Agreement

entered into between



**DRS DIETRICH, VOIGT, MIA & PARTNERS**

(“hereinafter referred to as “Pathcare”)

having a principal place of business at:

Pathcare Business Centre

Neels Bothma Street

N1 City, Goodwood

and

(hereinafter referred to as the Company)

having a principal place of business at:

**NOW THEREFORE THE PARTIES AGREE WITH EACH OTHER AS FOLLOWS:**

**Definitions**

1. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
	1. “confidential information” means any and all information of a confidential nature which may be disclosed by one party and/or any such confidential information of any subsidiary or associated company and/or trust and/or other persons and/or legal entities associated with such party, to the other party including but not limited to medical and personal information about patients, employees client lists, know-how, member card holder files, any technical-, commercial- and/or scientific information, processes, machinery, designs, drawings, intellectual property and trade secrets;
	2. “Company” means the party identified on the cover page of the agreement as such;
	3. "intellectual property" means all patents, trademarks, service marks, designs, design rights, copyright (including copyright in any designs and computer software), and all other intellectual property rights and rights of a similar character whether registered or capable of registration and all applications and rights to apply for protection of any of the same in and to the concept;
	4. “know-how” means all the ideas, designs, documents, diagrams, know-how, techniques, methods and information relating to or used in connection with a party’s business and includes all manuals or technical information and expertise relating to the running of a party’s business;
	5. "Pathcare” means Dietrich, Voigt, Mia and Partners, practising in a partnership and practising as such at Pathcare Park, Neels Bothma Street, N1 City, Goodwood;
	6. “parties” means the Company and Pathcare collectively or either one of them where the context so indicates and “party” shall have a corresponding meaning;
	7. “Purpose” means the purpose as set out in clause 3.
2. Whenever the term "including" is followed by specific examples, such examples will not be construed so as to limit the meaning of that term**.**

**Disclosure and purpose**

1. Due (INSERT PURPOSE) the Company has requested Pathcare to provide it with confidential information relating to (INSERT DETAILS).

**Duration**

4. This Agreement shall be valid for a period of 2 (two) years from date of last signature, with either party having the right to terminate this agreement by giving the other party 30 (thirty) days written notice at the address nominated in clause 20. The mutual obligation of confidentiality shall, however, survive the termination of the agreement and remain in force for a period of 5(five) years after termination and in accordance with the provisions of clause 10.

