

CONFIDENTIALITY, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

entered into between

NEOSPACE AFRICA (PTY) LTD

Reg No: 2020/471079/07

and

.....

Reg No:

.....

and

.....

Reg No:

.....

and

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Reg No:

.....

Jointly the "Parties" and individually the "Party"

1. REPRESENTATIONS

The parties are entering into this Agreement for the following purpose:

exploring the potential collaboration on business ventures (the "Purpose") as may be specifically agreed between the Parties (the "Program/s") and confirm that Confidential Information will be disclosed between the Parties and therefore require that disclosed information be protected and regulated by the terms and conditions of this agreement.

Each Party warrants that it is the lawful owner or authorised Representative of the Confidential Information disclosed by it to the other Party during subsequent discussions and negotiations and makes such Confidential Information available to the other Party strictly subject to the terms and conditions of this Agreement.

2. DEFINITIONS

2.1. Confidential Information

For the purposes of this agreement, unless inconsistent with or otherwise indicated by the context, "Confidential Information" shall mean any information disclosed by either Party and may include technical data, trade secrets, commercial -, financial - and/or management information and intellectual property otherwise embodied, whether directly or indirectly obtained, marked as confidential or unmarked as confidential but can reasonable be assumed

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to be confidential and shall include but not be limited to:

- 2.1.1. market intelligence of a Party's own or as confidentially shared by the clients of a Party,
- 2.1.2. operating know-how, processes and techniques used by either Party in the conduct of its business;
- 2.1.3. trade secrets, know-how, inventions, drawings and/or illustrations, intellectual property (both registered and unregistered), existing and/or contemplated products and services, research and development information,
- 2.1.4. technical data, product or process specifications, designs formulations, computer programmes and all other technical, mechanical and computer information, belonging to or in the possession of a Party and employed in the conduct of its business operations;
- 2.1.5. knowledge of details, particulars and data generally with reference to either Party's employees, employment terms, suppliers, customers, strategic alliances and business associates;
- 2.1.6. either Party's method of conducting business (such as policies or strategies, internal organisation facilities, compliance process, financing models etc), management, marketing, productions, costs and source of material, pricing information, any financial data and financial projection, or business plans ;
- 2.1.7. the contractual arrangements such as representation specifics, supply, financial management between each Party and its clients and business associates;
- 2.1.8. names, addresses and requirement of suppliers and potential suppliers of either Party (including potential supplier for future purposes of doing business);
- 2.1.9. names, addresses and requirements of clients and potential clients of either Party (including potential clients of a Party whom such Party intends to contact in future for purposes of doing business);
- 2.1.10. any other matters which may come to the knowledge of the other Party and which relate to the business of either Party in respect of which information is not readily available in the public domain or normal course of business.

All Confidential Information shall be treated as such whether communicated in writing, orally or any kind of communication between the Party or their employees, agent or any representatives exchanged by any means.

The Parties agree that any Confidential Information relating to this Agreement and exchanged by the Parties prior to this Agreement shall be subject to the all the terms and conditions of this Agreement.

2.2. **Discloser**

"Discloser" shall mean any Party to this agreement making available Confidential Information to the Recipient.

2.3. **Recipient**

"Recipient" shall mean any Party to this agreement that receives Confidential Information disclosed by the Discloser.

2.4. **Representative**

"Representative" shall mean any legal entity or legal person, subsidiary, branch, representative or individual that is either wholly owned or majority owned by a Party, employed by a Party or that has a contractual relationship or formal agreement with a Party other than being a normal supplier to the Party.

3. EXCEPTIONS

The confidentiality obligations set out in this agreement shall however not apply to any information which:

- 3.1. any Party can demonstrate, is already in the public domain or becomes public knowledge through no breach by any Party hereto or the persons contemplated in clause 4.3;
- 3.2. was rightfully in the Recipient's knowledge or possession without obligation of confidence as proven by its written records prior to receipt from the Discloser;
- 3.3. can be proven to have been rightfully received by a Party from a third party without solicitation and without obligation of confidence;
- 3.4. is independently developed by a Party as proven by its documented records;
- 3.5. is approved for release with the prior written consent of the other Party;
- 3.6. is required to be disclosed in order to comply with a judicial order or decree, provided that a Party has given the other Party sufficient prior written notice of such request to enable such other Party to defend or protect such disclosure.

