

MUTUAL CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT ("**Agreement**") is made with effect from _____ ("**Effective Date**")

PARTIES:

A. **THE INSTITUTION OF CERTIFICATED MECHANICAL AND ELECTRICAL ENGINEERS, SOUTH AFRICA NPC**

Registration Number: 2018/541877/08, a corporation incorporated under the laws of the Republic of South Africa ("**ICMEESA**");

and

B. _____, Registration Number: _____ ;

each referred to in this Agreement as a "Party" and collectively as the "Parties".

WHEREAS the Parties intend to engage with one another on potential business opportunities and may wish to work together with other parties to pursue commercial agreements ("the Purpose") and wish to regulate confidentiality matters between them and to ensure the protection of their proprietary rights

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1 Definitions

"Confidential Information" shall mean any information which has been or will be supplied or made available directly or indirectly by Disclosing Party to Receiving Party for the Purpose, which is generally considered by Disclosing Party to be commercially sensitive, confidential or trade secret, whether or not marked confidential, private or otherwise, including but not limited to copyright material supplied under restrictive licence, business plans, product development details, application solutions, software specifications, software code, software design and development details, methodologies, names and sensitive information pertaining to Disclosing Party's customers and prospects and marketing information. Confidential Information does not include such information that –

(i) is or becomes generally available in the public domain through no fault of the Receiving Party or its Representatives; (ii) was rightfully known to the Receiving Party or its Representatives without limitation on disclosure prior to such receipt; (iii) becomes available to a Receiving Party or its Representatives on a non-confidential basis from a third party, provided that said Receiving Party did not know, or have reason to believe, after reasonable investigation, that such third party was subject to an obligation not to disclose such information; or (iv) was independently developed by either Party after the Effective Date without use of the Confidential Information of the Disclosing Party ("**Excluded Information**");

"Disclosing Party" means that Party who discloses, or has disclosed Confidential Information to Receiving Party;

"Receiving Party" means that Party who receives the Confidential Information of Disclosing Party.

2 Handling of Confidential Information

2.1 Receiving Party shall maintain the Disclosing Party's Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and degree of care (including following relevant policies on confidentiality and protection of confidential and/or commercially sensitive information) than those which Receiving Party applies to its own confidential information but in no event shall the Receiving Party exercise less than a reasonable degree of care.

Receiving Party has no right to disclose said Confidential Information unless explicitly provided for in this Agreement as part of the Purpose.

2.2 Copies of the Confidential Information shall not be made or kept and all copies made shall be the property of Disclosing Party.

2.3 In the event that a Receiving Party is required by law, regulation or court order to disclose any Confidential Information, such Receiving Party shall notify the Disclosing Party in writing at least five (5) days prior to making any such disclosure to the extent that it is able to do so in order to facilitate the Disclosing Party seeking a protective order or other appropriate remedy from the proper authority. The Receiving Party agrees to co-operate with the Disclosing Party in seeking such order or other remedy. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information.

3 Limitations and Warranty

3.1 Receiving Party shall:

3.1.1 not divulge the Disclosing Party's Confidential Information, in whole or in part to any third party, except in accordance with the terms and conditions of this Agreement;

3.1.2 make no commercial use of the Disclosing Party's Confidential Information or any part thereof without the prior written consent of the Disclosing Party. Receiving Party shall not be entitled to make any disclosure of the Disclosing Party's Confidential Information to a third party except where the Disclosing Party has provided its prior written consent to the Receiving Party on condition that the Receiving Party enters into an obligation of confidence with any third party on terms no less onerous than under this Agreement.

3.2 Disclosing Party warrants its right to disclose its Confidential Information to the Receiving Party and to authorise the Receiving Party to use its Confidential Information for the Purpose.

3.3 The Parties agree that, in the event of a breach or threatened breach of this Agreement, damages would not be an adequate remedy and Disclosing Party shall be entitled to seek a temporary restraining order and/or a preliminary injunction without bond, and thereafter to seek a permanent injunction and no proof of special damages shall be necessary for the enforcement of rights under this Agreement.

3.4 Receiving Party agrees that it is fully responsible for the actions of her direct family with respect to the Confidential Information. Receiving Party agrees to be responsible to Disclosing Party for any damages, costs or expenses (including court costs and reasonable legal fees) suffered by Disclosing Party as a result of any breach of this Agreement by Receiving Party.

3.5 The Parties agree that there shall be no limitation or exclusion under this Clause 3 or elsewhere in this Agreement for fraud or fraudulent misrepresentation.

3.6 The receiving party shall not for a period of 24 (twenty four) months from date of last disclosure of any confidential information by the disclosing party, directly or indirectly through any third party, or internally through its own representatives, officers, employees, agents or sub-contractors, in any manner:-

3.6.1 exploit (including but not limited to the sale, marketing, development and design of) the confidential information and intellectual property owned by, accruing, or under license to the other party for the duration of this agreement other than expressly provided for in terms of this agreement;

3.6.2 solicit, or seek to exploit, any business, vendor or customer relationship disclosed by the disclosing party in terms of this agreement;

3.6.3 directly negotiate with any third party introduced to the receiving party by the disclosing party pursuant to her employment.

3.7 It is the intention of the parties to ensure that they do not through any structure, mechanism, subterfuge or in any other way seek to evade the provisions of this agreement.

4 Disclaimer

All rights in Confidential Information are reserved by each respective Disclosing Party and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any invention, discovery, patent, copyright or other industrial property right now or in the future held, made, obtained or licensable by either Party. Nothing in this Agreement or its operation shall preclude, impair or restrict either Party from continuing to engage in its business otherwise than breach of the terms of this Agreement.

5 Notices

5.1 Except as otherwise expressly provided in this Agreement, no notice from one Party to the other Party shall have any validity under this Agreement unless made in writing in accordance with this Clause 5.

5.2 Any notice required by or in connection with this Agreement shall be in writing and delivered by hand; sent by certified or registered post or transmitted by facsimile transmission ("Fax") or email as follows:

5.2.1 if to **ICMEESA** : Physical Address: 1ST Floor
 Davidson Office Park
 2 Davidson Road
 Rynfield
 Benoni

 Telefacsimile: +27 (0)86 262 1061
 Email: cpd@icmeesa.org.za

5.2.2 if to _____: Physical Address: _____

 Telefacsimile: _____

 Email: _____

5.3 In the absence of evidence to the contrary service of any notice shall be deemed to have taken place:

5.3.1 upon personal delivery (if duly signed for by an authorised recipient);

5.3.2 upon completion of a Fax transmission with receipt verified of the correct number of pages to the correct Fax number.

5.4 Either Party may change its address, fax number or nominated recipient for such service by notice as provided in this Clause 5.

6 Termination

6.1 This Agreement shall terminate immediately upon written notice of one Party to the other or otherwise expire 24 months after the Effective Date of this Agreement unless superseded by another agreement. Receiving Party shall have no access to the Disclosing Party's Confidential Information after termination or expiry whichever is the sooner. In addition to clauses expressly stated or by their nature required to survive expiry or termination, the provisions of Clauses 1, 2, 3 and 9 shall survive any such expiry or termination.

6.2 Upon expiry or termination of this Agreement, all Confidential Information received or obtained in written or copied form in whatever media shall, on written request from the Disclosing Party given in accordance with Clause 5, be destroyed by the Receiving Party, unless the Receiving Party is required to retain such materials pursuant to governing law or the requirements of an applicable court of law or governmental agency. Following receipt of such a written request from the Disclosing Party the Receiving Party shall certify that all such Confidential Information in tangible form, in whatever media has been destroyed within twenty-eight (28) days thereafter.

7 Non-Assignment

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part without the prior written consent of the other Party.

8 Entire Agreement

This Agreement constitutes the entire agreement and understanding between the Parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect. Nothing in this Clause 8 shall be deemed to exclude or limit liability for fraud or fraudulent misrepresentation.

9 Governing Law and Jurisdiction

The interpretation construction and effect of this Agreement shall be governed and construed in all respects in accordance with the Laws of South Africa and the Parties hereby submit to the jurisdiction of the South African Courts.

10 Third Parties

No person who is not a Party to this Agreement shall have any right or benefit under it.

11 Waiver

No exercise or failure to exercise, or delay in exercising any right, power or remedy vested in any Party under or pursuant hereto shall constitute a waiver by that Party of that or any other right, power or remedy

12 Publicity

Neither Party shall publicise the fact of this Agreement or the subject matter thereof without the prior written consent of the other Party.

Agreed for and on behalf of the parties:

ICMEESA	
Signature)	Signature)
Who by her signature warrants her authority to bind ICMEESA	
Printed Name: M.J. JACOBS	Printed Name:
Date of Signature:	Date of Signature: