



Registration No. 2000/026390/08

RECIPROCAL CONFIDENTIALITY AGREEMENT

Between

**SOUTH AFRICAN NATIONAL BLOOD SERVICE NPC
REGISTRATION NUMBER: 2000/026390/08
(Hereinafter referred to as "SANBS")**

And

.....

**REGISTRATION NUMBER:
(Hereinafter referred to as "[...])**



Registration No. 2000/026390/08

TABLE OF CONTENTS

| | | |
|---|---|-------------------------------------|
| 1 | PARTIES | 3 |
| 2 | RECITAL..... | 3 |
| 3 | DEFINITIONS | 3 |
| 4 | RULES OF INTERPRETATION | 6 |
| 5 | DISCLOSURE AND CONFIDENTIALITY ARRANGEMENTS..... | 7 |
| 6 | RIGHTS AND PROCEDURAL ARRANGEMENTS..... | 9 |
| 7 | MISCELLANEOUS..... | 11 |
| 8 | PERSONAL DATA AND POPI COMPLIANCE.... | ERROR! BOOKMARK NOT DEFINED. |



1 PARTIES

- 1.1 This Confidentiality Agreement (the "Agreement") is entered into by and between SANBS and [INSERT ENTITY NAME].
- 1.2. SANBS and [Insert entity name] are collectively referred to herein as the "**Parties**" and individually as a "**Party**".

2 RECITAL

- 2.1 SANBS has presented project RFQ-0096-2022 – Provision of Blood Pack Barcode Labels and **[insert entity name]** will fund part of the project, in the process it may be necessary for either or both of the Parties to provide the other Party with confidential business, financial and technical information.
- 2.2 In consideration of this, the Parties agree the following.

3 DEFINITIONS

For the purposes of this Agreement:

- 3.1 "**Affiliate**" means (a) a subsidiary or a holding company or a subsidiary of the holding company of any entity, provided that such terms shall also include any foreign entity which would fall within the ambit of either of such terms; and/or (b) as to any entity, any other entity that, now or in the future, directly or indirectly, effectively controls, is effectively controlled by, or is under common effective control by another entity together with, such entity. For the purposes of this definition the term "**effective control**" shall include control of any entity through any voting pool or other arrangement, the right to the exercise of voting rights,



directly or indirectly, resulting in effective control of any entity and/or control of its management, and/or the right to appoint the majority of the members of the board of directors of any entity.

3.2 "**Confidential Information**" means any information, whether tangible or intangible, in whatever form or medium embodied in Intellectual Property, data, client information, technical knowledge, specifications, business processes, materials and/or other communications relating to or useful in connection with the business, affairs, operations, activities, commercial and financial information, technology or processes of the Disclosing Party, (a) disclosed or provided by the Disclosing Party to the Receiving Party; or, (b) that may be learned, acquired or derived by the Receiving Party during any examination of the said information or during any negotiation or discussions concerning the Subject; or (c) which has been identified by, or on behalf of, the Disclosing Party as confidential; Without limitation the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation):

3.2.1 agreements to which the Disclosing Party is a party and proposals or quotations that the Disclosing Party submits to the Receiving Party,

3.2.2 the terms and conditions of any proposed Agreement between the parties;

3.2.3 the Disclosing Party's technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae and trade secrets,

3.3 "**Data Privacy Annexure**" means the annexure attached hereto as Annexure [A] and which sets out the Parties' obligations in respect of data privacy;



