



ZAMBIA NATIONAL COMMERCIAL BANK PLC

and

CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT

LEGAL COUNSEL
ZAMBIA NATIONAL COMMERCIAL BANK PLC
HEAD OFFICE
CAIRO ROAD
P.O. BOX 33611
LUSAKA

This Mutual Non - Disclosure Agreement (the “**Agreement**”) entered into on the the date of the last party’s signature between:-

ZAMBIA NATIONAL COMMERCIAL BANK Plc, a company incorporated under the Companies Act, 2017, and registered under the Banking and Financial Services Act, 2017 with its registered office at Cairo Road/Sapele Road, Lusaka and of P.O Box 33611, Lusaka (“the Bank”) of the one part

and

, a company incorporated under the Companies Act, 2017, with registration number having its principal place of business at (“the Company”) of the other part and collectively known as “The Parties.”

WHEREAS The Parties, for their mutual benefit, may have exchanged and wish further to exchange certain information of a confidential nature and wish to protect such information in the manner set out in this Agreement

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. DEFINITION

1.1. “**Agreement**” means this Reciprocal Non-Disclosure Agreement;

1.2. “**Confidential Information**” shall mean any information or data or other material in whatever form relating to a Party's business or affairs (including but not limited to information in a document or electronic file or software or information ascertainable by the inspection or analysis of samples or captured in any other way of representing or recording information) disclosed whether in writing, orally or by any other means to one party by the other Party or by a third party on behalf of the other Party, whether before or after the date of this Agreement, but shall exclude any part of such disclosed information or data which:

1.2.1. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party; or

1.2.2. the Receiving Party can show:

1.2.2.1. was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or

1.2.2.2. to have been developed by or for the Receiving Party at any time independently of any information disclosed to it by the Disclosing Party; or

1.2.3. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party of any obligation of confidentiality or non-use towards the Disclosing Party;

1.2.4. is hereafter furnished by the Disclosing Party to a third party without restriction on disclosure or use; or

1.2.5. is disclosed by the Receiving Party:

1.2.5.1. with the prior written approval of the Disclosing Party;

- 1.3. **“Disclosing Party”** shall mean the Party disclosing its Confidential Information to the other Party;
- 1.4. **“Parties”** shall mean the Bank, and **“Party”** shall mean, as the context may require, any of them;
- 1.5. **“Permitted Purpose”** shall mean any discussions and negotiations between or within the Parties concerning or in connection with the establishment of a business relationship between the Parties;
- 1.6. **“Receiving Party”** shall mean the Party receiving the Confidential Information from the Disclosing Party;
- 1.7. **“Signature Date”** shall mean the date on this Agreement is signed by the last Party signing in time.

2. **HANDLING OF CONFIDENTIAL INFORMATION**

- 2.1. The Receiving Party shall maintain the other Party's Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own Confidential Information which the Receiving Party warrants as providing adequate protection against unauthorised disclosure, copying or use.
- 2.2. The Parties acknowledge that the other Parties' Confidential Information is a valuable, special and unique asset proprietary to such Party.
- 2.3. The Parties agree that where they are the Receiving Party they will not, during the course of their association with one another insofar as are pertinent to the purpose of such exchange (or association arising therefrom), or for the Term set out in clause 11, whichever is the longer, disclose the Confidential Information of the Disclosing Party received by the Receiving Party, 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 Parties identified in this Agreement (their holding and subsidiary companies, employees or agents who shall be deemed to be bound by the provisions of this Agreement).
- 2.4. The Parties agree that where they are the Receiving Party they will not, during the course of their association with one another insofar as are pertinent to the purpose of such exchange (or association arising therefrom), or for the Term set out in clause 11, whichever is the longer, use the Confidential Information of the Disclosing Party received by the Receiving Party, for their personal gain in any way other than for its intended purpose.
- 2.5. 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, directors, agents, consultants and employees only on a strictly need-to-know basis: provided that the Receiving Party takes whatever steps are reasonably necessary to procure that such professional advisors, directors, agents, consultants and employees agree to

abide by the terms of this Agreement to prevent the unauthorised disclosure of the Confidential Information to third parties

2.6. The Receiving Party agrees:

- 2.6.1. 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 except as permitted under this Agreement without the prior written consent of the Disclosing Party;
- 2.6.2. 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.
- 2.6.3. that copies or reproductions of Confidential Information shall not be made except to the extent reasonably necessary to carry out the Permitted purpose and all copies made shall be the property of the Disclosing Party.

