

# INTERSTELLIO IO (PTY) LTD

## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

### CHECKLIST

#### TYPE OF RECIPIENT:

- |                   |                          |
|-------------------|--------------------------|
| INDIVIDUAL        | <input type="checkbox"/> |
| PRIVATE COMPANY   | <input type="checkbox"/> |
| CLOSE CORPORATION | <input type="checkbox"/> |
| SOLE PROPRIETOR   | <input type="checkbox"/> |
| PARTNERSHIP       | <input type="checkbox"/> |
| PUBLIC COMPANY    | <input type="checkbox"/> |

#### DETAILS OF INDIVIDUAL SIGNING ON BEHALF OF RECIPIENT:

FULL NAMES \_\_\_\_\_

ID NO \_\_\_\_\_

ADDRESS \_\_\_\_\_

CAPACITY \_\_\_\_\_

#### AUTHORIZED TO ENTER AND SIGN BY VIRTUE OF:

- |                   |                          |
|-------------------|--------------------------|
| SOLE OWNERSHIP    | <input type="checkbox"/> |
| MANAGING POSITION | <input type="checkbox"/> |
| RESOLUTION        | <input type="checkbox"/> |
| MINUTES           | <input type="checkbox"/> |

#### PAGES TO BE COMPLETED BY SIGNATORY:

- |                      |                          |
|----------------------|--------------------------|
| PAGE 2 – PARTICULARS | <input type="checkbox"/> |
| PAGE 6 – DESCRIPTION | <input type="checkbox"/> |
| PAGE 14 – DOMICILIUM | <input type="checkbox"/> |
| PAGE 19 – SIGNATURES | <input type="checkbox"/> |

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

Entered into by and between:

**INTERSTELLIO IO (PTY) LTD**

**T/A INTERSTELLIO (REG NO: 2019/606622/07)**

Herein duly represented by: \_\_\_\_\_

In his/her capacity as: \_\_\_\_\_

(Herein after referred to as “the Discloser”)

and

\_\_\_\_\_

ID / Reg number: \_\_\_\_\_

Herein duly represented by: \_\_\_\_\_

ID number: \_\_\_\_\_

In his/her capacity as: \_\_\_\_\_

(Herein after referred to as “the Recipient”)

**The Discloser and the Recipient hereby agree to the following:**

**1. INTERPRETATION**

In this Agreement:

1.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement.

1.2 Any reference in this Agreement to the singular includes the plural and vice versa.

- 1.3 Any reference in this Agreement to natural persons includes artificial and legal persons (whether incorporated or unincorporated) and references to any gender include the other gender and vice versa.
- 1.4 The use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.5 In interpretation, the contra proferentem rule of construction shall not apply (this Agreement being the product of negotiations between the parties) nor shall this Agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisers participated in the preparation of this Agreement.
- 1.6 Any substantive provision conferring rights or imposing obligations on any party in the interpretation and definitions clause or elsewhere shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.7 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.
- 1.8 Reference to “days” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to “business hours” shall

be construed as being the hours between 08h00 and 17h00 on any business day.

- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.11 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## **2. DEFINITIONS**

Unless the contrary is clearly indicated, the following words and/or phrases, when used in this Agreement, will have the following meaning:

- 2.1 “Agreement” – means this written document together with all written appendices, annexures, exhibits or amendments attached to it from time to time.
- 2.2 “Confidential Information” – means any and all information or data in whatever form disclosed or revealed by or on behalf of the Discloser to the Recipient at any time for or in anticipation of the Disclosing Purpose or in the course of discussions in connection with the Disclosing Purpose and includes, without limitation, cost

data and any business, marketing, scientific, commercial, financial, or technical information, contracts, intellectual property, trade secrets, know-how, formulas, processes, sketches, photographs, plans, drawings, specifications, reports, diagrams, models, customer lists, price lists, studies, findings, computer software, inventions, ideas and data, in any form or media, and whether oral, written or electronic, as well as any and all notes, memoranda, reports, analyses, concepts, documents, files and other information or records prepared by or for the Recipient or Discloser or in the possession or control of the Recipient that describe, evaluate, analyse, reflect or otherwise incorporate or are generated from or contain any Confidential Information or Trade Secrets of the Discloser.

2.3 “Effective Date” – means the date of signature by the last party signing this Agreement.

2.4 “Discloser” – means **INTERSTELLIO IO (PTY) LTD (REG NO: 2019/606622/07)**

T/A **INTERSTELLIO** being the party disclosing the Confidential Information and Trade Secrets, which will include any group of Companies or other Companies forming part of or subsidiaries to INTERSTELLIO or any Company or group of Companies of which INTERSTELLIO forms part of for the Disclosing Purpose.