- 3.4 **“Disclosing Party”** and **“Receiving Party”** mean any Party respectively disclosing and receiving Confidential Information pursuant to the terms of this Agreement. Either Party may be a Disclosing Party or a Receiving Party as the context may require;
- 3.5 **“Effective Date”** and **“Commencement Date”** shall mean the first date the Receiving Party receives any Confidential Information, of the Disclosing Party despite the date of signature of this NDA;
- 3.6 **“Intellectual Property”** shall include, but not be limited, to all the rights in respect of trade-marks, service marks, trade names, domain names, logos, patents, provisional patents, inventions (whether patentable or not), know-how (including confidential industrial and commercial information and techniques in any form), utility models, registered and unregistered design rights, copyright, semiconductor topography rights, database rights, rights in respect of any new or existing compilation of any data or information not covered under any existing copyright, any structured analysis, reports, application and any resulting know-how, use or any other results originating or following from or as a consequence of data being made available in respect of any of the aforementioned or part thereof, and all similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations, as well as any confidential information or processes relating to that subject matter; and
- 3.7 **“Representatives”** means a Party’s Affiliates and the respective directors, employees, agents, consultants and advisers of the Party or its Affiliates.
- 3.8 **“Subject”** means the project insert project name to be held between SANBS and



entity name

4 RULES OF INTERPRETATION

For all purposes of this Agreement, unless the context otherwise requires:

- 4.1 Words in the singular include the plural and vice versa and words in a particular gender include all genders.
- 4.2 The expressions “hereunder”, “herein” and “hereof” refer to the provisions of this Agreement in its entirety.
- 4.3 Any reference to an agreement means a reference to such agreement as amended, modified, supplemented, restated or replaced from time to time.
- 4.4 Any reference to an entity includes any successor to such entity and its permitted assigns.
- 4.5 Headings of clauses in this Agreement are for convenience and shall not be taken into account in the construction or interpretation of this Agreement.
- 4.6 Where a term is defined herein, a derivative of that term shall have a corresponding meaning unless the context otherwise requires.
- 4.7 The word “including” and “includes” is not limiting, irrespective of whether non-limiting language such as “without limitation” or “but not limited to” or words of similar import are used with reference thereto.
- 4.8 Any rule of construction or interpretation that this Agreement shall be construed or interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.



Registration No. 2000/026390/08

4.9 If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, in whole or in part, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

5 DISCLOSURE AND CONFIDENTIALITY ARRANGEMENTS

5.1 The Disclosing Party shall disclose so much of its Confidential Information to the Receiving Party as the Disclosing Party deems appropriate in the circumstances. The Disclosing Party shall disclose such Confidential Information on a non-exclusive basis, either directly or indirectly.

5.2 In consideration of any Confidential Information received, learned, acquired or derived pursuant to this Agreement, each Receiving Party undertakes, and will ensure that its Affiliates undertake:

5.2.1.1 to treat the Confidential Information as strictly confidential, not to divulge to any third party or sell, trade, publish, reproduce or reverse engineer any of the Confidential Information, in any manner, without the Disclosing Party's prior written consent;

5.2.1.2 not to put the Confidential Information in use for any purpose not related to the Subject in any manner, without the Disclosing Party's prior written consent;

5.2.1.3 not to make known or cause to be made known to any third party knowledge of the Subject unless such knowledge previously was of public record; and

5.2.1.4 In the event Confidential Information received must be disclosed pursuant to the operation of law, stock exchange



Registration No. 2000/026390/08

requirements, governmental regulation or court order, to give the Disclosing Party sufficient notice prior to disclosure and cooperate with the Disclosing Party in any attempt to test the disclosure requirement and/or to obtain a protective order.

5.3 Confidential Information shall not include information that the Receiving Party can establish:

5.3.1.1 at the time of disclosure is or after disclosure becomes, generally known or available to the public through no act or failure to act by the Receiving Party;

5.3.1.2 was rightfully acquired and free from restrictions from a third party having an unrestricted right to disclose the same; and

5.3.1.3 Was independently developed by it or any of its Affiliates.

5.3.1.4 is independently developed by the Receiving Party without having had knowledge of the Confidential Information of the Disclosing Party, or

5.4 Specific Confidential Information shall not be deemed to be within any of these exclusions merely because it is embraced by more general published or available information. In addition, any combination of features shall not be deemed to be within the exclusions merely because individual features are within the exclusions, but only if the combination itself and its principle of operation are within the exclusions.

5.5 The Receiving Party shall limit disclosures of the Confidential Information to those of its Representatives (a) who are directly involved in the Receiving Party's appraisal of the Subject or in any associated negotiations, (b) whose



knowledge of the Confidential Information is essential because of such involvement or negotiations, (c) who are first informed and advised by an authorised representative of the Receiving Party of the confidential nature of the Confidential Information and (d) who are under written obligation, not less onerous than the obligation in this Agreement, of sufficient scope to obligate them to maintain the confidentiality of confidential information of third parties in the Receiving Party's possession. The Receiving Party shall be responsible for any non-compliance by any Representative with the terms and conditions of this Agreement to the same extent the Receiving Party would have been responsible under applicable law for its own breach of the same obligations.

5.6 The Receiving Party shall protect the Confidential Information disclosed to it using the same standard of care it applies to safeguard its own proprietary, secret or confidential information and the Confidential Information shall be stored and handled in such a way as to prevent any unauthorized access and disclosure thereof.

5.7 If the Receiving Party becomes aware of disclosure or use of Confidential Information other than as authorised in this agreement, the Receiving Party shall promptly notify the Disclosing Party of such disclosure or use and shall cooperate with the Disclosing Party in mitigating any adverse consequences to the Disclosing Party of that disclosure or use.

6 RIGHTS AND PROCEDURAL ARRANGEMENTS

6.1 Neither this Agreement nor the disclosure of any Confidential Information in accordance with the Subject shall be construed to grant any rights in or licenses to the Confidential Information to the Receiving Party.

6.2 All rights to the Confidential Information shall remain vested in the Disclosing



Party and the Disclosing Party may demand the return thereof at any time upon giving written notice to the Receiving Party. Within (thirty) 30 days of receipt of such notice, or of termination of this Agreement, as the case may be, the Receiving Party shall return all of the original Confidential Information and shall destroy all copies and reproductions (including in electronic form) in its possession and in the possession of its Representatives to whom it was disclosed pursuant to this Agreement. The Receiving Party may however retain one (1) copy of the Confidential Information in its confidential legal files for the sole purpose of identifying and maintaining its obligations under this Agreement.

- 6.3 The term of this Agreement during which the disclosure of Confidential Information shall continue in perpetuity.
- 6.4 The Disclosing Party hereby represents and warrants that it has the right and authority to disclose the Confidential Information to the Receiving Party. The Disclosing Party, however, makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information disclosed hereunder. Any authorised use of, or reliance upon, the Confidential Information by the Receiving Party shall be solely at its own cost, risk and expense.
- 6.5 Neither Party shall be liable to other, whether in delict or contract, for any indirect or consequential loss or damages (including loss of production, loss of prospective economic advantage or loss of business opportunity), punitive or exemplary damages or loss of profits.
- 6.6 The Receiving Party acknowledges the sensitive, proprietary nature and competitive value of the Confidential Information and that the Disclosing Party and its Affiliates may be irreparably damaged if any of the restrictions on



disclosure or use of the Confidential Information in this Agreement are not fully observed or performed by the Receiving Party and its Representatives.

- 6.7 The Receiving Party further acknowledges that monetary damages alone may not be a sufficient remedy for any breach of this Agreement by the Receiving Party or its Representatives, and that the Disclosing Party may be entitled to seek to obtain specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at law or equity to the Disclosing Party.
- 6.8 The Receiving Party will take and cause its Representatives to take all such actions as is reasonably necessary to safeguard the Confidential Information from disclosure to anyone other than as permitted herein and the Receiving Party will be responsible for any of the breaches of this undertaking whether by it or any of its Representatives.
- 6.9 The Receiving Party shall be liable to and shall indemnify and hold harmless the Disclosing Party and its Representatives against all actions, proceedings, claims, demands, direct losses, direct costs, direct damages and direct expenses whatsoever which may be brought against or suffered by any of them or which any of them may sustain, pay or incur which are established to result or arise, directly, from disclosure of all or any part of the Confidential Information by the Receiving Party or its Representatives contrary to the provisions of this Agreement or any other breach of this Agreement relating to the protection of Confidential Information

7 MISCELLANEOUS

- 7.1. This Agreement shall be governed by and interpreted in accordance with the



laws of the Republic of South Africa excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.

