

CONFIDENTIALITY AGREEMENT

made and entered into by and between

CBRE Excellerate Cres (Pty) Ltd

REGISTRATION NUMBER: 2019/120346/07

and

REGISTRATION NUMBER: _____

(collectively hereinafter referred to as the "**Parties**")

1. INTERPRETATION AND DEFINITIONS

In this agreement:

- 1.1 unless the context indicates a contrary intention, an expression which denotes:
 - 1.1.1 any gender includes the other genders;
 - 1.1.2 a natural person includes a juristic person and the other way around (*vice versa*);
 - 1.1.3 the singular includes the plural and the other way around (*vice versa*);
 - 1.1.4 the headings in this agreement are used for the sake of convenience and shall not govern the interpretation hereof;
 - 1.1.5 words and expressions defined in any clause, unless it is clear from the clause in question that the word or expression so defined has limited application to the relevant clause, shall bear the same meanings ascribed to them for all purposes in terms of this agreement;
 - 1.1.6 where a number of days are prescribed in this agreement it shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Sunday or public holiday in the Republic of South-Africa, in which case the last day shall be the next succeeding day, which is not a Sunday or public holiday;
 - 1.1.7 in the event that the day for performance of any obligation to be performed in terms of this agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
 - 1.1.8 the use of the word "including" or "includes" followed by a specified example or instance shall not be construed as limiting the meaning of the general wording succeeding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples;
 - 1.1.9 the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply; and
 - 1.1.10 the interpretation, construction and effect of this agreement and the rights and obligations of the Party hereto shall be governed by the laws of the Republic of South-Africa.
- 1.2 “**Business Day**” means any day other than a Saturday, Sunday or public holiday officially proclaimed as such in the Republic of South-Africa;
- 1.3 “**Confidential Information**” means:
 - 1.3.1 information relating to either Party’s existing and future strategic objectives and planning;
 - 1.3.2 information relating to either Party’s business activities, business relationships, customer names, products, services, customers and clients;
 - 1.3.3 price lists, pricing policies and financial and business information;
 - 1.3.4 information relating to the customers of either Party, which such Party is obliged to keep confidential by virtue of its relationship with its customers;

- 1.3.5 information contained in either Party's software and associated material documentation;
- 1.3.6 technical, scientific, commercial, financial and market information, know-how and trade secrets;
- 1.3.7 data concerning business relationships, demonstrations and processes;
- 1.3.8 plans, designs, drawings, functional and technical requirements and specifications;
- 1.3.9 information concerning either Party's systems, hardware and/or software, defects occurring in such systems, hardware and/or software, or the incidence of such faults or defects;
- 1.3.10 information concerned with discoveries, research, developments, methods, processes, procedures, improvements, "know-how" and compilations; and
- 1.3.11 market research, marketing techniques and plans conducted or drawn up by either Party;
- 1.3.12 but excludes any information –
 - 1.3.12.1 to the extent that, at the time of its disclosure, such information was in fact in the public domain;
 - 1.3.12.2 which after its disclosure becomes public knowledge other than by reason of a breach by Receiving Party of this agreement;
 - 1.3.12.3 was legally in Receiving Party's possession prior to disclosure by the Disclosing Party;
 - 1.3.12.4 is independently developed by the Receiving Party without the benefit of any information disclosed by the Disclosing Party; or
 - 1.3.12.5 the Parties agree in writing is not Confidential Information;
- 1.4 "**Counterparty**" means _____, a company duly registered in terms of the company laws of the Republic of South Africa, with Registration Number: _____;
- 1.5 "**Disclosing Party**" means the Party disclosing the Confidential Information;
- 1.6 "**THE COMPANY**" means CBRE Excellerate Cres (Pty) Ltd, a company duly registered in terms of the company laws of the Republic of South Africa, with Registration Number: 2019/120346/07, as well as any subsidiaries or affiliated entities;
- 1.7 "**Parties**" mean THE COMPANY and the Counterparty, and "**Party**" shall mean either one of them as the context indicates; and
- 1.8 "**Receiving Party**" means the Party receiving the Confidential Information.

2. SUPPLY AND USE OF INFORMATION

- 2.1 The Parties have engaged in, or are about to engage in, discussions pertaining to a potential transaction between THE COMPANY and the Counterparty (hereinafter referred to as the "purpose"). The Parties are entering into this agreement to record the terms and conditions upon which the Disclosing Party intends to disclose its Confidential Information to the Receiving Party for the purpose.

- 2.2 The Receiving Party therefore agrees:
- 2.2.1 to keep the Disclosing Party's Confidential Information confidential;
 - 2.2.2 not to use the Disclosing Party's Confidential Information except for the purpose for which such disclosure was intended; and
 - 2.2.3 not to disclose the Disclosing Party's Confidential Information to any third party and to use reasonable efforts to prevent any such disclosure except as expressly permitted by this agreement.