2.5 “Disclosing Purpose” – means all necessary research, fact finding and negotiations with the Discloser in order for the Recipient to determine the viability and possibility of the future co-operation between the parties in the furtherance of the business of the Discloser.

2.6 “Recipient” – means \_\_\_\_\_(ID / REG NO: \_\_\_\_\_) being the party receiving the Confidential Information and Trade Secrets, which will include its subsidiaries as defined in Section 3 of the Companies Act, 2008, as at the Effective Date.

2.7 “Trade Secrets” – means the Discloser’s business strategies, contractual relationships amongst themselves and with third parties, the character and needs of its clients and suppliers, Confidential Information including, inter alia, without limiting the generality thereof, the following matters, all of which are hereinafter referred to as “the trade secrets”.

2.7.1 Manufacturing know-how, processes and techniques, technical detail, know-how, method of operating, cost and source of material, pricing and purchasing policies;

2.7.2 Names of clients and potential clients of the Discloser and of companies comprising the Discloser (including potential clients of the Discloser and the group with whom the Discloser and/or the group (or any company forming part of the group) has not yet contracted, but intends contracting for the purpose of doing business) and the needs and requirements of such clients;

- 2.7.3 The names of and financial arrangements between the Discloser and/or the group (or any company forming part of the group) and suppliers of services, information, hardware and software products and finished goods;
- 2.7.4 Knowledge of and influence over the Discloser's and/or the group's clients and the associates of the Discloser's business and of the businesses of the companies comprising the group;
- 2.7.5 The contractual arrangements between the Discloser and/or any company within the group and its/their business associates;
- 2.7.6 The financial details of the Discloser and/or the group's relationships with its/their associates;
- 2.7.7 The financial details (including credit and discount terms) relating to the Discloser and/or the group's clients;
- 2.7.8 The design and function of any software and/or hardware used by the Discloser and/or any company within the group;
- 2.7.9 Details of the Discloser's and/or the group's financial structure and operating results;
- 2.7.10 Details of the Discloser's and/or the group's business operations, strategic planning and positioning and policy considerations;
- 2.7.11 Details of the remuneration paid by the Discloser and/or the group to its/their various employees and/or consultants and their duties;

2.7.12 Other matters which relate to the business of the Discloser and any company within the group and in respect of which information is not readily available in the ordinary course of business to a competitor of the company or such group company.

### **3. INTRODUCTION**

#### **WHEREFORE:**

- 3.1 The Discloser is in possession of Confidential Information and Trade Secrets pertaining to the business of the Discloser and the Recipient requires access to such Confidential Information and Trade Secrets for use in connection with the Disclosing Purpose; And;
- 3.2 The Recipient acknowledges the importance of the Confidential Information or Trade Secrets to the Discloser and agrees that if the Confidential Information and Trade Secrets so disclosed is used by the Recipient for any purpose other than the Disclosing Purpose or is disclosed or disseminated by the Recipient to another person or entity which is not a party to this agreement, this is likely to cause the Discloser irreparable harm and material financial loss.
- 3.3 The parties have accordingly agreed to enter into this Agreement, in the absence of which, the Discloser would not have disclosed any of its Confidential Information or Trade Secrets set out herein.

### **4. DURATION**

- 4.1 This Agreement shall commence on the Effective Date and shall remain in force for a period of five years after the date of signature, provided that the confidentiality with regards to the Trade Secrets continue to apply indefinitely.



## 5. CONFIDENTIAL INFORMATION AND TRADE SECRETS

- 5.1 Any Confidential Information or Trade Secrets disclosed by the Discloser at any time shall be received and used by the Recipient only for the Disclosing Purpose and for no other purpose, save with the prior written consent of the Discloser.
- 5.2 The Discloser has disclosed such Confidential Information or Trade Secrets which in the sole discretion of the Discloser necessary for the Disclosing Purpose and the Discloser did not provide any warranty in respect of the accuracy or completeness of the Confidential Information and Trade Secrets.
- 5.3 The Confidential Information or Trade Secrets shall at all times be owned by and remain the sole and exclusive property of the Discloser. At the Discloser's request, the Recipient shall immediately return to the Discloser any and all Confidential Information or Trade Secrets disclosed to the Recipient and shall at the Discloser's option destroy or return to the Discloser all copies, notes, electronic data, summaries, transcriptions and records thereof or relating thereto or deriving there from, without retaining copies of any of the same in any form or medium; and where requested by the Discloser shall provide written confirmation that the provisions of this clause have been fully complied with. The return of any Confidential Information or Trade Secrets will not diminish or otherwise affect any other obligations of the Recipient under this Agreement.
- 5.4 The Recipient acknowledges that any breach of this Agreement could cause substantial irreparable harm to the Discloser and that any breach or threatened breach of this Agreement by the Recipient

will entitle the Discloser to obtain an interdict, without prejudice to any other legal remedies available to the Discloser, including but not limited to, specific performances, damages or other equitable relief.

## **6. NON-DISCLOSURE**

6.1 The Recipient warrants that it shall:

6.1.1 Treat the Confidential Information or Trade Secrets as private and strictly confidential and will safeguard it accordingly using reasonable means and shall not disclose any Confidential Information and Trade Secrets to any third party or competitor of the Recipient;

6.1.2 Not disclose the Confidential Information or Trade Secrets except in accordance with the provisions of this Agreement;

6.1.3 Not use, disclose, divulge, copy, reproduce, publish, circulate, reverse engineer and/or decompile or otherwise transfer, whether directly or indirectly, the Confidential Information or Trade Secrets to any other person or entity;

6.1.4 Take all such reasonable steps as may be reasonably necessary to prevent the Confidential Information or Trade Secrets falling into the hands of unauthorised persons or entities;

6.1.5 Not use the Confidential Information or Trade Secrets in any way that could be directly or indirectly detrimental to the Discloser, or so as to procure any commercial advantage for itself or for any person or entity over the Discloser and will itself not enter into any business venture similar to that of the Discloser or into competition with that of the Discloser;

- 6.1.6 Not at any time use the Confidential Information or Trade Secrets to solicit or entice away or endeavour to solicit or entice away any suppliers to, customers of, business opportunities or prospective clients of customers, employees or shareholders of the Discloser either to join the Recipient or any other party or for any other purpose (specifically including without being limited to, a purpose being the same or similar as the business of the Discloser);
- 6.1.7 Not allege that this Agreement grants it, either directly, or by implication, or by estoppel or otherwise any right or license to or under such Confidential Information or Trade Secrets and no rights whatsoever in such Confidential Information or Trade Secrets shall be deemed to have been conferred upon the Recipient except as set out in this Agreement;
- 6.1.8 Not disclose to any person the contents of this Agreement and not disclose to any person any Confidential Information or Trade Secrets which it has received; except, in either case, to its directors, employees, legal and financial advisers (“Personnel”) directly involved in the Disclosing Purpose and then only to the extent that it is strictly necessary and the Personnel need to know the Confidential Information and Trade Secrets for the Disclosing Purpose and provided that such Personnel are subject to written and signed confidentiality obligations at least as stringent as those contained in this Agreement prior to such disclosure and which confidentiality obligations shall continue after the Personnel’s relationship with the Recipient may have terminated. The Recipient shall be liable to the Discloser for any breach by the Personnel of such confidentiality obligations.

- 6.2 Any documentation, written record, data, photograph or other material containing Confidential Information or Trade Secrets (in whatsoever form) which came into the possession of the Recipient or its representatives, shall be deemed to form part of the Confidential Information or Trade Secrets.
- 6.3 The Recipient hereby indemnifies and holds the Discloser harmless against any claim, demand, loss, actions, expense, claim, liability, harm or damage of whatsoever nature sustained or suffered by the Discloser arising out of or in connection with a breach by the Recipient, its directors, employees, advisers, representatives or agents, of any of the provisions of this Agreement.
- 6.4 The provisions of this Agreement shall not apply to any Confidential Information or Trade Secrets which:
- 6.4.1 Was by reasonable proof already in the possession of the Recipient at the time of receipt of the Confidential Information or Trade Secrets and was not made available to the Recipient subject to any obligation of confidentiality or in breach of any obligation of confidentiality imposed on any other person; or
- 6.4.2 Was in or hereafter enters the public domain through no action, omission or fault of the Recipient or any of its directors, employees, advisers, representatives or agents; or
- 6.4.3 Was lawfully obtained by the recipient from a third party other than the Discloser which third party was lawfully entitled without any restriction on disclosure to disclose such Confidential Information or Trade Secrets.

## **7. RESTRICTED RELEASE OF INFORMATION TO THE PUBLIC**

7.1 The Recipient shall not issue any media release or any other public document or make any public statement relating to or connected with or arising from this Agreement or the termination thereof, without obtaining the prior written approval of the Discloser to the contents and the manner of its presentation and publications. The granting of any such approval shall be at the sole discretion of the Discloser.

## **8. ORDER TO DISCLOSE**

8.1 In the event that the Recipient is compelled or required by any court of law or governmental agency having the requisite authority, to disclose any Confidential Information or Trade Secrets, the Recipient shall ensure that the Discloser is (prior to the disclosure of the Confidential Information or Trade Secrets, and to the satisfaction of the Discloser) provided with immediate notice of such request or requirement, full details of the Confidential Information or Trade Secrets to be disclosed and copies of any documentation in regard thereto, whether written, electronic or in any other format, in order to allow the Discloser in its sole discretion to seek appropriate protective relief from all or part of such order or request.

8.2 The Recipient agrees to co-operate fully with the Discloser concerning efforts to obtain in the Discloser's own right and at its cost an appropriate protective order or other suitable assurance that the confidential treatment will be accorded to such Confidential Information or Trade Secrets and if and when disclosure of such information is legally required, furnish only that portion of the Confidential Information or Trade Secrets which it is legally compelled to disclose.

## 9. DOMICILIUM

9.1 The parties choose as their *domicilium citandi et executandi* their respective addresses and information set out below for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement:

### 9.1.1 The Discloser:

#### Physical

**Address:** 19 INDIANAPOLIS STREET,  
KYALAMI BUSINESS PARK MIDRAND  
GAUTENG  
1684

**Email:** LEGAL@INTERSTELLIO.IO

### 9.1.2 The Recipient:

#### Physical

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Email:** \_\_\_\_\_

- 9.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its *domicilium* addresses or information to any other address or information which is not a post office box or *poste restante*.
- 9.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

## 10. NOTICES

- 10.1 Any notice given by one party to the other (“the addressee”) which:
- 10.1.1 Is delivered by hand during the normal business hours of the addressee at the addressee’s *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
- 10.1.2 Is transmitted by electronic email to the addressee’s receiving machine/computer shall be presumed, until the contrary is proved, to have been received within one (1) hour of transmission where it is transmitted during normal business hours or, if transmitted outside normal business hours, within one (1) hour of the resumption of normal business hours on the next business day;
- 10.1.3 Notwithstanding anything to the contrary contained in this clause 11, a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its *domicilium*.

## 11. BREACH

- 11.1 In the event of any party breaching any material term of this Agreement, the innocent party will have the right to:
- 11.1.1 Immediately cancel this Agreement upon notice to the guilty party, or:
  - 11.1.2 Afford the guilty party 5 (five) days to rectify its breach by forwarding a written letter of demand to the guilty party requiring for its breach to be rectified accordingly.
- 11.2 In the event of the innocent party cancelling the Agreement in terms of clause 11.1.1 herein above or in the event of the guilty party not rectifying its breach in terms of clause 11.1.2 herein above, the innocent party will have the following rights:
- 11.2.1 To cancel this Agreement immediately and/or;
  - 11.2.2 Claim specific performance and/or;
  - 11.2.3 Claim damages.
- 11.3 In the event of the innocent party taking any legal action against the guilty party the guilty party will be liable to pay any and all legal cost of the innocent party on the scale as between attorney and own client including advocate costs, including costs of senior counsel and the costs of any expert witnesses.



## **12. GOVERNING LAW AND JURISDICTION**

- 12.1 The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such law.
- 12.2 The parties agree to submit themselves to the exclusive jurisdictions of the South African Courts.

## **13. GENERAL**

- 13.1 This Agreement constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.
- 13.2 No party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signing by the parties.
- 13.3 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 13.4 No failure in exercising any right or indulgence which either party may grant the other party shall constitute a waiver of any of the rights of the first party.
- 13.5 The parties acknowledge that this Agreement and the undertakings given by it in terms hereof are fair and reasonable in regard to their nature, extent and period and go no further than is reasonably necessary to protect the interests of the parties.

- 13.6 The parties agree that, if any provision of this Agreement is found by a court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.
- 13.7 The parties hereby confirm that they have entered into this Agreement understanding of the nature, significance and effect thereof and freely and voluntarily and without duress.
- 13.8 The parties endeavour at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 13.9 This Agreement may be executed in several counterparts that together shall constitute one and the same instrument.
- 13.10 In this Agreement, clause headings are for convenience only and shall not be used in its interpretation.

#### **14. ASSIGNMENT, CESSION AND DELEGATION**

- 14.1 Neither of the parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other.

#### **15. NON-VARIATION**

- 15.1 The parties agree that this agreement is in full effect and can only be amended in writing which will be signed and agreed to by both parties.

**\*\* THE SIGNATORY HEREWITH KNOWS AND UNDERSTANDS THE FULL PARTICULARS OF THIS AGREEMENT BY VIRTUE OF THE FACT THAT SAME WAS DULY EXPLAINED TO HIM/HER. THE SIGNATORY FURTHERMORE HEREBY ACKNOWLEDGES THAT HE/SHE IS DULY AUTHORISED TO ENTER INTO THIS AGREEMENT AND HAS DONE SO WITH SOBER MIND AND WITHOUT ANY UNDUE INFLUENCE OR DURESS. \*\***

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF**

**\_\_\_\_\_ 20\_\_\_\_.**

\_\_\_\_\_

WITNESS

\_\_\_\_\_

THE DISCLOSER

NAME: \_\_\_\_\_

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF**

**\_\_\_\_\_ 20\_\_\_\_.**

\_\_\_\_\_

WITNESS

\_\_\_\_\_

THE RECIPIENT

NAME: \_\_\_\_\_