- 7.2. In the event of any dispute arising out of or relating to this Agreement, the Parties will attempt to reach an amicable settlement of their differences. Failing such settlement within (thirty) 30 days of the dispute having arisen, the dispute shall be referred to arbitration and settled by arbitration according to the rules then in effect of the Arbitration Foundation of Southern Africa ("AFSA"). Such arbitration shall be held in Johannesburg and conducted in the English language before one (1) arbitrator appointed by agreement between the Parties or failing such agreement within (ten) 10 days of being called upon to do so, in accordance with the said rules. The arbitrator shall apply the law chosen by the Parties elsewhere in this Agreement to the merits of the dispute. This agreement to arbitrate shall survive termination of the Agreement and shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. These provisions shall not prevent either Party to approach any court or other judicial forum in any country having appropriate jurisdiction to obtain timely injunctive or other relief in cases of urgency.
- 7.3. This Agreement comprises the entire agreement between the Parties concerning disclosure of Confidential Information with regard to the Subject and no representations, warranties or negotiations between the Parties with regard to the subject matter hereof shall have any legal effect whatsoever unless contained in this Agreement.
- 7.4. Each Party represents and warrants that it has the authority necessary to enter into this agreement and to do all things necessary to procure the fulfilment of its



obligations in terms of this Agreement.

- 7.5. In addition to the obligations set out in this clause 7.5, the Parties shall be bound by the provisions of the Data Privacy Annexure insofar as the processing of Personal Information is applicable.
- 7.6. All specific data collected and processed, from the Disclosing Party by the Receiving Party in performance of its obligations under this Agreement shall remain the property of Disclosing and be delivered to Disclosing Party upon termination or expiry of this Agreement. The Disclosing Party hereby grants the Receiving Party the right to use such specific data for purposes of executing its obligations under this agreement.
- 7.7. The [insert other party's name] is obliged to behave ethically and, in the context of its activity for SANBS, adhere to the principles of moral and professional behaviour enshrined in SANBS's Code of Ethics (hereinafter referred to as "Code of Ethics"), which is available from SANBS on request.
- 7.8. The [insert other party's name] agrees to observe the conduct in the Code of Ethics during the fulfilment of the obligations arising out of or in connection with this Agreement and undertakes to ensure that the principles of the conduct expressed in the Code of Ethics will be equally respected and adhered to by all its affiliates, employees or persons in a similar position, and persons acting on its behalf.
- 7.9. SANBS is entitled to unilaterally change the wording of the Code of Ethics and such change does not require an amendment to this Agreement to be prepared.
- 7.10. The [insert other party's name] agrees to keep abreast of changes to the Code



of Ethics and familiarise itself with the current version of the Code of Ethics.

- 7.11. Neither this Agreement nor any rights or obligations hereunder may be assigned, novated or otherwise transferred by either Party to any third party, without the prior written consent of the other Party. In the event a Party consents in writing to an assignment, novation or transfer of rights or obligations under this Agreement, the assigning Party and the assignee shall be jointly and severally liable for compliance with all confidentiality and restricted use obligations related to the interests assigned.
- 7.12. No indulgence granted by any Party to any other Party, or failure to pursue any remedy for breach of this Agreement, shall constitute a waiver of any of that Party's rights under this Agreement and that Party shall not be precluded, as a consequence of having granted such indulgence, or in failing to pursue any remedy, from exercising any rights or pursuing any remedy against the other Party which may have arisen in the past or which may arise in the future.
- 7.13. No amendments, changes or modifications to this Agreement, including amendments to this clause, shall be valid except if the same are in writing and signed by a duly authorised representative of each of the Parties.
- 7.14. All notices to be given to a Party hereto pursuant to this Agreement shall be in writing and delivered personally, by registered mail or internationally recognised overnight courier, addressed to the address for service of the addressee Party as described below:

SANBS:

Physical address: 1 Constantia Boulevard, Constantia Kloof, Roodepoort, 1709

Attention:



E-mail:@sanbs.org.za

Entity name

Physical address:

Attention:

E-mail:

Any notice so given shall be conclusively deemed to have been given and received, if delivered personally or sent by registered mail or overnight courier, on the day of receipt, or if sent by e-mail, on the date such e-mail is sent.

7.15. This Agreement may be executed in counterparts, and all such counterparts shall, together, form one and the same agreement.

7.16. It is a material term of this Agreement that each Party's obligations under the Agreement are separate from and independent of the other Party's obligations hereunder. Accordingly, any breach of the terms of this Agreement by a Party shall not be just cause for the other Party to repudiate, breach this Agreement or to stop complying with the confidentiality obligations and use restrictions placed upon it in terms of the Agreement.



Registration No. 2000/026390/08

Thus executed by the Parties as evidenced by the following signatures of their authorised representatives.

SIGNED at _____ on _____ 20

For and on behalf of
SANBS

Signature

Name of Signatory

Designation of Signatory

Signature

Name of Witness

Designation of Witness

SIGNED at _____ on _____ 20

For and on behalf of
[Entity name]

Signature

Name of Signatory

Designation of Signatory



Registration No. 2000/026390/08

Signature

Name of Witness

Designation of Witness



ANNEXURE A: DATA PRIVACY

1 INTRODUCTION

This annexure sets out the roles and responsibilities of the Parties pursuant to POPI and applies to the extent that the Counterparty and/or SANBS, as applicable, shall be Processing Personal Information in terms of this Agreement.

2 DEFINITIONS

In this annexure, unless the context indicates otherwise, capitalised terms shall bear the following meanings –

- 2.1 "**Applicable Laws**" means any of the following, from time to time, to the extent it applies to a Party (including the performance, delivery, receipt or use of the products and/or services, as applicable and wherever occurring) —
- 2.1.1 any statute, regulation, policy, by-law, directive, notice or subordinate legislation (including treaties, multinational conventions and the like having the force of law);
 - 2.1.1.1 the common law;
 - 2.1.1.2 any binding court order, judgment or decree;
 - 2.1.1.3 any applicable industry code, policy or standard enforceable by law; or
 - 2.1.1.4 any applicable direction, policy or order that is given by a regulator;
- 2.2 "**Confidential Information**" means any information or data which by its nature or content is identifiable as sensitive, confidential and/or proprietary to the Disclosing Party and/or any third party or which is provided or disclosed in confidence and which the Disclosing Party or any person acting on its behalf



may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. The Disclosing Party's Confidential Information shall include:

- 2.2.1 information relating to strategic objectives and planning for both its existing and future needs;
- 2.2.2 information relating to either Party's business activities, business relationships, products, services, clients and Staff;
- 2.2.3 technical, scientific, commercial, financial and market information and trade secrets;
- 2.2.4 Intellectual Property that is proprietary to a Party or that is proprietary to a third party and in respect of which the Disclosing Party has rights of use or possession;
- 2.2.5 The Disclosing Party's plans, designs, drawings, functional and technical requirements and specifications;
- 2.2.6 information concerning faults or defects in either Party's systems, Infrastructure or the incidence of such faults or defects;
- 2.2.7 agreements to which either Party is a party.
- 2.2.8 Confidential Information excludes information or data which:
 - 2.2.8.1 is lawfully in the public domain or already in the possession of the Receiving Party from a source other than the Disclosing Party at the time of disclosure to the Receiving Party; or
 - 2.2.8.2 subsequently becomes lawfully part of the public domain by publication or otherwise; or



- 2.2.8.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which is lawfully entitled, without any restriction on disclosure, to disclose such Confidential Information; or
- 2.2.8.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order; provided that the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions and provided further that the information disclosed in terms of this Agreement will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession.
- 2.2.9 The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade or otherwise;
- 2.3 "**Counterparty**" means the party other than SANBS to this Agreement;
- 2.4 "**Data Protection Legislation**" means any and all laws relating to the protection of data or of Personal Information relevant to a Party and shall include POPI as well as the protection of Personal Information principles agreed to in this Agreement;
- 2.5 "**Data Subject**" means the person to whom Personal Information relates;
- 2.6 "**Disclosing Party**" means the Party who discloses Confidential Information to the other Party in terms of this Agreement;
- 2.7 "**Good Industry Practice**" means, in relation to an obligation, undertaking, activity or a service, the exercise of the degree of skill, speed, care, diligence, judgment, prudence and foresight and the use of practices, controls, systems,



technologies and processes, which would be expected from a party performing the same or similar obligation, undertaking, activity or service and utilising and complying with the relevant Data Protection Legislation and all Applicable Laws relating to the protection of Personal Information in force in South Africa and in such jurisdictions where the Parties' conduct business and/or fall within the scope of that jurisdiction;

- 2.8 "**Infrastructure**" means information technology and telecommunications infrastructure and systems, including computer and telecommunications networks, equipment, hardware, software, middleware, firmware, data, databases, peripherals, terminals and components;
- 2.9 "**Intellectual Property Rights**" includes all current and future intellectual property rights of any kind whatsoever and however embodied which may subsist or be capable of protection wheresoever in the world, including (without limitation) patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, the right to keep information confidential and private, rights in and to Know-How, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection as at the signature date or thereafter wheresoever in the world, whether or not any of these is registered and including applications for any such rights or registration thereof and any goodwill related to or arising from such rights.
- 2.10 "**Know-How**" means all the ideas, designs, documents, diagrams, information, devices, technical and scientific data, secret and other Processes and methods used in connection with a Party's business, as well as all available information



regarding research, marketing and promotion of the services of a Party, as well as all and any modifications or improvements to any of them;

- 2.11 **"Personal Information"** means information defined from time to time as Personal Information or data in any applicable Data Protection Legislation, including information relating to an identifiable, living, natural person and where it is applicable, an identifiable, existing juristic person, including:
- 2.11.1 information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
 - 2.11.2 information relating to the education or the medical, financial, criminal or employment history of the person;
 - 2.11.3 any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 - 2.11.4 the biometric information of the person;
 - 2.11.5 the personal opinions, views or preferences of the person;
 - 2.11.6 correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
 - 2.11.7 the views or opinions of another individual about the person; and



- 2.11.8 the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about that person;
- 2.12 "**POPI**" means Protection of Personal Information Act, No. 4 of 2013, as amended;
- 2.13 "**Process**" means any operation or set of operations including collecting, recording, organising, storing, updating, modifying, retrieving, consulting, using, disseminating by means of transmission, distribution or making available in any other form, merging, linking, as well as blocking, erasing or destroying and "**Processing**" and "**Processed**" shall have a corresponding meaning;
- 2.14 "**Receiving Party**" means the Party, other than the Disclosing Party, to the extent that it receives disclosure of any of the Confidential Information of the Disclosing Party in terms of this Agreement;
- 2.15 "**Special Personal Information**" means information concerning a child and Personal Information concerning the religious or philosophical beliefs, race or ethnic origin, trade union membership, political opinions, health, DNA, sexual life or criminal behaviour of a Data Subject;
- 2.16 "**Staff**" means any employee, independent contractor, agent, consultant, Subcontractor or other representative of a Party; and
- 2.17 "**Subcontractor**" means a person other than the Counterparty or its Staff who is contracted or appointed by the Counterparty to perform any part of or to provide the products, perform the services or obligations undertaken by the Counterparty in terms of this Agreement, including its appointed sub-Processors.



3 INFORMATION SECURITY AND DATA PROTECTION

- 3.1 Each Party shall perform its obligations under this Agreement utilising security technologies and techniques in accordance with Applicable Laws and Good Industry Practice, including those relating to the prevention and detection of inappropriate use or access of Infrastructure or information including Personal Information and Confidential Information.
- 3.2 Without limiting the generality of the foregoing, each Party shall implement and/or use network management and maintenance applications and tools and appropriate intrusion prevention, intrusion detection, identity management, and encryption technologies where reasonable and appropriate to do so.
- 3.3 Each Party acknowledges the sensitive nature of the Personal Information to be exchanged under this Agreement and that where applicable some of the Personal Information may constitute Special Personal Information). Each Party shall ensure that its Staff shall not —
 - 3.3.1 Process the Personal Information in any manner or for any purpose other than to the extent strictly necessary to perform its obligations under this Agreement; and/or
 - 3.3.2 cause another Party to breach or contravene any applicable Data Protection Legislation or other Applicable Law.
- 3.4 Each Party must notify the other Party immediately in the event of non-compliance or breach of any applicable Data Protection Legislation, who will in turn notify any affected Parties affected, in accordance with internal procedures.



- 3.5 The Parties specifically record that all the Personal Information disclosed by a Party shall constitute Confidential Information of such Party.
- 3.6 Each Party warrants and undertakes in favour of each of the other Parties that it shall at all times strictly comply with all Data Protection Legislation which may be in force from time to time.
- 3.7 Without derogating from or limiting its further obligations in this Agreement, each Party further warrants that it shall ensure that all Infrastructure which it uses to provide, exchange or access any Personal Information, including all Infrastructure on which the Personal Information is Processed shall at all times be of a minimum standard required by Applicable Laws and Good Industry Practice.
- 3.8 Neither Party shall transfer or Process any Personal Information of the other Party across the border of South Africa without the prior written consent of the Party and Data Subject who disclosed such Personal Information.
- 3.9 Each Party shall take all reasonable and appropriate precautions necessary (having regard to Good Industry Practice, the requirements of Applicable Laws and the Parties' obligations under this Agreement) to preserve the integrity of the Personal Information and to prevent any unauthorised access, use, corruption or loss of the Personal Information in its possession or under its control or that of its Staff.
- 3.10 In order to give effect to the provisions of clause 3, each Party shall —
- 3.10.1 establish and maintain appropriate safeguards and verify that such safeguards are effectively implemented and are operating effectively;



Registration No. 2000/026390/08

- 3.10.2 conduct its own regular assessments to identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or control ("**Data Risk Assessments**");
- 3.10.3 update and align its safeguards with the risks identified during and/or pursuant to Data Risk Assessments;
- 3.10.4 verify that the updated and aligned safeguards are effectively implemented; and
- 3.10.5 generally ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards and to remain current with Good Industry Practice.
- 3.11 The obligations in this clause 3 shall also apply to and extend to any Personal Information disclosed or received by a Party prior to the signature date of this Agreement.
- 3.12 Each Party warrants that, where it discloses Personal Information to the other Party, that it has obtained the necessary consent of the relevant Data Subject whose Personal Information it is disclosing under this Agreement and/or is otherwise authorised to make such disclosure to the other Party in accordance with Data Protection Legislation.
- 3.13 All SANBS specific data collected and Processed by the Counterparty in the performance of its obligations under this Agreement shall remain the property of SANBS and shall be delivered to SANBS upon termination or expiry of this Agreement. SANBS hereby grants the Counterparty the right to use such SANBS specific data for purposes of complying with its obligations under this Agreement.



Registration No. 2000/026390/08

- 3.14 Where the Counterparty is required to Process any Personal Information belonging to SANBS, its customers, employees, patients, agents and/or any other member of SANBS Committee (both acting as responsible parties as defined in POPI), the Counterparty agrees to –
- 3.14.1 act only in accordance with SANBS' instructions; and
 - 3.14.2 use appropriate technical and organisational measures to protect the Personal Information against unauthorised or unlawful Processing and against accidental loss, destruction, damage, theft, use or disclosure.
- 3.15 Notwithstanding any other provision in this Agreement, this clause shall survive any termination, cancellation or expiration of this Agreement.