

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

A. Automotive Industry Transformation Fund NPC  
(registration number: 2020/037969/08)

and

B. \_\_\_\_\_  
(registration number: \_\_\_\_\_)

wish to conduct discussions and negotiations in order to consider the possibility of entering into an agreement pursuant to such discussion and/or negotiations ("**Proposed Transaction**"). For purposes of this confidentiality and non-disclosure agreement ("**Agreement**") a reference to the "**Disclosing Party**" shall be a reference to the Party disclosing its Confidential Information to the Receiving Party, which shall for purposes of this Agreement include disclosures by either Party to the other, and a reference to "**Receiving Party**" shall mean the Party receiving the Disclosing Party's Confidential Information (collectively, the "**Parties**" and a reference to "**Party**" will be a reference to either of them).

C. In order to evaluate the feasibility of the Proposed Transaction, each Party will receive from the other Party certain information, data, documents, material, knowledge, know-how, trade secrets, training methods, marketing methods and proprietary interests concerning such Party, including but not limited to any other information which is confidential, not in the public domain and not readily available to competitors of such Party in the ordinary course of business (hereinafter referred to as "**Confidential Information**"). In consideration of such Confidential Information being made available for the purpose of considering, evaluating and negotiating the Proposed Transaction ("**Purpose**"), the Parties agree as set out below. The Disclosing Party will disclose to the Receiving Party only such Confidential Information which the Disclosing Party deems appropriate to fulfil the objectives of this Agreement, as set out above. Nothing in this Agreement will be construed as compelling the Disclosing Party to disclose any Confidential Information to the Receiving Party or to enter into any further contractual relationships.

1 The Receiving Party undertakes to and in favour of the Disclosing Party that –

1.1 the Receiving Party will strictly use the Confidential Information disclosed to it by the Disclosing Party solely for the Purpose;

1.2 the Confidential Information will be kept and safeguarded as private and confidential and will not

be divulged, published or disclosed to any person, firm, company, corporation or other entity whatsoever without the prior written consent of the Disclosing Party, nor will any statement be made without the prior written consent of the Disclosing Party in respect of the fact that the Confidential Information has been made available, that the Parties have entered into discussions and negotiations regarding the Proposed Transaction or in respect of any of the terms and conditions or status of the discussions and negotiations, or this Agreement; and

1.3 the Confidential Information will neither be copied, nor otherwise reproduced or duplicated, in whole or in part, where such copying, reproduction or duplication has not been specifically authorised in writing by the Disclosing Party.

2 The undertakings given by the Receiving Party will not preclude the Receiving Party from disclosing the Confidential Information -

2.1 to the extent required by a valid court or governmental order, provided the Receiving Party gives the Disclosing Party prompt advance notice so that the Disclosing Party may seek a protective order or other appropriate remedy. In the event that such a protective order or other remedy is not obtained, or in the event that the Disclosing Party waives compliance with the provisions of this Agreement, the Receiving Party will be entitled to disclose only that portion of the Confidential Information which is legally required; or

2.2 in so far as such disclosure is necessary for the Purpose, to the Receiving Party's employees and/or professional advisors who have a need to know the Confidential Information for the purposes of evaluating and providing advice in relation to the Proposed Transaction and who, prior to such disclosure, are informed of the confidential nature of the Confidential Information and are made aware of the obligations under this Agreement. The Receiving Party will ensure that each such employee and/or professional advisor will adhere to such undertakings and obligations.

3 The Parties agree that the undertakings given by the Receiving Party in terms of this Agreement will not apply to any part of the Confidential Information which -

