



RECIPROCAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

CAPITEC BANK LIMITED	(hereinafter referred to as " Capitec ")
Registration number:	1980/003695/06
Physical Address:	5 Neutron Road, Techno Park, Stellenbosch
Postal Address:	PO Box 12451 Die Boord 7613
Telefax number:	0218801207

This Non-Disclosure Agreement ("NDA") between Capitec Bank Limited ("Capitec") with its principal place of business at (5 Neutron Road, Techno Park, Stellenbosch) and you ("Counterparty" or "you" or "your") apply to the below mentioned Purpose. By downloading, viewing and/or reading you agree to the terms of this NDA

PURPOSE	The Parties to this Agreement may disclose certain Confidential Information to each other pertaining to themselves, their businesses and/or their clients, as well as in respect of their respective shareholders, officers, suppliers, customers, contractors, employees and/or representatives for the purpose of enabling and/or assisting the Counterparty to provide certain goods and/or services to Capitec and/or to enable Capitec to evaluate (by means of a proof of concept or otherwise) the products and/or services offered by the Counterparty and all discussions and negotiations ancillary thereto.
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TABLE OF CONTENTS

1 INTERPRETATION2

2 INTRODUCTION6

3 DURATION7

4 UNDERTAKINGS AND USE OF CONFIDENTIAL INFORMATION7

5	RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION.....	9
6	PROTECTION OF PERSONAL INFORMATION.....	9
7	PERMITTED RECIPIENT.....	11
8	EXCLUSIONS.....	12
9	DISCLAIMER.....	13
10	COUNTERPARTY OBLIGATIONS.....	13
11	BREACH.....	13
12	APPLICABLE LAW AND JURISDICTION	14
13	NOTICES AND DOMICILIUM	15
14	GENERAL	15
15	BENEFIT.....	16
16	NO OBLIGATION.....	16
17	COSTS.....	16

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

1.1 In this Agreement -

1.1.1 clause headings are for convenience only and are not to be used in its interpretation;

1.1.2 unless the context indicates a contrary intention, an expression which denotes -

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and *vice versa*;

1.1.2.3 the singular includes the plural and *vice versa*.

1.2 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear

corresponding meanings –

- 1.2.1 "**Agreement**" means this reciprocal confidentiality and non-disclosure agreement, including all annexures (if any) hereto;
- 1.2.2 "**Associated Companies**" means, as the case may be, all Subsidiaries, the Holding Company and all other Subsidiaries of the Holding Company of the Disclosing Party, and includes a company, not being a subsidiary, in which the Disclosing Party directly or indirectly has a significant shareholding or financial interest;
- 1.2.3 "**Business Day**" means any day other than a Saturday, Sunday or a public holiday as gazetted by the Government of the Republic of South Africa from time to time;
- 1.2.4 "**Companies Act**" means the Companies Act, No 71 of 2008, as amended;
- 1.2.5 "**Confidential Information**" includes, without limitation, any and all information or data of any nature relating to the Disclosing Party or any of its Associated Companies which is disclosed by the Disclosing Party to the Receiving Party (whether before or after the Signature Date) in whatever format (including oral, written, electronic or visual form) and whether recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise), and which is intended or which by its nature or content could reasonably be identifiable as, or expected to be, confidential and/or proprietary to the Disclosing Party and/or its Associated Companies, and which includes, without limitation even if it is not marked as 'confidential', 'proprietary' or 'restricted' (or any similar designation), any and all:
- 1.2.5.1 information which was disclosed to one Party by any third party in terms of any agreement between such Party and the relevant third party and which has become known to the Receiving Party;
- 1.2.5.2 information relating to the Disclosing Party's business activities, business relationships (including information relating to such business relationships), services, processes, data, employees, clients, technical information, techniques, know-how, operating methods and procedures, business strategy and business models, including all agreements to which the Disclosing Party is a party (including this Agreement);
- 1.2.5.3 information relating to costs, sources of services and customer lists (whether actual or potential);

- 1.2.5.4 information relating to pricing, price lists and purchasing policies;
- 1.2.5.5 information contained in or relating to the Disclosing Party's technology and telecommunications systems, computer data, databases, programmes and source codes, including any third party hardware, software or information or incidents concerning faults or defects therein;
- 1.2.5.6 products, specifications, software documentation and configuration information;
- 1.2.5.7 marketing information of whatsoever nature or kind;
- 1.2.5.8 financial, technical, scientific, commercial and market information of whatsoever nature or kind;
- 1.2.5.9 personal information of whatsoever nature or kind, including 'personal information' as defined in POPI;

- 1.2.6 "**Cover Page**" means the first page (and the second page) of this Agreement indicating the business terms of this Agreement and to which this Agreement is attached;
- 1.2.7 "**Disclosing Party**" being either of the Parties referred to in clause 1.2.12 as determined by the context;
- 1.2.8 "**Entity**" means any person, association, business, close corporation, club, company, concern, enterprise, partnership, trust, undertaking, voluntary association or other similar Entity, whether corporate or unincorporated;
- 1.2.9 "**Exclusions**" means the circumstances in which the undertakings given by the Receiving Party are not applicable, as described in clause 8;
- 1.2.10 "**Good Industry Practice**" means in relation to an obligation, undertaking, activity or a service, the exercise of the degree of skill, speed, care, diligence, judgement, prudence and foresight and the use of current practices, controls, systems, technologies and processes, which would be expected of a skilled, experienced and market leading service provider who seeks to engage with Capitec applying skilled resources with the requisite levels of expertise;
- 1.2.11 "**Holding Company**" shall bear the meaning assigned thereto in section 1 of the Companies Act;
- 1.2.12 "**Parties**" means the parties to this Agreement being:

- 1.2.12.1 "**Capitec**" means as described on the Cover Page of the Agreement; and
 - 1.2.12.2 "**Counterparty**" means as described on the Cover Page of the Agreement;
 - 1.2.13 "**POPI**" means the Protection of Personal Information Act, No 4 of 2013, as amended or substituted from time to time;
 - 1.2.14 "**Permitted Recipients**" means, in relation to the Receiving Party, any director, officer, employee, agent, contractor, sub-contractor, professional advisor or other third party representatives to whom disclosure of Confidential Information is reasonably necessary in order for the Receiving Party to fulfil the Purpose;
 - 1.2.15 "**Purpose**" shall bear the meaning as indicated on the Cover Page;
 - 1.2.16 "**Receiving Party**" means the Party other than the Disclosing Party, to the extent that it receives Confidential Information in terms of this Agreement;
 - 1.2.17 "**Signature Date**" means the date of signature of this Agreement by the Party last signing in time;
 - 1.2.18 "**Subsidiary**" shall bear the meaning assigned to it in section 1 of the Companies Act.
- 1.3 Any substantive provision conferring rights or imposing obligations on any Party in the interpretation clause shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.4 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.5 Reference to months or years shall be construed as calendar months or years.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding Business Day.

- 1.7 Except to the extent that any provision of this Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of any provision of this Agreement falls on a day which is not a Business Day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding Business Day.
- 1.8 No provision herein shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.9 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 1.10 The *eiusdem generis* (of the same kind) rule shall not apply to this Agreement.
- 1.11 Whenever the term "**including**" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

2 INTRODUCTION

- 2.1 It is the intention of the Parties to enter into negotiations and/or discussions in relation to the Purpose.
- 2.2 In the course of such negotiations and/or discussions, the subsequent implementation of any agreement or arrangement which may arise out of such negotiations and/or discussions and in any future interactions between the Parties, the Parties may disclose certain Confidential Information to each other and each may gain knowledge of the Confidential Information of the other.
- 2.3 The Parties desire to keep the negotiations and/or discussions, and the nature and scope thereof, as well as all other actions which may flow there from, confidential.
- 2.4 The Parties are willing to provide each other with an undertaking to maintain the confidentiality of the Confidential Information, on the terms and conditions set out in this Agreement.

3 DURATION

The Parties agree that the terms and conditions of this Agreement shall commence with retrospective effect from the date on which the first Confidential Information is disclosed by the Disclosing Party to the Receiving Party, regardless of the Signature Date hereof, and shall continue for three (3) years. The confidentiality obligations shall, however, survive the expiry or termination of this Agreement and shall continue indefinitely or until the information is no longer considered confidential by the Disclosing Party.

4 UNDERTAKINGS AND USE OF CONFIDENTIAL INFORMATION

4.1 The Receiving Party acknowledges that -

4.1.1 the Confidential Information is a valuable, special and unique asset of the Disclosing Party and/or its Associated Companies; and

4.1.2 the Disclosing Party and/or its Associated Companies may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used otherwise than in accordance with this Agreement.

4.2 The Receiving Party undertakes and agrees that all Confidential Information received from the Disclosing Party, or which otherwise comes to the knowledge of the Receiving Party:

4.2.1 is proprietary to the Disclosing Party and/or one or more of its Associated Companies; and

4.2.2 does not confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.

4.3 The Receiving Party irrevocably and unconditionally agrees and undertakes -

4.3.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;

4.3.2 to maintain the Confidential Information in accordance with industry standards, using practices no less stringent than those used by the Receiving Party to protect its own Confidential Information;

4.3.3 to initiate, maintain and monitor internal security procedures, acceptable to the Disclosing Party to protect it against theft, damage, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties;

- 4.3.4 to comply with the provisions of POPI;
 - 4.3.5 to disclose Confidential Information only to Permitted Recipients and then only to the extent that such disclosure is necessary for the Purpose and only on a "*need-to-know*" basis;
 - 4.3.6 except as permitted by this Agreement, not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party (other than the Permitted Recipients) for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be granted or withheld in the Disclosing Party's sole and absolute discretion;
 - 4.3.7 not to use or permit the use of the Confidential Information for any purpose other than the Purpose and, in particular, not to use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the Disclosing Party and/or its Associated Companies or otherwise use it to the detriment of the Disclosing Party and/or its Associated Companies;
 - 4.3.8 not to decompile, disassemble or reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the Confidential Information in any manner whatsoever;
 - 4.3.9 not to copy or reproduce the Confidential Information by any means without the prior written consent of the Disclosing Party, it being recorded that any copies shall be and remain the property of the Disclosing Party; and
 - 4.3.10 to notify the Disclosing Party immediately if it becomes aware of or suspects that any Confidential Information has been disclosed to or is in the possession of any person who is not a Permitted Recipient and provide any assistance the Disclosing Party may require at the Disclosing Party's cost, unless such unauthorised possession, use or knowledge is the fault of the Receiving Party (or a Permitted Recipient) when such assistance shall be at the Receiving Party's cost.
- 4.4 The Receiving Party acknowledge that certain Confidential Information may be so sensitive as to require special handling procedures and obligations in addition to those set forth in this Agreement. In such event, the Parties may enter into supplements to this Agreement identifying such Confidential Information and the special procedures and obligations relating to the disclosure thereof.
- 4.5 In instances where the Disclosing Party wishes to maintain the highest level of

confidentiality in respect of discussions and in connection with the Confidential Information, it is agreed that the Receiving Party will not, unless otherwise directed in writing by the Disclosing Party, communicate with any other person in the employ of, or representing the Disclosing Party, other than the persons nominated by the Disclosing Party in a separate addendum to this Agreement. The Disclosing Party shall likewise only communicate with the persons nominated by the Receiving Party in the same addendum.

5 RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

5.1 The Disclosing Party shall have the right to demand the return or destruction of all its Confidential Information at any time (regardless of where it is stored or in which format it is held, including any and all copies of it). Upon such demand, the Receiving Party shall, at its own expense and in accordance with the instructions of the Disclosing Party either:-

5.1.1 within 5 (five) days return to the Disclosing Party all Confidential Information including any copies, notes or summaries thereof (whether in paper, electronic or other format) held by the Receiving Party or Permitted Recipients without keeping any copies thereof; or

5.1.2 within 5 (five) days destroy or permanently and irrevocably delete, or procure the destruction or permanent deletion of, the Confidential Information including any and all copies, notes or summaries (whether in paper, electronic or other format) held by the Receiving Party or its Permitted Recipients; or

5.1.3 within 5 (five) days irrevocably delete or procure the deletion of all Confidential Information from any computer, word processor or other device in the possession or control of the Receiving Party or any Permitted Recipients, and

confirm in writing to the Disclosing Party the fact that all such Confidential Information has been returned, destroyed and/or irrevocably deleted in compliance with the terms of this Agreement and the instructions of the Disclosing Party and in event that the Confidential Information has been destroyed, the Receiving Party shall provide written proof to the Disclosing Party that destruction has taken place, to the satisfaction of the Disclosing Party.

5.2 In the event that any law requires the Receiving Party to retain a record(s) of Confidential Information, the Receiving Party must inform the Disclosing Party, in writing, within 2 (two) days of receipt of demand in terms of clause 5.1, of the Receiving Party's legal obligation which prevents the return or destruction of the Confidential Information.

6 PROTECTION OF PERSONAL INFORMATION

6.1 The Parties agree that they are each responsible for complying with their respective

general obligations under POPI and/or any other applicable laws governing the Processing of Personal Information or personal data.

- 6.2 The terms “Data Subject”, “Operator”, “Responsible Party”, “Personal Information” and “Processing” have the meanings assigned to it in POPI.
- 6.3 The term “Card Data” has the meaning assigned to it by the Payment Card Industry Security Standards Council as recorded in the Payment Card Industry Data Security Standards (“PCI Standards”) Glossary Terms, Abbreviations, and Acronyms. Card Data is a category of Personal Information.
- 6.4 The Parties agree that the Disclosing Party shall at all times remain the Responsible Party in respect of Personal Information disclosed to the Receiving Party for the Purpose. The Receiving Party acknowledges and undertakes that, should it have access to and Process, Personal Information of Data Subjects, the Receiving Party shall comply with all relevant provisions of POPI that apply to Operators, in relation to all Personal Information received, and without prejudice to the generality of the foregoing, undertakes:
 - 6.4.1 to use and process the Personal Information solely for the Purpose;
 - 6.4.2 not to allow any unauthorised persons access to the Personal Information;
 - 6.4.3 not to do anything in relation to the Personal Information that requires the consent of, or notification to, a Data Subject without first acquiring such consent or providing such notification, as the case may be;
 - 6.4.4 to comply immediately with all lawful and reasonable requests made by the Disclosing Party to ensure compliance with POPI;
 - 6.4.5 to inform the Disclosing Party of all requests made by Data Subjects in terms of POPI, and to comply with such requests (to the extent required by POPI) should the Disclosing Party authorise the Receiving Party to do so;
 - 6.4.6 not to perform any act or omission that will cause the Disclosing Party to breach any of its obligations under POPI;
 - 6.4.7 in addition to the undertakings under clause 4.3 above, to implement reasonable and appropriate technical and organisational security measures to prevent the loss of, damage to and/or unauthorized access or destruction of Personal Information, and take reasonable steps to ensure that all its representatives, employees, agents, partners and third party sub-contractors, if applicable, comply with all the undertakings in this clause 6;

- 6.4.8 to provide the Disclosing Party with such information and access to Personal Information as the Disclosing Party may require to satisfy itself that the Receiving Party is complying with the obligations in this clause 6;
- 6.4.9 obtain prior written consent of the Disclosing Party should any Personal Information be transferred cross border in compliance with the provisions of POPI; and
- 6.4.10 to notify the Disclosing Party immediately (or if not reasonably possible, as soon as reasonably possible) of any breach or anticipated breach of these undertakings or any of the provisions of POPI (including but not limited to any security breach or anticipated security breach, or unauthorised disclosure) in relation to the Personal Information, or any complaint (together with the full details of the complaint) received from a Data Subject.
- 6.5 The Receiving Party acknowledges and undertakes that, should it have access to and/or Process Card Data, the Receiving Party shall comply with PCI Standards in addition to the requirements set out in clause 4.3 above and this clause 6.
- 6.6 The Receiving Party hereby indemnifies and defends the Disclosing Party against any loss, claims, costs (including legal costs on an attorney and own client scale) or damage which may be suffered or incurred by the Disclosing Party in consequence of any breach of any of the above undertakings in this clause 6 by the Receiving Party.

