

## **POPIA CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

ENTERED INTO BY AND BETWEEN

\_\_\_\_\_  
(Reg. No/ID No: \_\_\_\_\_ )

(hereinafter referred to as "the Receiving Party")

AND

Fabrinnox Proprietary Limited

(Reg. No: 2008/000839/07)

(hereinafter referred to as "the Disclosing Party")

Hereinafter referred to as "The Parties"

### **1. RECORDAL**

- 1.1 The Receiving Party (the Operator) will have access to clients of the Disclosing Party (the Responsible Party) (including through agreements of subcontract), as well as confidential/personal information of the Disclosing Party or clients (the Data Subjects) of the Disclosing Party (as more fully defined and referred to below).
- 1.2 The Receiving Party agrees that these rights of the Disclosing Party and/or data subjects are worthy of protection, and that the Disclosing Party and data subjects will suffer material proprietary and other damages in the event of a breach.
- 1.3 The Receiving Party will only process Personal Information with the knowledge of authorisation of the Disclosing Party and treat Personal Information which comes to the Receiving Party's knowledge as confidential and must not disclose it unless required by law or in the proper course of the proper performance of the Receiving Party's duties.

- 1.4 The Protection of Personal Information Act, 4 of 2013 (POPIA) is a data protection privacy law which as its main function and objective, regulates and controls the processing of Personal Information by a Responsible Party.
- 1.5 The Disclosing Party, for the purposes of carrying out its business and related objectives, does and will from time to time, process Personal Information belonging to a number of persons, including legal entities and individuals, who are referred to as Data Subjects under POPIA.
- 1.6 The Disclosing Party is obligated to comply with POPIA and the data protection conditions housed under POPIA with respect to the processing of all and any Personal Information pertaining to all and any Data Subjects.
- 1.7 In order for the Disclosing Party to pursue its mandate and its related operational and business interests, and in order to protect it and its staff, the government and its service provider's legitimate interests and to manage it and the aforementioned parties risks, the Disclosing Party may from time to time have to disclose certain Personal Information, which it has obtained from certain Data Subjects, to other parties, including third party service providers whom it contracts with, regulators and / or other governmental officials, overseas service providers and other companies and / or agents who it may be in partnership with.
- 1.8 In terms of section 20 of POPIA, when the Disclosing Party discloses Personal Information which it has collected from Data Subjects to another for the purpose of processing or further processing such Personal Information on its behalf, or where the Disclosing Party has appointed another to process Personal Information belonging to a Data Subject on its behalf, (hereinafter referred to as "the Receiving Party" or "the Operator") then any such processing must be subject to a written Agreement concluded between Disclosing Party (the Responsible Party) and Receiving Party (the Operator), which contractually obliges the Receiving Party (the Operator) to:

- 1.8.1 comply with the provisions of POPIA and the 8 POPIA conditions for lawful processing, when processing any Personal Information on behalf of the Disclosing Party;
  - 1.8.2 only process the Personal Information received from the Disclosing Party in accordance with the mandate or written instruction received from the Disclosing Party;
  - 1.8.3 keep all the Personal Information held by the Receiving Party (the Operator) on behalf of the Disclosing Party, and / or belonging to Data Subjects, confidential;
  - 1.8.4 put measures in place in order to keep all the Personal Information held by the Receiving Party (the Operator), confidential, safe and secure from misuse, abuse and or unauthorised use or access.
- 1.9 The Disclosing Party is desirous of providing the Receiving Party (the Operator) with certain Personal Information which pertains to certain Data Subjects, which the Disclosing Party would like the Receiving Party to process on its behalf, and the Receiving Party has agreed to process the Personal Information on behalf of the Disclosing Party, subject to the terms set out under this Agreement.

## **2. NON-DISCLOSURE**

- 2.1 Confidential information under this agreement shall mean any information, including Personal information as defined by the Protection of Personal Information Act 4 of 2013, considered propriety or confidential by the Disclosing Party, including but not limited to the Disclosing Party's employee information, client or data subjects and Disclosing Party's personal information, specifications, photographs, designs, know-how, technical descriptions and other technical and business data, software programs, samples, records and information pertaining to the Disclosing Party which is disclosed by the Disclosing Party (or in the manner received by the Receiving Party ) whether in writing and/or graphic or computer database form and any derivatives thereof or any other matter which relates to the business of the Disclosing Party in respect of which information is not readily available in the normal course of business and which may come to the knowledge of the Receiving Party.

- 2.2 The Receiving Party undertakes to refrain from using, exploiting or permitting the use of, directly or indirectly, or in any manner whatsoever apply the proprietary confidential information disclosed to it pursuant to the provisions of this agreement for any purpose whatsoever other than for the purpose for which it was disclosed and otherwise than in accordance with the provisions of this agreement, and more specifically and explicitly not to use, exploit, permit the use of, directly or indirectly the proprietary confidential information.
- 2.3 All such confidential information shall not be disclosed to any third party without the written consent of the Disclosing Party or data subject. Where such consent is granted, disclosure shall only be made to a third party if such third party (in writing) accepts obligations of confidentiality similar to those contained in the agreement or, if such third party is a government or government agency, agrees (in writing) to treat such information as confidential and propriety information.
- 2.4 The Receiving Party undertakes to restrict its use of confidential information to its dealings with the Disclosing Party, to make no further use of same and to ensure that dissemination of confidential information within its own organisation is made on a strict "need to know" basis. The Receiving Party shall ensure that all persons to whom confidential information will be made available in the performance of Receiving Party's duties are aware of the confidential nature of such confidential information and will comply with the terms and conditions of this agreement relating to the protection and use of confidential and personal information.
- 2.5 The Receiving Party shall not do or purport to do anything or assist any other person in doing anything which may or could impair, prejudice or interfere with the Disclosing Party's vested rights, title and interest in and pertaining to the proprietary confidential information.
- 2.6 The Receiving Party guarantees that it's directors, employees, members, trustees, or any other representatives or agents of whatsoever nature (if any), will adhere to these confidentiality undertakings, as though such persons were party to this agreement.

- 2.7 Nothing in this agreement shall be deemed to grant a license directly or by implication under any patent or patent application, utility model, copyright, mask work or any other industrial or intellectual property right concerning same.
- 2.8 Upon termination of the principal agreement between the parties, the Receiving Party undertakes to deliver to the Disclosing Party all documents relating to and copies (by whomsoever made) of the confidential information of the Disclosing Party (including in computerised format), or if so requested by the Disclosing Party to certify destruction thereof.
- 2.9 The Receiving Party must secure the integrity and confidentiality of personal/confidential information in its possession or under its control by taking appropriate reasonable technical and organisational measures to prevent loss of, damage, unauthorised destruction of personal information and unlawful access to or processing personal information.
- 2.9.1 The Receiving Party will comply with paragraph 2.9 if it ensures that appropriate, reasonable technical and organisational measure are in place to:-
- a) Identify and document all reasonably foreseeable internal and external risks that may have an influence on the personal information in its possession or under its control;
  - b) Establish and maintain appropriate safeguards against the risks identified;
  - c) Regularly verify and obtain confirmation that the safeguards are effectively implemented; and
  - d) Ensure that the safeguards are continuously updated in accordance with newly identified risks or deficiencies that may influence the current safeguards.

The Receiving Party must favourably consider and take into account generally accepted information security practices and procedures that may be required in terms of specific industry or professional rules and regulations.

### **3. BREACH / LIABILITY OF THE RECEIVING PARTY (THE OPERATOR) AND THIRD-PARTY RIGHTS**

- 3.1 Should the Receiving Party commit a breach of any of the provisions of this agreement, then the Disclosing Party shall be entitled to, in addition to any other common law or statutory remedies it may have (including the right to claim damages):-
- 3.1.1 without notice to the Receiving Party, to bring an application in any Court of competent jurisdiction, whether on an urgent basis or not, for the granting of an interdict against the Receiving Party to prevent any further breach of the terms of this agreement; and/or
  - 3.1.2 without notice to the Receiving Party, to claim specific performance from the Receiving Party of all its obligations whether or not the due date for performance has arrived.
- 3.2 The Operator indemnifies and holds the Disclosing Party harmless against any loss, damage, action or claim which may be brought by whomsoever against the Receiving Party or any of its directors or employees in consequence of the Receiving Party or its employees or agents breaching:
- 3.2.1 any of the warranties and undertakings housed under this Agreement, or
  - 3.2.2 any of the provisions of POPIA and / or the 8 POPIA conditions for the lawful processing of personal information,
- and which breach pertains to the Personal Information, which the Receiving Party has been mandated to process in terms of the Service Agreement between the Parties and this Agreement.
- 3.3 In the event of the Receiving Party, its employees or agents breaching any of the warranties and undertakings housed under this Agreement, or breaching any of the provisions of POPIA and / or the 8 POPIA conditions for lawful processing of personal information, and which breach pertains to the Personal Information which it has been mandated to process in terms of this Agreement and the Service Agreement, then in such an event, the Receiving Party shall be liable for all and any damages it may have caused in consequence of said breach including patrimonial, non-patrimonial and punitive damages

actually suffered by the Disclosing Party and / or the Data Subject(s) in consequence of said breach.

- 3.4 At the request of the Disclosing Party (the Responsible Party), the Receiving Party (the Operator) will provide the Disclosing Party with evidence of financial resources sufficient to fulfil its responsibilities set out under this Agreement, which may include insurance coverage.

#### **4. DOMICILIA AND NOTICES**

- 4.1 The parties choose *domicilia citandi et executandi* ("domicilium address/address where legal documents will be accepted") for all purposes arising from or pursuant to this agreement as:

4.1.1 Receiving Party:

4.1.2 Disclosing Party:

Corner of Drommedaris Road and Drie Bergen Road, Paarl, South Africa

#### **5. GENERAL**

- 5.1 The agreement constitutes the sole record of the agreement.
- 5.2 No party shall be bound by any representation, warranty, undertaking, promise of the like not recorded in this agreement.
- 5.3 No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless done in writing and signed by or on behalf of all parties.
- 5.4 Any indulgence, which any party may show to another in terms of or pursuant to the provisions contained in this agreement, shall not constitute a waiver of any of the rights of the party which granted such indulgence.

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**PO Box 892, Huguenot, 7645, South Africa**



SIGNED AT THE DATES AND PLACES INDICATED HEREUNDER, IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

Signed at: \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2024

\_\_\_\_\_

For and on behalf of the **DISCLOSING PARTY**

who warrants his/her authority hereto.

WITNESS:

\_\_\_\_\_

Signed at: \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021

\_\_\_\_\_

For and on behalf of the **RECEIVING PARTY**

who warrants his/her authority hereto.

WITNESS:

\_\_\_\_\_

**Batch Manufacturing | Under-License Manufacturing | Components | Sub-assemblies | Project Management | Global Installations**

ISO 9001 (TUV ID: 9108649528) | ISO 3834-2 (TUV ID: 9105086568)  
Fabrinox (Pty) Ltd | Reg Nr 2008/000839/07 | VAT Nr 456 024 8298