3. **CONFIDENTIALITY**

- 3.1 The Receiving Party acknowledges that the Disclosing Party's Confidential Information is valuable, special and a unique proprietary asset to the Disclosing Party.
- 3.2 The Receiving Party shall protect the Disclosing Party's Confidential Information through the exercise of the precautions set out in this agreement and shall use no less protection and care than the Receiving Party customarily use in preserving and safeguarding their own Confidential Information, which shall be at least a reasonable standard of care.
- 3.3 The Receiving Party shall keep the Disclosing Party's Confidential Information in a secure environment, and not copy or use the Disclosing Party's Confidential Information except as is reasonably necessary in connection with furthering the purpose set out above.
- 3.4 The Receiving Party agree to advise the Disclosing Party immediately if they are aware or reasonably suspect that the security of the Disclosing Party's Confidential Information has or may be compromised in any way.
- 3.5 The Receiving Party shall not utilise, exploit, reproduce, copy, disclose, disseminate or transfer to any third party in whole or in part any of the Disclosing Party's Confidential Information except:
 - 3.5.1 with the prior written consent of the Disclosing Party;
 - 3.5.2 to those of its directors, contractors, advisers and employees as are or are likely to be directly concerned with furthering the purpose or incidental matters and who need to know the Confidential Information (or any part of it) for the purpose of furthering the purpose;
 - 3.5.3 to those of its professional advisers engaged to advise in respect of the purpose and who need to know the Confidential Information (or any part of it) in order to advise the Receiving Party, provided that the Receiving Party shall procure that each of those directors, contractors, employees and professional advisers to whom the Confidential Information is to be disclosed is made aware of and shall undertake to adhere to the terms of this agreement as if he/she were a party to it; or
 - 3.5.4 to the extent such disclosure is required by any court of competent jurisdiction or required or requested by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose or where disclosure is required to comply with the provisions of any law or regulation in force from time to time, provided that (and without breaching any legal or regulatory requirement) where reasonably practicable the Parties give each other not less than 2 business days' notice in writing of the requirement to make such disclosure.

- 3.6 The Receiving Party shall not, without the prior written consent of the Disclosing Party, permit any third party to have access to the Disclosing Party's Confidential Information where the Receiving Party is notified, or ought reasonably to know, that such third party is, or is employed by, a direct competitor of the Disclosing Party.
- 3.7 The Receiving Party shall not use the Disclosing Party's Confidential Information in any way that is directly or indirectly detrimental to the Disclosing Party or so as to procure any commercial advantage over the Disclosing Party.
- 3.8 The Receiving Party agrees that the unauthorised disclosure of the Disclosing Party's Confidential Information to a third party may cause irreparable loss, harm and damage to the Disclosing Party.

4. **DURATION**

Notwithstanding anything to the contrary elsewhere contained, the Receiving Party shall be bound by the terms of this agreement for a period of 12 (twelve) months from the date of signature of this agreement, or for a period of 12 (twelve) months from the date of the last disclosure of Confidential Information to the Receiving Party, whichever is the longer period, whether or not the Parties continue to have any relationship for that period of time.

5. **OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION**

- 5.1 Notwithstanding anything to the contrary herein, the Disclosing Party's Confidential Information shall remain the property of that Party, and the Receiving Party shall not acquire the right to use, or rights of ownership in, the Disclosing Party's Confidential Information except as expressly set out in this agreement.
- 5.2 The Disclosing Party may, at any time, request the Receiving Party to return any material containing, pertaining to or relating to the Disclosing Party's Confidential Information disclosed pursuant to the terms of this agreement and may, in addition request the Receiving Party to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 5.3 As an alternative to the return of the Confidential Information contemplated in clause 5.2 above, the Receiving Party shall, at the written instance of the Disclosing Party, destroy such material and furnish the Disclosing Party with a written statement to the effect that all such material has been destroyed.
- 5.4 The Receiving Party shall comply with a request in terms of this clause, within 7 (seven) days of receipt of such a request.

6. **WARRANTY**

The Disclosing Party warrants to the Receiving Party that to best of its knowledge the Disclosing Party's Confidential Information to correctly reflect what it sets out to be.

7. **NOTICES AND DOMICILIUM**

- 7.1 The Parties select as their *domicilia citandi et executandi* for all purposes under this agreement the following addresses:
- 7.1.1 For **THE COMPANY**

The Chief Executive Officer

Excellerate on Summit, 3A Summit Road, Dunkeld West, South Africa

7.1.2 For the **Counterparty**

(Name) _____

(Address) _____

7.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

7.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address within the Republic of South-Africa and such change shall become effective on the 7th day from the deemed receipt of the notice by the other Party.

7.4 Any notice to a Party delivered by hand to and signed-off by a responsible person during ordinary business hours at the physical address stipulated in clause 7.1 shall be deemed to have been received on the day of delivery.

7.5 Notwithstanding anything to the contrary contained herein, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

8. **GENERAL**

8.1 This agreement constitutes the entire agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in this agreement.

8.2 Neither Party may cede, assign, transfer or attempt to assign or transfer its rights or obligations under this agreement without the prior written consent of the other Party. Any attempt to cede, assign or transfer rights or obligations under this agreement in violation of this clause will be void and of no force and effect.

8.3 Nothing in this agreement shall be construed as a waiver or limitation of the rights of a Party to enforce any common law or statutory right, which it may have in regard to the subject matter of this agreement.

8.4 No variation or consensual cancellation of this agreement (or of this non-variation clause) and no addition to this agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

8.5 No waiver of any of the terms and conditions of this agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as 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.

8.6 Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms

and conditions, which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of being amended to render it valid, the Parties agree to negotiate an amendment to remove the cause of such invalidity.

- 8.7 The Parties hereby consent and submit, to the extent legally permissible, to the non-exclusive jurisdiction of the South Gauteng High Court, in any dispute arising from or in connection with this agreement.
- 8.8 Notwithstanding termination of this agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.
- 8.9 This agreement may be executed in counterparts and by each Party in a separate counterpart, each of which so executed shall be an original, but all of which shall together constitute one and the same instrument.

EXECUTION

Thus, done and signed at _____ on the _____ day of _____ 2024, in the presence of the undersigned witness.

As witness:

1. _____
Being duly authorised thereto
Name: _____
THE COMPANY

Thus, done and signed at _____ on the _____ day of _____ 2024, in the presence of the undersigned witness.

As witness:

1. _____
Being duly authorised thereto
Name: _____
Counterparty