7 PERMITTED RECIPIENT

- 7.1 The Receiving Party shall, both before and after the disclosure of any Confidential Information to a Permitted Recipients, inform such Permitted Recipients of, and take all practical steps to impress upon him or it, the secret and confidential nature of the Confidential Information and the Receiving Party's obligations under this Agreement (specifically the undertakings under clause 4.3 above).
- 7.2 The Receiving Party shall be responsible for procuring that the Permitted Recipients abide by the provisions of this Agreement and agree to be bound by the confidentiality undertakings given to the Disclosing Party by the Recipient in this Agreement. The Receiving Party shall be responsible for any breach of the terms of this Agreement by any Permitted Recipient.
- 7.3 The Receiving Party shall (if requested to do so by the Disclosing Party) procure that the Permitted Recipients give a written undertaking in favour of the Disclosing Party in regard to the Confidential Information on substantially the same terms and conditions contained in this Agreement.

7.4 The Receiving Party's failure to obtain receipt of the written undertaking referred to in clause 7.3 above shall in no way detract from the Receiving Party's obligations in terms of this Agreement and particularly in terms of the remaining provisions of this clause 7 and clause 9.

8 EXCLUSIONS

8.1 The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.

8.2 If the Receiving Party is uncertain as to whether any information is Confidential Information, the Receiving Party shall treat such information as confidential until the contrary is agreed by the Disclosing Party in writing.

8.3 The undertakings given by the Receiving Party in this Agreement and in particular in clause 4.3 shall not apply to any information which –

8.3.1 is or becomes generally and lawfully available to the public and other than by the negligence or default of the Receiving Party and/or any Permitted Recipient, or by the breach of this Agreement by any of them;

8.3.2 the Disclosing Party confirms in writing is disclosed on a non-confidential basis;
or

8.3.3 has lawfully become known by or come into the possession of the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or any of its Associated Companies having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party existing at the Signature Date,

provided that –

8.3.4 the onus shall at all times rest on the Receiving Party to establish that such information falls within the Exclusions;

8.3.5 information will not be deemed to be within the Exclusions merely because such information is embraced by more general information in the public domain or in the Receiving Party's possession; and

8.3.6 any combination of features will not be deemed to be within the Exclusions merely because individual features are in the public domain or in the Receiving Party's possession, but only if the combination itself and its principle of operation are in

the public domain or in the Receiving Party's possession.

8.4 In addition, the undertakings given by the Receiving Party in clause 5 above shall not apply to any information which –

8.4.1 the Receiving Party, or anyone to whom the Receiving Party has supplied any such Confidential Information, is required to retain any such Confidential Information by any applicable law or by any competent judicial, governmental, supervisory, or regulatory body or in accordance with internal policy;

8.4.2 has been referred to in board papers and board minutes of the Receiving Party;
or

8.4.3 has been disclosed by the Receiving Party in terms of 8.4.2 above.

9 DISCLAIMER

9.1 The Parties do not make any representation or warranty as to the accuracy or completeness of any of the Confidential Information disclosed in relation to the Purpose, unless it forms part of any goods and/or services to be rendered by the Recipient to Capitec in term of any agreement concluded between the Parties.

10 COUNTERPARTY OBLIGATIONS

10.1 In addition to all other obligations which it may have in terms of this Agreement. The Counterparty hereby agrees and shall be obliged to ensure that any proposed engagement between Capitec and the Counterparty is entered into in a workmanlike manner, in accordance with Good Industry Practice and in compliance with all applicable laws.

10.2 The Counterparty furthermore hereby unequivocally agrees to and shall comply to Capitec's code of conduct which is available on request and accessible at <https://www.capitecbank.co.za/business-services/procurement/code-of-conduct>, which is subject to change from time to time at the sole discretion of Capitec.

11 BREACH

11.1 Without prejudice to any other rights of the Disclosing Party under this Agreement or in law, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this Agreement, the Receiving Party shall, at the sole cost of the Receiving Party –

11.1.1 immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may reasonably require in order to remedy or mitigate the effects

of such actual or threatened breach; and

11.1.2 use all reasonable commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.

11.2 The Parties acknowledge and agree that –

11.2.1 cancellation is not an appropriate remedy for breach of this Agreement and this Agreement may not be cancelled or terminated save by written agreement between the Parties; and

11.2.2 any breach or violation of any provision of this Agreement may cause irreparable harm to the other Party, which money damages may not necessarily remedy and that the remedies of interdict, specific performance and any other equitable relief are appropriate for any threatened or actual breach of this Agreement. The Disclosing Party will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).

