

**CONFIDENTIALITY, NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT**

Between

(" ")

And

**Smartgrow (PROPRIETARY) LIMITED**  
**Registration number: 2015/353575/07**  
**("SMARTGROW")**

## 1. Introduction

- 1.1 The parties intend to provide each other with certain information pertaining to their operations and the parties are in the process of discussing certain matters with a view to concluding an agreement ("the potential agreement"), which discussions have required and will require the disclosure to one another of information of a proprietary, secret and confidential nature. Whether or not the parties conclude the potential agreement will not affect the validity of this agreement.
- 1.2. The parties wish to record the terms and conditions upon which each shall disclose confidential information to the other, which terms and conditions shall constitute a binding and enforceable agreement between the parties and their agents.
- 1.3 This agreement shall also bind the parties, notwithstanding the date of signature hereof, in the event that either party shall have disclosed any confidential information to the other party prior to date of signature hereof.
- 1.4 For the purposes of this agreement the party which discloses confidential information shall be referred to as "the disclosing party" and the party which receives the confidential information shall be referred to as "the receiving party".

## 2. The Confidential Information

- 2 "**Confidential Information**" shall, for the purpose of this agreement include, without limitation, any technical, commercial, financial or scientific information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, and data (including, but not limited to, the information set out in 1.1 above) in whatever form, disclosed to or assessed by either party during the course of his relationship with the other party.

**3. Disclosure of confidential information**

- 3.1 The disclosing party shall only disclose the confidential information to the receiving party to the extent deemed necessary or desirable by the disclosing party in its discretion.
- 3.2 The receiving party acknowledges that the confidential information is a valuable, special and unique asset proprietary to the disclosing party.
- 3.3 The receiving party agrees that it will not, during or after the course of their relationship and/or the term of this agreement as described in Clause 10, disclose the information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement. For avoidance of doubt, in this agreement “third party” means any party other than the disclosing party and the receiving party (their holding and subsidiary companies or agents or directors or shareholders or associated companies or members) who shall be deemed to be bound by the provisions of this agreement).
- 3.4 Notwithstanding anything to the contrary contained in this agreement the parties agree that the confidential information may be disclosed by the receiving party to its professional advisors on a need-to-know basis; provided that that party takes whatever steps are necessary to procure that such professional advisors agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the confidential information to third parties. For purposes of this clause, the receiving party’s professional advisers and employees, directors or managers shall be deemed to be acting, in the event of a breach, as that party’s duly authorised agents.
- 3.5 The receiving party agrees:
- 3.5.1 Not to utilise, exploit or in any other manner whatsoever use the confidential information disclosed pursuant to the provisions of this agreement for any purpose whatsoever without the prior written consent of the disclosing party;
- 3.5.2 That the unauthorised disclosure of the confidential information to a third party may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, claim, harm or damage, of whatever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement.

**4. Title**

4. All confidential information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:

4.1 To be proprietary to the disclosing party; and

4.2 Not to confer any rights to the receiving party of whatever nature in the confidential information.

**5. Restrictions on disclosure and use of the confidential information**

5. The receiving party undertakes not to use the confidential information for any purpose other than:

5.1 That for which it is disclosed; and

5.2 In accordance with the provisions of this agreement.

**6. Standard of care**

6.1 The receiving party agrees that it shall protect the confidential information disclosed pursuant to the provisions of this agreement using the same standard of care that the receiving party applies to safeguard its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

**7. Return of material containing or pertaining to the confidential information**

7.1 The disclosing party may, at any time, request the receiving party to return any material containing, pertaining to or relating to 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.

7.2 As an alternative to the return of the material contemplated in 7.1 above, the receiving party shall, at the 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.

7.3 The receiving party shall comply with a request in terms of this clause, within 7 (seven) days of receipt of such a request.

## **8. Excluded confidential information**

8. The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any confidential information that:

8.1 is known to, or in the possession of the receiving party prior to disclosure thereof by the disclosing party;

8.2 is or becomes publicly known, otherwise than as a result of a breach of this agreement by the receiving party;

8.3 is developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;

8.4 is disclosed by the receiving party 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 receiving party shall advise the disclosing party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the greatest extent possible in the circumstances;

8.5 is disclosed to a third party pursuant to the prior written authorisation of the disclosing party;

8.6 is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

9. **Non-circumvention and disclosure**

9.1 The receiving party agrees that in relation to any potential agreement, investment, joint venture and/or business opportunity, of any nature whatever, disclosed by the disclosing party during the course of the negotiations and discussions referred to in 1, it will not -

9.1.1 either directly or indirectly whether alone or with others, negotiate or participate in any transaction or series of transactions or related transactions of any nature which circumvents the disclosing party; and/or

9.1.2 In any way whatsoever circumvent or attempt to circumvent the disclosing party by directly or indirectly dealing with any party, the identity of which would fall within the definition of confidential information, in any present or future transactions.

Save insofar as such potential agreement, investment, joint venture and/or business opportunity falls within the ordinary course of business of the disclosing party.

10. **Term**

10.1 This agreement shall commence upon the date of signature of the last signing party hereto ("the effective date") and shall endure for a period of 5 years ("the term") thereafter, or for a period of five years 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. In the event that the parties extend the term by mutual and written agreement, then the provisions hereof shall endure for a further minimum period of 60 (sixty) months, *mutatis mutandis*.

**11. Additional Action**

11.1 Each party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

**12. Breach**

12.1 In the event that the receiving party should breach the provisions of this agreement and fail to remedy such breach within 7 (seven) days from date of a written notice to do so, then the disclosing party shall be entitled to invoke all remedies available to it in law including the institution of urgent interim proceedings and/or an action for damages.

**13. Amendments**

13.1 No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by both parties.

**14. Enforcement**

14.1 The failure by the disclosing party to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of the disclosing party to enforce the provisions of this agreement.

**15 Headings**

15.1 The headings of the clauses of this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement.

**16 Representations & Warranties**

16.1 Each party represents that it has authority to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

**17 Entire agreement**

17.1 This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this agreement.

**18 Governing law**

18.1 This agreement and the relationship of the parties in connection with the subject matter of this agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

**19. Submission**

19.1 The parties hereby submit to the non-exclusive jurisdiction of the Johannesburg Local Division of the High Court of South Africa.

**20. Correspondence addresses**

20.1 Any written notice in connection with this agreement must be sent to registered email addresses of the businesses.

20.2 A party may change that party's address, by prior notice in writing to the other party.

20.3 If any notice is to be sent by mail, it shall be sent by prepaid registered mail and shall then be deemed until and unless the contrary is proved, to have been received 7 (seven) days after the date of posting.

20.4 If any notice is sent by email, it will be deemed, until and unless the contrary is proved, to have been received on the date recorded on the email transmission slip.

20.5 If any notice is delivered by hand, it will be deemed to have been received on proof of the date of delivery.



**21. Severability**

21. 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 other provision 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.

Signed at East London on this the 31<sup>st</sup> day of August 2018.

As Witness: \_\_\_\_\_  
for  
duly authorised to so sign

1. \_\_\_\_\_

2. \_\_\_\_\_

Signed at East London on this the 31<sup>st</sup> day of August 2018.

As Witness: \_\_\_\_\_  
for **Smartgrow**  
duly authorised to so sign

1. \_\_\_\_\_

2. \_\_\_\_\_