3. TITLE

- 3.1. All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party:
 - 3.1.1. to be proprietary to the Disclosing Party; and
 - 3.1.2. not to confer any rights of whatever nature in such Confidential Information to the Receiving Party.

4. EXCEPTIONS

- 4.1. The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any Confidential Information that:
 - 4.1.1. is known to or in possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
 - 4.1.2. is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Receiving Party;
 - 4.1.3. is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of this Agreement;
 - 4.1.4. is disclosed by the Receiving Party to satisfy the 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 in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard: provided further that the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such Confidential Information to the widest extent possible in the circumstances;
 - 4.1.5. is disclosed to a third party pursuant to the prior written authorisation from the Disclosing Party;

4.1.6. is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement; or

4.1.7. which comes to the knowledge of the Receiving Party other than as a result of a disclosure by the Disclosing Party.

5. LIMITATIONS AND WARRANTY

5.1. The Receiving Party shall:

5.1.1. not divulge the Disclosing Party's Confidential Information, in whole or in part, to any third party and, in particular, the Receiving Party shall not use nor cause to be used, any Confidential Information in the course of or pursuit of any other business relationship or in respect of any product or otherwise with any person or entity which is acting or may act in business competition with the Disclosing Party;

5.1.2. use the Confidential Information only for the Permitted Purpose; and

5.1.3. make no commercial or other use of the same or any part thereof without the prior written consent of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party shall be entitled to make any disclosure required by order of the Court or law or regulation of the Disclosing Party's Confidential Information.

5.2. Each Party warrants to the other Party that it has a right to disclose its Confidential Information to the Receiving Party and to authorise the Receiving Party to use the same for the Permitted Purpose.

6. DISCLAIMER

6.1. All rights in Confidential Information are reserved by the Disclosing Party and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any invention, discovery, patent, copyright or other intellectual property right now or in the future held, made, obtained or licensable by either Party. Nothing in this Agreement or its operation shall preclude, impair or restrict either Party from continuing to engage in its business otherwise than in breach of the terms of this Agreement.

7. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

7.1. If the Disclosing Party makes a request for the return of the Confidential Information at any time, or if the Confidential Information is no longer required by the Receiving Party for the Permitted Purpose, the Receiving Party shall return to the Provider all material containing Confidential Information and copies thereof in the possession, power or control of the Receiving Party and its authorised Representatives within 30 (thirty) days of receipt of a written request from the Disclosing Party.

- 7.2. If requested by the Disclosing Party, the Receiving Party shall within seven (7) days of receiving the request destroy all material containing Confidential Information in the possession, power or control of the Receiving Party and any of its Representatives.
- 7.3. For the purposes of this Clause 7, 'material containing Confidential Information' includes any material created or generated by the Receiving Party that contains Confidential Information, material in any form of storage from which the Confidential Information can be reproduced and material in any form in which the Confidential Information is embodied or encoded.
- 7.4. If requested by the Disclosing Party, the Receiving Party shall provide a written statement confirming that all material containing Confidential Information has been returned to the Disclosing Party or destroyed in accordance with this Agreement.
- 7.5. Provided always that where so required by the law(s) or regulation(s) applicable to either Party, copies of Confidential Information may be kept for purposes of complying with such law(s) and/or regulation(s).