11.3 Without prejudice to clause 11.2 above, the Receiving Party accepts full liability for the maintenance of the confidentiality of the Confidential Information and hereby unconditionally and irrevocably indemnifies and holds the Disclosing Party [and each Associated Company] harmless against any and all loss, action, expense (including any such expenses that the Disclosing Party may incur to enforce a judgment or order against the Receiving Party should the Receiving Party be a foreign company), claim, harm or damages of whatsoever nature or kind suffered or sustained by the Disclosing Party [or any of its Associated Companies] pursuant to –

11.3.1 a breach or threatened breach by the Receiving Party of the provisions of this Agreement; and

11.3.2 any Permitted Recipient failing to keep the Confidential Information confidential.

11.4 Should any unauthorised disclosure of Confidential Information take place in breach of the provisions of this Agreement, the Disclosing Party shall, in addition to the foregoing, be entitled by written notice to the Receiving Party to terminate all obligations to provide information to the Receiving Party with immediate effect and no further information will be disclosed to the Receiving Party in terms of this Agreement.

12 APPLICABLE LAW AND JURISDICTION

12.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

- 12.2 Subject to the provisions of this Agreement, the Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town in any dispute arising from or in connection with this Agreement.
- 12.3 The Parties agree that any costs awarded will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

13 NOTICES AND DOMICILIUM

- 13.1 Any notice to be served on either of the Parties by the other Party under this Agreement shall be in writing and shall be sent to the addressee at its registered physical or postal address as stipulated on the Cover Page. All legal notices is to be delivered by hand and not by way of telefax or email. A Party may change its address for the purpose of notices to any other physical address within the Republic of South Africa by no less than 7 (seven) days written notice to the other Party to that effect.
- 13.2 All notices delivered or sent by -
- 13.2.1 hand during normal business hours shall be presumed to have been received on the date of delivery. Notices delivered after business hours or on a day which is not a Business Day will be presumed to have been delivered on the following Business Day;
 - 13.2.2 prepaid registered post within the Republic of South Africa shall be presumed to have been received within 7 (seven) Business Days of posting;
 - 13.2.3 email or telefax before 16h30 on a Business Day shall be presumed to have been received on the date of successful transmission of the email or telefax and emails or telefaxes sent after 16h30 or on a day which is not a Business Day will be presumed to have been received on the following Business Day.

14 GENERAL

- 14.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 14.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- 14.3 No variation, addition, deletion, or agreed cancellation will be of any force or effect unless in writing and signed by or on behalf of the Parties hereto. In particular, no policies and

procedures of the Counterparty shall form part of this Agreement, unless specifically and expressly included.

- 14.4 No waiver, suspension or postponement of any of the terms and conditions herein contained by either Party will be binding or of any force and effect for any purpose unless in writing and signed by or on behalf of the Party giving the same. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 14.5 No failure or delay on the part of the Party exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 14.6 Save as otherwise herein provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred by the Receiving Party without the prior written consent of the Disclosing Party.

15 BENEFIT

- 15.1 The undertakings given by the Receiving Party in this Agreement shall be for the benefit of and may be enforced by the Disclosing Party and any Entity purchasing the business (or part thereof) of the Disclosing Party as a going concern. The undertakings shall be deemed to have been imposed as a *stipulatio alteri* for the benefit of any Entity which purchases the business (or part thereof) and any Entity which acquires from the Disclosing Party its business (or part thereof) as a going concern and such benefit may be accepted by any such company. The fact that any undertaking may not be enforceable by one of them will not affect its enforceability by any other Party.
- 15.2 Notwithstanding the provisions of clause 15.1 above, and without prejudice to the generality of the other provisions of this Agreement, it is specifically recorded that the provisions of this agreement shall apply to any disclosure of Confidential Information by the Recipient to any Entity purchasing its business (or part thereof) as contemplated in clause 15.1 above.

16 NO OBLIGATION

Nothing in this Agreement shall require either Party to negotiate or continue negotiating with the other Party with respect to any further agreement, or to restrict either Party from withdrawing from any such negotiations at any time without liability.

17 COSTS

Each Party will bear and pay its own legal costs and expenses of and incidental to the

negotiation, drafting, preparation and implementation of this Agreement.