4. OBLIGATIONS OF THE PARTY

4.1. CONFIDENTIALITY

The Parties respectively hereby irrevocable agree and undertake in favour of each other:

- 4.1.1. not to divulge or disclose in any manner whatsoever to any other person, either directly or indirectly, any of the Confidential Information belonging to any Party without the prior written consent of the Discloser;
- 4.1.2. not to divulge or disclose in any manner whatsoever to any other person not a Party to this Agreement, the fact that the Parties are receiving Confidential Information from one another or the existence of such Confidential Information;
- 4.1.3. to use its best efforts to maintain in confidence any and all Confidential Information of the other Party which may be acquired by or disclosed to it in pursuance of the proposed discussions and negotiations and with at least the same standard of care that the Party uses in the protection of its own Confidential Information;
- 4.1.4. not, under any circumstances, without the prior written consent of the Discloser, disclose to any publishing or news media (including but not limited to Internet, social media, newspapers, magazines, radio or television) any information of any nature, whatsoever, including Confidential Information, with regard to the products, services, relationship or activities of the other Party, which said Party have not already made known to the public at large;

4.2. PROHIBITION OF ANY USE

The Parties respectively hereby irrevocable agree and undertake in favour of the other Party:

- 4.2.1. not to use, exploit, permit or procure, either directly or indirectly, the use or application in any manner whatsoever of any aspect of the Confidential Information disclosed to it pursuant to the provisions of this agreement for any purpose whatsoever other than for the Purpose and Programs for which it was disclosed;
- 4.2.2. not to make, or allow to be made, copies of or otherwise reproduce the Confidential Information, except as reasonably required for the Purpose of this Agreement or otherwise authorised by specific prior agreement of the Discloser;
- 4.2.3. not reverse engineer or otherwise decompile or disassemble the Confidential Information;

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- 4.2.4. not to use the same or any Confidential Information provided by another Party to seek or obtain any patents, designs, copyrights or any other intellectual property right in respect thereof on its own or through any other person;
- 4.2.5. not to utilise the Confidential Information in a manner so as to constitute a conflict of interest to the business or customer interests of the Discloser;
- 4.2.6. not directly or indirectly at any time after entering into this agreement, irrespective of its termination for any cause whatsoever, at any time subsequent to the coming into force and effect of this agreement, do or purport to do anything or assist any other person in doing anything which may or could impair, infringe, prejudice or interfere with another Party's vested rights, title and interest in and pertaining to the Confidential Information; and
- 4.2.7. represent that it has any right, title or interest in and pertaining to another Party's Confidential Information disclosed to, or acquired by, it in terms of this agreement.

4.3. AUTHORISED DISCLOSURE

- 4.3.1. In order to further protect the Confidential Information, each Party hereby undertakes that :
 - 4.3.1.1. it will secure written confidentiality undertakings with the same or greater obligation of confidentiality from its employees, officers, agents, directors, representatives, associates, advisors, suppliers, vendors and consultants as also those of its associated entities, subsidiaries' or holding companies, who have a reasonable need to know and will come into contact with any Confidential Information, and
 - 4.3.1.2. in order to preclude other persons having access to the Confidential Information, it will restrict to the aforesaid category of persons, contact with such Confidential Information.
- 4.3.2. Each Party hereby accepts liability for all acts of its employees, officers, agents, directors, representatives, consultants and associates who have access to the Confidential Information or who will or are handling the same.

4.4. GENERAL OBLIGATIONS

- 4.4.1. The undertakings referred to in 4.1 to 4.3 shall bind all Parties whether or not a further agreement is reached between the Parties as envisaged in clause 1 above, and shall survive the termination of this agreement for a further period of five (5) years.
- 4.4.2. It is agreed that the primary rationale for these undertakings is to protect each Party's legitimate rights in, and to prevent the disclosure or use of, by any Party, the Confidential Information obtained by any Party in the course of the discussions and negotiations which has or may be disclosed to such Party should no further agreement be concluded between the Parties which replaces and supercedes this agreement.
- 4.4.3. Should no further agreement be concluded between the Party in respect of the business dealings as contemplated herein, the Recipients respectively agree to, at the expiry or termination of this agreement, forthwith return to the Discloser all documents and other Confidential Information, whether in printed, electronic or any other form which may have been handed or made available to such Party for the purposes envisaged in this agreement together with all copies, memoranda, notes and reproductions of such documents and Confidential Information.
- 4.4.4. The Parties respectively hereby irrevocable agree and undertake in favour of the other to notify and where requested to do so by the other Party, to notify the Party, in writing immediately upon becoming aware of any unauthorized disclosure or use of Confidential Information, and will take all reasonable steps to prevent any further unauthorized disclosure or use, and to regain possession of any Confidential Information disclosed in violation of this Agreement.

5. LIMITED WARRANTY

- 5.1. The Parties warrant that it has the lawful right to transmit or otherwise furnish the Confidential Information disclosed pursuant to this Agreement.
- 5.2. The Parties make no representation or warranty as to the adequacy, completeness, accuracy, patentability, fitness for a particular purpose, sufficiency, or freedom from defect of any Confidential Information. The Party shall not be liable for damages of whatever kind as a result of the other Party's reliance on or use of Confidential Information.

6. NO LICENSE

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither Party solicits any change in the organization, business practice, service or products of the other Party, and that the disclosure of Confidential Information shall not be construed as any intent by a Party to purchase or provide any products or services of the other Party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products or services..

7. NON-SOLICITATION / NON-CIRCUMVENTION / NON-COMPETITION

- 7.1. It is expressly recorded that the Confidential Information disclosed by any Party to the other under the protection of the terms of this agreement shall be used solely for the Purpose and Program contemplated in this agreement.
- 7.2. The Recipient and/or its Representatives shall not, directly or indirectly, solicit or try to enter in any contractual relationship with any clients, suppliers, business partners of any kind, or employees of disclosing party or any of its Representatives.
- 7.3. The Parties agree that at all times any clients, suppliers or business partners that is, directly or indirectly disclosed by the Discloser party, shall remain their exclusive client and, the Recipient Party may not deal directly with their clients, suppliers or any business partners at any time other than as specifically agreed.
- 7.4. The Recipient and its Representatives accordingly hereby irrevocably undertakes that, pursuant to signature of this agreement, none of it's business partners or employees shall, directly or indirectly through the persuasion, inducement, encouragement or procurement of any third party on their behalf, solicit nor attempt to solicit the circumvention, interference or bypass the Discloser nor do anything, nor cause to be done which is likely to have the effect of circumventing, inferring with or either to source from, use as intermediaries and/or prospective customer(s) or client(s) of the other Party as may be disclosed or revealed pursuant to the discussions and negotiations contemplated by the terms of this agreement and in line with the Purpose and Program.

8. NO ADDITIONAL AGREEMENTS

Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of any Party to enter into any other agreement with one another.

The Parties reserve the right to reject any and all proposals made with regard to any transaction and to terminate discussions and negotiations in writing at any time. Additional agreements of the Parties, if any, shall be in writing signed by both Parties.

This Agreement neither commits nor creates an obligation on any Party in any way to disclose its Confidential Information to the other Party,

This Agreement does not create any partnership, joint venture, employer/employee relationship, or to create any implied relationship other than the undertakings and obligations set out in this Agreement.

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9. NO PUBLICITY

All Recipients agrees not to disclose its participation in this undertaking or the existence or terms and conditions of the Agreement unless approved in writing by the other Party.

10. SUCCESSORS AND ASSIGNEES

The rights and obligations of this Agreement shall be binding on and inure to the legal successors of the Party.

Except as otherwise provided in this Agreement, no Party may assign, delegate, sub-contract or deal in any way with, any of its rights or obligations under this Agreement or any document referred herein unless agreed to in writing by all Parties. Any attempted assignment or delegation in contravention of this clause shall be void and unenforceable.

11. NON- PARTY RIGHTS

Except as expressly provided herein, a party, legal person or entity who is not a Party to this Agreement shall not have any right to enforce the terms of this Agreement or be entitled to access to any disclosed information in terms of this Agreement unless as may be required in terms of due legal process in terms of South African Law.

12. NO IMPLIED WAIVER

Any Party's failure to insist in any one or more instances upon strict performance by the other Party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

13. HEADINGS

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

14. ANCILLARY PROVISIONS

Each acknowledgement or undertaking made or given by any Party pursuant to the provisions of this agreement:

- is a separate acknowledgement and undertaking and is made separately from each other,
- is made separately in respect of each proprietary right of the Discloser as set out herein and in respect of each element of such proprietary information,
- is severable from every other such acknowledgement and undertaking,
- the validity or invalidity of any one such separate acknowledgement and undertaking shall not affect the validity of any other,
- is in no manner limited or restricted by reference to or inference from any other separate acknowledgement and undertaking.
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15. ENTIRE AGREEMENT

This Agreement expresses the full and complete understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter.

This Agreement is not, however, to limit any rights that a Party may have under trade secret, copyright, patent or other laws that may be available to it.

This Agreement shall be construed as to its fair meaning and not strictly for or against any Party.

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16. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed equally authentic with the other. A PDF copy of this Agreement, once executed, is admissible in any legal proceeding.

17. AUTHORITY

All Parties represent that the person signing on its behalf below has the actual and apparent authority, right and power to sign, execute this Agreement on its behalf, and that such execution has been duly approved and authorized by all necessary corporate or other acts required for the Party to be legally bound hereby.

18. DURATION AND TERMINATION OF THE AGREEMENT

This Agreement shall remain in effect until the earlier of:

- a) the completion of the Program/s or;
- b) the date on which the Party enter into a further agreement containing substantially similar confidentiality provisions, which agreement is intended to entirely supersede this Agreement or;
- c) the date on which a Party terminates this Agreement either for breach or upon common consent.

19. SURVIVAL OF THE OBLIGATIONS

The obligations assumed and undertaken by each Party in favour of the other in terms of this Agreement may be expressly superseded by the terms regarding confidentiality of any further agreement as may be entered into between the Party in writing, *alternatively*, and in the event that no such further agreement be entered into between the Party, shall survive the expiry or termination of this agreement for any other reason whatsoever during five (5) years.

20. BREACH

- 20.1. The Parties acknowledge and agree that the breach of the provisions of any clause of this agreement shall be unlawful conduct which shall render the Party in breach and potentially liable to compensate the other Party for all damages that the latter may sustain as direct consequence of the breach of this Agreement.
- 20.2. The Parties acknowledge and agree that the unauthorised disclosure or use of the Confidential Information by any Party or a related third party in terms of Clause 11 is likely to cause irreparable loss, harm and damage to the Discloser and accordingly the Recipient indemnifies and holds the Discloser harmless against any loss, action, expense, claim, harm or damage of whatsoever nature, suffered or sustained pursuant to a breach by the Recipient or the Recipient's representatives, of any of the provisions or undertakings set out in this agreement.
- 20.3. Any breach of clause 4 and 7 shall constitute unfair competition and entitle the non-breaching Party to compensation for all damages sustained as a consequence of said breach. Any breach of clause 4 and 7 shall entitle the non-breaching Party to seek an award of damages incurred by the breach of clause 4 and 7 of this Agreement.
- 20.4. Should any Party commit a breach of any of the provisions of this agreement, then the other Party shall be entitled to, without prejudice, any injunctive relief or specific performance, orders, in addition to any legal or statutory remedies it may have (including the right to claim damages).
- 20.5. The Parties acknowledge and agree that the covenants contained herein are necessary for the protection of the Parties' legitimate business interests and are reasonable in scope and content.
- 20.6. Any formal notice to be given or to be made for any purpose under this Agreement shall be sent in writing to the recipient Party.

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21. GOVERNING LAW AND JURISDICTION

- 21.1. This agreement shall be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such law.
- 21.2. The parties hereto consent and submit to the jurisdiction of the South Gauteng (Johannesburg) Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with this agreement.
- 21.3. The parties hereto select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required hereunder, the following:

Party ... 1 ...	Physical Address Studio 1E, Devonbosch Estate, Bottelary Rd, Stellenbosch, 7605	Postal Address (as per physical)	Email admin@neospaces.co.za
Party	Physical Address	Postal Address	Email
Party	Physical Address	Postal Address	Email
Party	Physical Address	Postal Address	Email

or such other address or telefax number as may be substituted by notice given as herein required. Any notice addressed to a party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by telefax. Any notice shall be deemed to have been given:

- a) if posted by prepaid registered post, 10 (ten) days after the date of posting thereof;
- b) if hand delivered, on the day of delivery;
- c) if sent by telefax on the date of sending of such telefax, provided that such notice shall be confirmed by prepaid registered post on the date of despatch of such telefax, or, should no postal facilities be available on that date, on the next business day.