8. CONSEQUENCES OF BREACH

- 8.1. Each Party acknowledges and agrees to the other Party that:
- 8.1.1. neither it nor any of its officers, employees or advisors (each a "**Relevant Person**");
 - 8.1.2. makes any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by it or the assumption on which it is based; or
 - 8.1.3. shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by it or be otherwise liable to the other Party or any other person with respect to the Confidential Information or any such information; and
- 8.2. It may be irreparably harmed by the breach of the terms of this Agreement and damages may not be an adequate remedy and it shall be entitled to seek an injunction or specific performance for any threatened or actual breach of the provisions of this Agreement by the other Party.
- 8.3.

9. NATURE OF UNDERTAKINGS

- 9.1.1. The undertakings given by each Party to the other Party under this Agreement are given by each Party to the other Party and (without implying any fiduciary obligations on either Party to the other).

10. NOTICES

- 10.1. The parties hereby select the addresses respectively set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered to it for the purposes of this Agreement.

Attention:

ZAMBIA NATIONAL COMMERCIAL BANK (ZANACO) PLC
Cairo Road
P.O Box 33611
LUSAKA

Attention:

- 10.2. Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if in writing and delivered by hand or by post or email.
- 10.3. Either Party may by written notice to the other Party change its chosen domicile to another physical address, provided that the change will become effective on the 7th (seventh) day after the receipt of the notice by the addressee.
- 10.4. Any notice to a Party sent by post and contained in a correctly addressed envelope and:
- 10.4.1. sent by prepaid registered post to it at its chosen address; or
- 10.4.2. delivered by hand to a responsible person during ordinary business hours at its chosen domicile will be deemed to have been received, in the case of clause 10.4.1 on the seventh business day after posting (unless the contrary is proved) and, in the case of clause 10.4.2 on the day of delivery.
- 10.5. Any notice by email to a Party at its email address provided will be deemed, unless the contrary is proved, to have been received within 12 (twelve) hours of transmission where it is transmitted during normal business hours or within 12 (twelve) hours of the first business day after it is transmitted where it is transmitted outside those business hours.

11. TERMINATION

- 11.1. This Agreement shall continue in force from the last Signature Date for a period of 24 (twenty-four) months or until terminated by mutual consent or by either Party giving to the other Party not less than 1 (one) months' notice provided at all times that the obligations of non-use and non-disclosure of confidential information shall survive termination of this Agreement.

12. NO WAIVER

- 12.1. This Agreement sets out the full extent of each Party's obligations of confidentiality owed to the other Party in relation to the information the subject of this Agreement. No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any rights, power or privilege preclude any further exercise thereon or the exercise of any other right, power or privileges under this Agreement.

13. VARIATIONS

13.1. The terms of this Agreement and each Party's obligations hereunder may only be amended or modified by written agreement between the Parties.

14. NON-ASSIGNMENT

14.1. This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by either Party without the prior written consent of the other Party.

15. ENTIRE AGREEMENT

15.1. This Agreement constitutes the entire agreement and understanding between the Parties in respect of the Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect.

16. GOVERNING LAW AND JURISDICTION

16.1. This Agreement shall be governed by and construed in accordance with the laws of Zambia.

16.2. The Parties irrevocably agree that a Court of competent jurisdiction in the Republic of Zambia shall have exclusive jurisdiction to hear, settle and determine any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, breach, enforcement, application, validity, formation or termination. For these purposes, each Party irrevocably submits to the jurisdiction of the courts of Zambia.

17. COUNTERPARTS

17.1. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. An e-mail copy shall be deemed to be a valid counterpart to this Agreement.

SIGNED at on this the _____ day of _____ 2021.

SIGNED for and on behalf of **ZAMBIA**
NATIONAL COMMERCIAL BANK PLC

Name:

Signature:

Designation:

Date:

In the presence of

WITNESS

Name:

Signature:

SIGNED for and on behalf of

Name:

Signature:

Designation:

Date:

In the presence of

WITNESS

Name:

Signature: