

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** relevant to the **SPU-RFAA-119-2022** entered into by and between the following parties:

**SOL PLAATJE UNIVERSITY**

(established in terms of the Higher Education Act, 1997) (hereinafter referred to as the 'the Discloser')

and

\_\_\_\_\_  
(Registration / Identity Nr. \_\_\_\_\_)  
(hereinafter referred to as 'the Recipient'); each sometimes hereinafter referred to as a Party and collectively as Parties.

**1. INTERPRETATION** 1.1 The headings to the clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings: 1.2.1 Agreement shall mean this Agreement and the schedules hereto; 1.2.2 Business Day shall mean any day other than a Saturday, Sunday or public holiday in the Republic of South Africa; 1.2.3 Confidential Information shall mean, subject to clause 10, information relating to the Discloser and its business that the Discloser discloses to the Recipient; and 1.2.4 Signature Date shall mean the date of last signature of this Agreement. 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Agreement. 1.4 Unless inconsistent with the context, an expression which denotes: 1.4.1 any one gender includes the other gender; 1.4.2 a natural person includes a juristic person and vice versa; and 1.4.3 the singular includes the plural and vice versa. 1.5 The schedules to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedules. 1.6 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day. 1.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail. 1.8 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause. 1.9 Any reference to an enactment in this Agreement is to that enactment as at the Signature Date and as amended or re-enacted from time to time. 1.10 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. 1.11 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this. **2. INTRODUCTION** 2.1 The Discloser wishes, from time to time, to disclose Confidential Information to the Recipient for the purpose of allowing the Recipient to submit a Request for Proposal: **SPU-RFAA-119-2022**. The Recipient requires adequate information in order to submit a meaningful proposal. All such information disclosed by the Discloser to the Recipient in terms of **SPURFAA-119-2022** will be regarded as Confidential Information for the purposes of this Agreement. 2.2 The Recipient wishes to receive the Confidential Information from the Discloser and use such for the purpose for which it will be disclosed. 2.3 The Parties have accordingly agreed to regulate the disclosure of the Confidential Information in accordance with the terms and conditions of this Agreement. **3. DISCLOSURE OF INFORMATION** 3.1 The Discloser has disclosed or will disclose the Confidential Information to the Recipient for the purpose indicated above. 3.2 The Recipient acknowledges that the Confidential Information is a valuable and the proprietary of the Discloser. 3.3 The Recipient undertakes that it will not disclose the Confidential Information to any third party for any reason or purpose whatsoever without the express prior written consent of the Discloser, save in accordance with the provisions of this Agreement. 3.4 The Recipient undertakes that it will not use the Confidential Information in any manner whatsoever and will take all steps necessary to procure that its employees, professional advisors, agents and consultants comply with this provision. 3.5 Notwithstanding anything to the contrary contained in this Agreement, the Discloser agrees that the Confidential Information may be disclosed by the Recipient to its affiliates, officers, directors, employees, attorneys, accountants, professional advisors, agents and consultants on a need-to-know basis, provided the Recipient takes all steps necessary to procure that such employees, professional advisors, agents and consultants agree to abide by the terms of this Agreement to prevent the unauthorised disclosure of the Confidential Information to third parties. **4. PROPRIETARY RIGHTS** 4.1 All Confidential Information disclosed by the Discloser to the Recipient is acknowledged by the Recipient: 4.1.1 to be proprietary to the Discloser; and 4.1.2 not to confer any rights of whatever nature in respect of such Confidential Information to the Recipient. 4.2 The Recipient acknowledges that all existing intellectual property rights in the Confidential Information shall vest and remain vested in the Discloser. 4.3 The Discloser makes no warranties or representations, whether express or implied, in respect of the Confidential Information. **5. DISCLOSURE PROCEDURE** 5.1 Without limitations, the following will be included as Confidential Information: 5.1.1 if that information is contained in a printed document or computer disc or is otherwise fixed in a tangible medium, it must be marked "Confidential"; and 5.1.2 if that information is disclosed orally, is disclosed by showing it to the Recipient, is disclosed by transmitting it in an electronic file, or is otherwise not fixed in a tangible medium, then on the day that it is disclosed the Disclosing Party must confirm, in a notice to the Recipient describing the information, that that information is confidential. **6. RESTRICTIONS ON DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION** Notwithstanding the provisions of clause 3.3, the Recipient undertakes not to use the Confidential Information for any purpose other than: 6.1 that for which it is disclosed; and 6.2 in accordance with the provisions of this Agreement. **7. STANDARD OF CARE** The Recipient agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that it applies to safeguard its own proprietary, secret or confidential information and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorised access and disclosure thereof. **8. NOTIFICATION OF UNAUTHORISED DISCLOSURE OR USE** If the Recipient becomes aware of disclosure or use of Confidential Information other than as authorised in this agreement, the Recipient shall promptly notify the Discloser of that disclosure or use and shall cooperate with the Discloser in mitigating any adverse consequences to the Discloser of that disclosure or use. **9. RETURN OF MATERIAL CONTAINING OR PERTAINING TO THE CONFIDENTIAL INFORMATION** 9.1 The Discloser may, at any time for any reason whatsoever, request the Recipient to return any or all material containing, pertaining to or relating to information disclosed or made available or otherwise communicated pursuant to the terms of this Agreement and may, in addition request the Recipient to furnish a written statement to the effect that, upon such return, the Recipient has not retained in its possession, or under its control, either directly or indirectly, any such material. 9.2 As an alternative to the return of the material contemplated in clause 9.1 above, the Recipient shall, at the instance of the Discloser destroy such material and furnish the Discloser with a written statement to the effect that all such material has been destroyed. 9.3 The Recipient shall comply with a request, in terms of this clause 8, within 5 (five) Business Days of date of such a request. **10. EXCLUDED INFORMATION** The obligations of the Recipient pursuant to the provisions of this Agreement shall not apply to any information that: 10.1 is known to, or in the possession of the Recipient prior to disclosure thereof by the Discloser; 10.2 is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Recipient; 10.3 is developed independently of the Discloser by the Recipient in circumstances that do not amount to a breach of the provisions of this Agreement; 10.4 is disclosed by the Recipient to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances,

the Recipient shall advise the Discloser to take whatever steps it deems necessary to protect its interests in this regard provided further that the Recipient will disclose only that portion of the information which it is legally required to disclose and the Recipient will use its best endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances; 10.5 is disclosed to a third party pursuant to the prior written consent of the Discloser; 10.6 is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement. **11. TERM** Despite the Signature Date, this Agreement will commence on the first date that the Discloser releases any Confidential Information to the Recipient (Commencement Date) and shall continue in perpetuity. **12. REPRESENTATION AND WARRANTIES** 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. **13. BREACH** Should either Party (the Defaulting Party) commit a breach of any of the provisions of this Agreement, then the other Party (the Aggrieved Party) shall be entitled to require the Defaulting Party to remedy the breach within 5 (five) Business Days, or any other reasonable time, of delivery of a written notice requiring it to do so. If the Defaulting Party fails to remedy the breach within the period specified in such notice the Aggrieved Party shall be entitled to enforce the performance of the provisions of this Agreement by interdict or specific performance upon application to a court of competent jurisdiction. **14. ADDRESSES** 14.1 Any Party may by written notice to the other Parties, change its chosen address, telefax number or e-mail address to another address, telefax number or e-mail address, provided that: 14.1.1 the change shall become effective on the 10th (tenth) Business Day after the receipt or deemed receipt of the notice by the addressee in accordance with the provisions of clause 14.2, and 14.1.2 any change in a Party's Domicilium shall only be to an address in the Republic of South Africa, which is not a post office box or a poste restante. 14.2 Any notice to a Party contained in a correctly addressed envelope; and 14.2.1 sent by prepaid registered post to it at its chosen address in clause 0; or 14.2.2 delivered by hand to a responsible person during ordinary business hours at its chosen address in clause 14.5; shall be deemed to have been received in the case of clause 14.2.1 on the fifth Business Day after posting (unless the contrary is proved) and, in the case of clause 14.2.2 on the day of delivery. 14.3 Any notice by e-mail to a Party at its e-mail address shall be deemed, unless the contrary is proved, to have been received on the first Business Day after the date of transmission. 14.4 Notwithstanding anything to the contrary contained in this clause 14, 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 address or e-mail address as set out in clause 14.5. Each Party chooses the addresses set out below as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* (Domicilium) at which all documents in legal proceedings in connection with this Agreement must be served: The **Discloser**: Physical Address: 26 Scanlan Street, Labram, Moroka Hall of Residences, Kimberley, E-

