAWS AND JURISDICTION

- 8.1 This Agreement shall be governed by and interpreted according to the laws of the Republic of South Africa.
- 8.2 Any dispute arising from or in connection with this Contract shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by the Foundation.
- 8.3 Nothing herein contained shall prevent either party from approaching the South Gauteng High Court, seeking urgent interim relief.

## 9 NON-CIRCUMVENTION

- 9.1 The receiving party understands/ agrees, that it shall not, by any means or under any circumstances whatsoever attempt/ endeavour to circumvent the disclosing party with regard to any of the opportunities, to enter into any transactions made available to it (details of which shall be set out, signed by the Parties and accepted as forming part of this agreement) by any means or manner whatsoever, including the contacting or attempting to contact, in any manner, the owners and/or sellers or sources of the subject matter of such transactions, either personally or through or with the assistance of either Party connected persons in such a way as to gain for themselves or their Affiliates or prevent the other party from accepting any (or less) fees, profits, commissions, remuneration or other material benefit whatsoever as may be due to either of the Parties or from either party to the other party.

- 9.2 The Parties agree not to independently contact or initiate contact at any time for any purpose, either directly or indirectly, consultants, employees, agents or Affiliates whose identity was revealed through this agreement, unless such approval is specifically granted in writing, on a case-by-case basis. Should such contact be required, the contacting party shall first seek permission from the other party to this agreement in writing, so as avoid a breach event.

## 10 GENERAL

- 10.1 This document contains the entire agreement between the Parties as to the subject matter hereof.
- 10.2 No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 10.3 No failure by any Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 10.4 No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless reduced to writing and signed on behalf of all the Parties.
- 10.5 It is agreed that each clause of this Agreement is severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall continue to be of full force and effect.
- 10.6 Nothing in this Agreement shall be construed as creating a relationship of principal and/or agent and/or partnership and/or joint venture and/or similar relationship between the Parties or any other party, unless agreed otherwise in writing.
- 10.7 Each Party shall bear its own costs to be incurred in connection with the drafting and negotiation of this Agreement.

## 11 EXECUTION

- 11.1 This Agreement:
- 11.1.1 may be executed in separate counterparts, none of which need contain the signatures of all of the Parties, all of which shall be deemed to be an original and all of which taken together constitute one agreement;
- 11.1.2 shall be valid and binding upon the Parties, notwithstanding that one or more of the Parties may sign an electronic copy (including facsimile or email copy) thereof and whether or not such copy contains the signature of the other Party.

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11.2 The persons signing this Agreement in a representative capacity warrant their authority to do so.

**SIGNED: -**

**For: Macrocomm**

**Signatory:**

\_\_\_\_\_  
**Capacity:**

Date: \_\_\_\_\_

Place: \_\_\_\_\_

\_\_\_\_\_  
**Witness**

**SIGNED: -**

**For:**

**Signatory:**

\_\_\_\_\_  
**Capacity:**

Date: \_\_\_\_\_

Place: \_\_\_\_\_

\_\_\_\_\_  
**Witness**