- 3.1 is public knowledge at the time of its disclosure or becomes part of the public domain, otherwise than as a result of a breach by the Receiving Party; or
- 3.2 becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, which is not to the knowledge of the Receiving Party legally prohibited from disclosing it; or
- 3.3 is released from the provisions hereof by the Disclosing Party's prior written consent; or
- 3.4 is known to or in the possession of the Receiving Party prior to the disclosure thereof by the Disclosing Party; or
- 3.5 is independently developed by or for the Receiving Party at any time by persons who have had no access to or knowledge of the Confidential Information; or
- 3.6 the Receiving Party is requested or required to disclose by any law, regulations, judicial, governmental, supervisory or regulatory body, court of law or legal process, provided that in these circumstances the Receiving Party shall advise the Disclosing Party of same in order for the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard.
- 4 Upon written request of the Disclosing Party, the Receiving Party shall return or, at the option of the Disclosing Party, irretrievably destroy and delete (and certify to the Disclosing Party that it has irretrievably destroyed and deleted) all the Confidential Information and other information received from the Disclosing Party hereunder, that is in written, electronic or other tangible form.
- 5 The disclosure and provision of Confidential Information under this Agreement will not be construed as granting to the Receiving Party any rights, whether expressed or implied, by licence or otherwise, in respect of any matters, inventions or discoveries to which such Confidential Information pertains, or any copyright, trademark or rights to trade secrets.
- 6 Protection and Processing of Personal Information:
- 6.1 All Personal Information provided by the Disclosing Party to the other, or to which a party may be exposed, constitutes Confidential Information belonging to that Disclosing Party. For purposes of this Agreement, -
- 6.1.1 "*Personal Information*" means information relating to an identifiable natural or juristic person, as defined in the Protection of Personal Information Act 4 of 2013 ("**POPI Act**") that is supplied to one party by the other party or Processed on behalf of one Party by the other Party.
- 6.1.2 "*Process*" means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means and "*Processing*" shall have a corresponding meaning.
- 6.2 Each party ("**Party**") warrants to the other that it will:
- 6.2.1 at all times strictly comply with all applicable laws ("**Applicable Laws**");
- 6.2.2 not Process any Personal Information without the express prior written consent of the other Party, where such Processing is not for the purposes of the Discussions;
- 6.2.3 notify the other Party of any security compromises in respect of Personal Information disclosed by such Party in terms of this Agreement of which it becomes aware, immediately on becoming so aware;
- 6.2.4 take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Personal Information, the unlawful access to or Processing of Personal Information and/or to maintain the integrity of the Personal Information. The measures taken must at all times be of a minimum standard required by all Applicable Laws;
- 6.2.5 take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Personal Information under that Party's possession or control and establish and maintain appropriate safeguards against any risks identified. Each Party shall regularly verify that the safeguards are effectively implemented and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards;
- 6.2.6 provide to the other upon written request within a reasonable period, all information which is necessary to carry out a comprehensive review of the Processing of Personal Information in terms of this Agreement. In this regard, a Party may select

- an independent third party to carry out such comprehensive review as may be necessary;
- 6.2.7 unless otherwise agreed in writing between the Parties, not retain any Personal Information provided to it or to which it may be exposed for any longer than is necessary for achieving the purpose of the Discussions and in terms of Applicable Laws; and
- 6.2.8 if it receives a request from a third party for access to the Personal Information provided by the other Party, notify the other Party upon becoming aware of such request; provided that such Party will, subject to the provisions of clause 3.6, not be permitted to disclose any such Personal Information without the prior written consent of the Disclosing Party, which may not be unreasonably withheld.
- 7 This Agreement will commence on the date of signature hereof ("**Signature Date**") and will remain binding and in force for as long as the secrecy and/or confidential nature of the Confidential Information exchanged by the Parties in connection with the Purpose exists. The expiry or termination of this Agreement, for any reason whatsoever, will not affect the continuance thereafter of the Receiving Parties' confidentiality and non-disclosure obligations as set out in this Agreement, which will remain in full force and effect indefinitely to the extent that such Confidential Information remains confidential.
- 8 The Parties acknowledge that the unauthorised disclosure of the Confidential Information of either Party or any portion thereof to a third party may cause irreparable loss, harm and damage to the other Party, and each Party accordingly hereby indemnifies and holds the other Party harmless against any loss, action, expense, claim, harm or damage of whatever nature, suffered or sustained pursuant to a breach by such Party of the provisions of this Agreement.
- 9 Notwithstanding the foregoing or any other provision of this Agreement, neither Party will be liable to the other for any indirect, consequential or special damages, including loss of profit or anticipated savings.
- 10 This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party will be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 11 No addition to, variation, novation or agreed cancellation of any provision of this Agreement will be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 12 If at any time after the Signature Date, a Party breaches its obligations hereunder, the other Party shall be entitled, by written notice to the Party in breach, to forthwith terminate this Agreement without any further liability to the other Party, and the Party in breach shall indemnify the other Party against costs, claims and liabilities arising as a result of the breach.
- 13 This Agreement will in all respects be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 14 This Agreement may be executed in counterparts and the signature by either Party of a counterpart of this Agreement will be as effective as if that Party had signed the same document as the other Party.
- 15 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.
- 16 Neither Party shall be entitled to cede, assign, transfer or make over any of their rights or obligations in terms of this Agreement without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 17 Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement.
- 18 The Parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give effect to the terms, conditions and import of this Agreement. The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.

**FOR:            AUTOMOTIVE INDUSTRY TRANSFORMATION FUND NPC**

Signature: \_\_\_\_\_  
                  who warrants that he is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**FOR:            \_\_\_\_\_**

Signature: \_\_\_\_\_  
                  who warrants that s/he is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_