**Undertaking**

1. The parties hereto undertake to treat as strictly confidential and not disclose all and any confidential information of any nature whatsoever communicated to or acquired by it during the course of the parties’ association with one another and/or for purposes of the exchange of information as set out herein, howsoever such information may have been disclosed to it, without limiting the aforegoing, whether orally, visually or in computer language or by reason of inspection of documentation or other matter.
2. The parties acknowledge that the aforesaid confidential information is being made available to one another or will otherwise come into one another’s possession solely for the Purpose and for no other purpose whatsoever and in particular not to obtain any commercial advantage over the other party, and that such confidential information would not have been made available to it but for this agreement.
3. The parties shall protect the confidential information by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorised use, dissemination or publication of the confidential information as the parties use to protect their own confidential information and/or material.
4. All confidential information disclosed to the other party shall be and remains the sole property of the party disclosing the confidential information.
5. Save as otherwise agreed to in writing the parties agree that they will not make use, in whole or in part, directly or indirectly including but not limited to whether as proprietor, partner, director, shareholder, employee, member, consultant, contractor, financer, agent, representative, assistant or otherwise and whether for reward or not, of the confidential information than for the Purpose unless:
	1. any part of such confidential information is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission on part of the party to whom it was disclosed or its employees, agents, professional advisors and/or contractors;
	2. same came lawfully into the party’s possession from a third party lawfully possessing such information;
	3. same is released by the disclosing party in writing as information free of restrictions.
	4. The Institution will be entitled to make publications (including at a symposium, conference, other professional meeting or through an academic journal) provided that it complies with the terms of this clause. The Institution shall provide the PathCare with a manuscript of any proposed paper, publication, dissertation, thesis or presentation (“Proposed Publication”) at least 60 (sixty) days prior to submission thereof for publication or presentation. PathCare may require the removal of any or all of its confidential information from such Proposed Publication in order to protect its proprietary rights and interests and the Institution will comply with any such requirement to the reasonable satisfaction of Pathcare prior to submission. All Proposed Publications will suitably acknowledge the contributions of PathCare and its personnel. The Institution shall ensure that PathCare will be furnished with a copy of the Proposed Publication as finally published or presented within one (1) month after such publication or presentation.
6. The parties agree not to disclose the confidential information to any person (whether a natural person or a legal entity) whomsoever other than as may be required by law or to its employees (which shall include any of its directors) and agents, professional advisors and/or contractors who need to know for the Purpose. Before revealing such information to any such employees, agents, professional advisors and/or contractors, it undertakes to procure that the employees, agents, professional advisors and/or contractors sign a similar undertaking in favour of the party who discloses the confidential information and that they are aware of the confidential nature of the information being made available to them. It undertakes to ensure that its employees will observe and comply with their obligations in respect thereof.
7. The disclosure of any confidential information by one party to the other pursuant to this agreement shall not constitute an option, grant or license to the other party under any patent, copyright or any other intellectual property rights, or rights of any nature or kind whatsoever, which are presently held by the party disclosing its confidential information or which may be held by such disclosing party in the future.
8. The parties do not intend that any agency, partnership or joint venture relationship be created between them by this agreement. The disclosure of the confidential information hereunder shall not result in any obligation on the part of either party to enter into a further agreement with the other with respect to the subject matter hereof or otherwise.
9. Each party warrants to the other that it has the right to make the disclosures under this agreement.
10. The obligations undertaken by the parties under this agreement shall endure notwithstanding the termination of this agreement, or notwithstanding the termination of any discussion or negotiations between them.
11. The parties agree that the courts of the Republic of South Africa shall have jurisdiction over any dispute or matter arising out of this agreement. In the event that a party elects to institute proceedings in the High Court of the Republic of South Africa, the parties consent to the jurisdiction of the Cape High Court, Western Cape Division of South Africa.
12. The parties acknowledge that monetary damages will not be a sufficient remedy for breach of the obligations of the parties herein and accordingly, without prejudice to any other rights and remedies available to the parties, agree that a party shall be entitled to all equitable relief including but not limited to relief by way of interdict, specific performance and otherwise.
13. In the event that any provision of this agreement shall be declared invalid or unenforceable, such provision shall be deemed to be severed and deleted, and neither such provision nor its deletion, shall affect the validity of the remaining provisions herein.
14. The parties do hereby choose their respective *domicilia citandi et executandi* at their addresses as set out herein:

The Company

Email:

PathCare: Drs Dietrich, Voigt, Mia & Partners

PathCare Business Centre

PathCare Park

Neels Bothma Street

N1 City

Goodwood

7460

Attention: Dr. John Douglass

Telefax: +27 21 596 3711

Email: john.douglass@pathcare.co.za

All notices or other communications to be given to any party shall be considered duly given if served personally by hand, dispatched by pre-paid registered post, telefax or by way of electronic communication. Either party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address within India or the Republic of South Africa, provided that the change shall become effective on the 10th (tenth) business day from the deemed receipt of the notice by the other party.

1. No extension of time, alteration, cancellation, variation, addition, waiver or relaxation shall be of any force or effect unless reduced to writing and signed by both parties to this agreement.
2. This document contains the entire agreement between the parties relating to the subject matter thereof and no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
3. No indulgences, leniency or extension of time which any party may grant or show to any other party shall in any way prejudice such party or preclude it from exercising any of its rights in terms hereof.
4. This agreement may be executed in two or more counterparts, each of which shall be deemed an original and shall be deemed to be effective as of the day and year indicated herein.

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| --- | --- |
| Dated: | Dated: |
| Authorised Signature | Authorised Signature |
| Name: | Name: |
| Title: | Title: |
|  | DRS DIETRICH, VOIGT, MIA & PARTNERS  |