Mail: [DeanOfStudents@spu.ac.za](mailto:DeanOfStudents@spu.ac.za) Attention: The Dean of Student

Affairs The **Recipient**:

Physical Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Attention: \_\_\_\_\_

**15. COSTS** Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement. **16. GOVERNING LAW** The entire provisions of this Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Furthermore, the parties hereto hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Northern Cape High Court, Kimberley, South Africa in regard to all matters arising from this Agreement. **17. SEVERABILITY** In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent. **18. COUNTERPARTS** This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. The signing of counterparts shall include faxed copies of the document. **19. PROCESSING OF INFORMATION** I accept, agree and understand that SPU obtain, retain and process data and documents in electronic and paper format, including the data supplied by myself. I also acknowledge that SPU is committed to: • protecting and promoting the privacy of my Personal Information including that of all its students and employees, or any other individuals / entities; • give effect to the Constitutional right to privacy; • fulfil its obligations under the Protection of Personal Information Act No 4 of 2013 (hereinafter referred to as 'POPIA'). 19.1 I hereby consent to SPU processing, using and transferring any personal information and data and using such documents in electronic or other formats for whatsoever purposes required during this period while applications for accreditation is considered and processed, and thereafter. I hereby consent to SPU processing my Personal Information where such processing is necessary, which includes but is not limited to SPU making use of my personal information (including my surname and first name, identity number, passport number, student number, face image and fingerprints and my mobile number) together with any personal information of the entity I represent, for purposes of assessing my / our application for accreditation and any other legitimate purposes associated with this process. 19.2 SPU acknowledges and agrees that the Personal Information will not, under any circumstances, be processed for purposes prohibited by POPIA, and that any processing of Personal Information will be done fairly and in accordance with relevant legislation, given that the purpose for which the personal information is processed is adequate, relevant and not excessive. 19.3 I acknowledge that I have been informed that I have the right to object in the prescribed manner to SPU as it relates to the processing of my personal information, by sending a written notification to this effect to the Registrar of SPU. On receipt of such objection SPU will place a hold on any further processing until the objection has been resolved. I do however understand that any inability by SPU to process personal information for reasonable purposes related to academic, support and administrative purposes will result in SPU having the right to reconsider my status at SPU, which might include suspension and/or cancellation of my registration at SPU. **20. GENERAL** 20.1 This document contains the entire agreement between the Parties in regard to the subject matter hereof. 20.2 No Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this document whether it induced the contract and/or whether it was negligent or not. 20.3 No variation, amendment or consensual cancellation of this Agreement or any provision or term hereof and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement shall be binding or have any force and effect unless reduced to writing and signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be construed as relating strictly to the matter in respect whereof it was made or given. 20.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement. 20.5 No failure by any Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way such Party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself. 20.6 No Party shall cede any of its rights or delegate any of its obligations under this Agreement. 20.7 If any clause or term of this Agreement should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of this Agreement.

By their respective signatures hereto, the Parties bind themselves to the terms and conditions as set out in this Agreement.

Signed on behalf of the **Discloser**:

Signature: \_\_\_\_\_

Signed on behalf of the **Recipient**:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Designation: \_\_\_\_\_  
Date: \_\_\_\_\_  
Place: \_\_\_\_\_  
Witness: \_\_\_\_\_

Name: \_\_\_\_\_  
Designation: \_\_\_\_\_  
Date: \_\_\_\_\_  
Place: \_\_\_\_\_  
Witness: \_\_\_\_\_