



**MUTUAL NON-DISCLOSURE AGREEMENT**

Between

**INSPIRED TESTING LIMITED**

<b>Company Number</b>	10141744
<b>Registered Address</b>	C/- Sable International, 5th Floor, 18 St. Swithin's Lane, London, EC4N 8AD

(hereinafter referred to as "**Inspired Testing**") And

<b>Registration Number</b>	
<b>Registered Address</b>	

(hereinafter referred to as "**Client**")

Inspired Testing and the Client hereby accept and agree to the terms of this Agreement.

	<b>For Inspired Testing</b>	<b>For</b>
<b>Name</b>		
<b>Designation</b>		
<b>Signature</b>		
<b>Place</b>		
<b>Date</b>		

The signatories warranting their authority to sign on behalf of Inspired Testing and the Client, respectively

LONDON Scott House, Suite 1, The Concourse, Waterloo Station, SE1 7LY | t. +44 203 848 9470

EDINBURGH 80 George Street, EH2 3BU | t. +44 7920 267 703

JOHANNESBURG 2 Venus Street, Melrose Estate, 2196 | t. +27 11 759 5930

CAPE TOWN 1st Floor, Crystal Towers Offices, Corner of Century Boulevard and Rialto Road, Century City, 7441 | t. +27 21 140 1400

EMAIL enquiries@inspiredtesting.com | WEBSITE www.inspiredtesting.com

**WHEREAS:**

The Parties have agreed to enter into discussions and negotiations during the course of which each Party intends, but does not undertake, to disclose or otherwise make available to the other Party certain Confidential Information (as defined below) concerning itself, to enable Inspired Testing and the Client to come to agreement regarding the services to be provided (the “Authorised Purpose”).

The Parties have agreed to maintain the confidentiality of the Confidential Information, use it solely for the Project and not disclose it to any third party.

**IT IS AGREED THAT:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement (the “**Agreement**”) the following words have the meanings set out below.

“**Associate**” means, in relation to either Party, any direct or indirect subsidiary or holding company of that Party, and any direct or indirect subsidiary of such holding company (“holding company” and “subsidiary” having the meanings ascribed to them in section 1159 of the Companies Act 2006);

“**Commencement Date**” means the first date on which Confidential Information is shared between the parties, regardless of the date of signature of this Agreement;

“**Confidential Information**” means material and information of a confidential or proprietary nature (including proprietary to either Party or their respective Associates or their Associates’ clients) (irrespective of the form of presentation or communication) which may include, but not be limited, to the following:

- (i) any electronic information, specifications, technical information, know-how and procedures contained or revealed in any of the foregoing, and other related information or materials of any type whatsoever (tangible or intangible, machine or human readable);
- (ii) confidential financial and strategic information, including the Agreement, future marketing plans, business plans, business requirements, and business projections and certain confidential data (including marketing and contact database information), data flow models, product definitions, project scope, trade secrets, pricing, methods of operation and related documentation and/or information; and

- (iii) any information concerning the business, finances, dealings, transactions or affairs of current clients and potential clients;
- (iv) any Personal Data; and
- (iv) any other information which the parties would reasonably expect to be kept confidential.

**“Data Protection Laws”** means all laws and regulations in the United Kingdom, including the Data Protection Act 2018 and the Retained Regulation (EU) 2016/679 (**“UK GDPR”**), applicable to the processing of Personal Data under this Agreement.

**“Disclosing Party”** means the Party who discloses any of its (or any Associate’s) Confidential Information under this Agreement, and includes any reference to an Associate as appropriate;

**“Intellectual Property Rights”** means all such intellectual property rights however arising, whether registered or unregistered and in whatever media including, but not limited to, patents, copyrights, design rights, trademarks, business names, logos, service marks, database rights, trade secrets, domain names and any application for the protection or registration of any of the foregoing rights, and any other intellectual property right, and all renewals and extensions thereof;

**“Party”** means a Party to this Agreement;

**“Personal Data”** means Personal Data as defined in the Data Protection Laws;

**“Receiving Party”** means the Party who receives Confidential Information from the Disclosing Party;

- 1.2 The clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.3 Where the context dictates, the singular shall include the plural and vice versa and any gender shall include the other genders.
- 1.4 Any reference to any statute or statutory provision will (unless the context requires otherwise) be construed as a reference to that statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

## **2. HANDLING AND USE OF CONFIDENTIAL INFORMATION**

In consideration of the Disclosing Party supplying Confidential Information to the Receiving Party, the Receiving Party undertakes as follows:

- 2.1 The Receiving Party shall keep confidential the Confidential Information of the Disclosing Party and, except as provided in this Agreement, shall not disclose such Confidential Information to any other person or company and shall not itself make any use of such Confidential Information for any purpose other than the Authorised Purpose.
- 2.2 The Receiving Party shall:
- (a) take the same care in protecting the Confidential Information as it takes in protecting its own information and in any event not less than that which a reasonable person or business would take in protecting its own Confidential Information;
  - (b) only disclose Confidential Information on a need-to-know basis to such of its employees, legal advisors, consultants and contractors (the “Representatives”) as are under similar obligations of confidentiality as contained in this Agreement and for the Authorised Purpose only (the Receiving Party shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Receiving Party);
  - (c) subject to clause 2.3, forthwith upon receipt of a written request from the Disclosing Party or otherwise on termination of this Agreement:
    - i) deliver to the Disclosing Party or at its request destroy immediately all documents, records, computer media, physical objects and samples (including copies) containing Confidential Information, which are in the possession or under the control of the Receiving Party; and
    - ii) on request from the Disclosing Party provide a certificate signed by an appropriate officer of the Receiving Party confirming that the provisions of this clause 2.2(c) have been complied with.
- 2.3 The Receiving Party shall not be required to return or destroy Confidential Information:
- 2.3.1 if the Receiving Party is required by law or mandatory regulation to retain such Confidential Information;
  - 2.3.2 to the extent that secondary information is contained in credit documentation and documentation of its boards, which are compiled or stored for the Authorised Purpose;  
or
  - 2.3.3 to the extent that automatic back-up copies of Confidential Information were saved in the ordinary course of business,

provided that such Confidential Information is also kept confidential according to the terms and conditions of this Agreement.

- 2.4 The Receiving Party shall not copy, reprint, duplicate or recreate, in whole or in part, the Confidential Information disclosed to it under this Agreement nor transmit it outside its usual place of business, without the prior written consent of the Disclosing Party.
- 2.5 The Receiving Party:
- 2.5.1 recognises the Disclosing Party's title to and ownership of all the Intellectual Property Rights in any information supplied by the Disclosing Party to the Receiving Party;
  - 2.5.2 shall not use any of the Disclosing Party's Intellectual Property Rights other than for the Authorised Purpose; and
  - 2.5.3 shall not claim any right, title or interest in the Disclosing Party's Intellectual Property Rights.

### **3. EXCLUSIONS**

- 3.1 This Agreement shall not apply to any Confidential Information which the Receiving Party:
- (a) can show is or becomes publicly available through no fault of the Receiving Party (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
  - (b) can show was in its possession prior to the date of disclosure by the Disclosing Party and was not held under any obligation of confidence to the Disclosing Party whether directly or indirectly;
  - (c) subsequently receives from any third party legally in possession of the Confidential Information and who was not restricted from disclosing it;
  - (d) is subsequently authorised to use or disclose in any subsequent written agreement between the Parties;
  - (e) can show is independently acquired by the Receiving Party as a result of work carried out by an employee, consultant or contractor of the Receiving Party to whom no disclosure of the Disclosing Party's Confidential Information has been made; or
  - (f) is required to disclose by law or pursuant to a court order.

- 3.2 In the event that clause 3.1(f) above applies and the Receiving Party is requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the Disclosing Party that it holds, the Receiving Party shall so far as is lawfully permissible provide the Disclosing Party with reasonably prompt prior written notice of such request or requirement so that the Disclosing Party may, at its own expense, seek a protective order or other appropriate remedy or, if appropriate, waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained or that the Disclosing Party waives compliance with the provisions hereof;
- (a) the Receiving Party may disclose to any tribunal only that portion of the subject Confidential Information which the Receiving Party in the reasonable opinion of its in-house counsel is legally required to be disclosed and shall exercise reasonable efforts to co-operate with the Disclosing Party in its efforts to obtain assurance that such Confidential Information will be accorded confidential treatment; and
  - (b) the Receiving Party shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure by the Receiving Party not permitted by this Agreement.
- 3.3 If a Party is unable to inform the other Party before Confidential Information is disclosed pursuant to clause 3.1(f) it shall, to the extent permitted by law, inform the other Party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

#### **4. TERM**

This Agreement shall apply to the Parties in relation to all Confidential Information exchanged between them, except for Confidential Information excluded by clause 3.1 above, and shall endure for an indefinite period.

#### **5. LIABILITY**

- 5.1 All Confidential Information supplied hereunder is supplied on an “as is” basis and the Disclosing Party gives no representation or warranty concerning its Confidential Information, including as to its accuracy, completeness or fitness for any purpose or as to whether they have any rights to use, disclose or grant rights in the Confidential Information or whether such use or disclosure will infringe the rights of any third party.

- 5.2 The Disclosing Party shall not be liable for any loss or damage suffered by the Receiving Party as a result of the Receiving Party's use of the Confidential Information, save in respect of a breach by the Disclosing Party of the warranty contemplated in clause 7.6.
- 5.3 The disclosure of Confidential Information by the parties shall not form any offer by, or representation or warranty on the part of, that Party to enter into any further agreement with the other Party in relation to the Authorised Purpose.
- 5.4 This clause 5, however, shall not apply to fraudulent misrepresentation.

**6. NO GRANT**

This Agreement shall not be deemed to confer or imply the grant or agreement to grant by the Disclosing Party to the Receiving Party of any of the Disclosing Party's rights under copyright, patents or other intellectual property rights.

**7. PERSONAL DATA**

- 7.1 In connection with any Personal Data (as such term is defined in the GDPR) disclosed during discussions relating to the Purpose, each party shall comply with the Data Protection Laws and not by any act or omission put the other party in breach of the Data Protection Laws.
- 7.2 Where any Personal Data pertaining to one Party and/or its personnel is provided to the other Party, then such Party shall ensure that an adequate level of protection is in place and for that purpose, take appropriate technical, physical and organisational security measures designed to protect against unauthorised access, or unlawful processing of the same and against accidental or unlawful destruction, or loss, or damage to the same and shall process such Personal Data only in connection with the performance of the Agreement.
- 7.3 The parties agree to exchange only the minimal amount of Personal Data during discussions relating to the Purpose.
- 7.4 The Discloser hereby warrants that it has, in accordance with the Data Protection Laws, received the written consent of the relevant Data Subjects to disclose any Personal Data to the Recipient in discussions relating to the Purpose. The Discloser hereby indemnifies the Recipient for any liabilities that it may incur as a result of or in connection with a breach by the Discloser of this clause.

**8. NON-SOLICITATION**

- 8.1 Neither Party shall, during the existence of this Agreement and for a period of twelve (12) months from termination date thereof, without the prior written agreement of the other Party:
- 8.1.1 Solicit any employee of the other party, whom the parties became aware of as a result of any engagement entered into between them, to terminate his/her employment with the other Party or to become employed or associated with it or any concern in which it has an involvement, whether directly or indirectly through any Third Party; or
  - 8.1.2 furnish any information or advice to any employee of the other party which is directly or indirectly designed to result in that employee terminating his/her employment.
- 8.2 Should either Party choose to employ an employee of the other without written consent a fee of 40% of the annual total cost to company offered to the employee will be immediately payable.
- 8.3 Should it be arranged and agreed between the Parties that an Inspired Testing Consultant become a permanent employee of the Client, where the resource has been delivering for less than 12 months, a placement fee of 20% of the annual total cost to company, offered to the employee will be immediately payable by the Client to Inspired Testing. Where the resource has been delivering for more than 12 months, the placement fee will be reduced to 15%.

**9. LOSS OF CONFIDENTIAL INFORMATION**

The Receiving Party shall promptly notify the Disclosing Party of any actual or suspected loss, unauthorised access to or disclosure of the Disclosing Party's Confidential Information with sufficient details to enable the Disclosing Party to take whatever steps it deems necessary to safeguard its interests; it being expressly agreed that the Receiving Party shall take all reasonable steps in the circumstances to retrieve the lost Confidential Information or prevent the ongoing unauthorised access to or disclosure of such Confidential Information.

**10. GENERAL**

- 10.1 The invalidity or unenforceability of any term of, or any right arising pursuant to the terms of this Agreement shall not in any way affect the remaining terms and rights as set out in this Agreement.
- 10.2 Without prejudice to any other rights or remedies that each Party may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the other Party. Accordingly, each Party shall be entitled to seek relief by way of an injunction, specific performance or other equitable relief



for any threatened or actual breach of this Agreement, without the need to prove or quantify loss or damage.

- 10.3 Nothing in this Agreement shall impose an obligation on either Party to continue discussions or negotiations in connection with the Authorised Purpose, or an obligation on either Party to disclose any information (whether Confidential Information or otherwise) to the other Party.
- 10.4 Each Party agrees that the existence and terms of this Agreement shall not be disclosed to any third party without the prior written consent of the other Party.
- 10.5 Nothing in this Agreement shall result in the constitution of a partnership or joint venture between the Parties or shall authorise one Party to enter into contractual relationships or incur obligations on behalf of the other Party.
- 10.6 A person who is not a Party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any other right or remedy of a third party which exists or is available apart from that Act.
- 10.7 This Agreement shall be governed by and construed in accordance with laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in the determination of any dispute relating to, arising from or otherwise in connection this Agreement.
- 10.8 Notices under this Agreement shall be deemed to be served on delivery when delivered by hand, or three (3) business days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party.
- 10.9 No variation of this Agreement or amendment to this Agreement, including this clause, shall be valid unless agreed in writing and signed by both Parties.
- 10.10 Neither Party shall without the prior written consent of the other Party assign or transfer this Agreement or any part of it to any other entity.
- 10.11 Failure by either Party to enforce any provision of this Agreement shall not be deemed to be a waiver of future enforcement of that or any other provision.
- 10.12 This Agreement represents the entire agreement between the parties relating to the Confidential Information and supersedes all prior agreements, arrangements and understandings between the parties relating to the Confidential Information and each Party agrees that it will have no remedy in respect of any untrue statement innocently or negligently

made by or on behalf of the other Party prior to signing this Agreement which such Party relied upon in entering into this Agreement whether such statement was made orally or in writing.

- 10.13 Each Party will indemnify, defend, and hold the other Party and its affiliates harmless from and against any and all liabilities relating to any third-party claims arising from or in connection with the indemnifying Party's breach of its obligations or representations or warranties under this Agreement, and shall do all things necessary to protect and keep the other Party and its affiliates harmless against such liabilities.

*End of document*