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**MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

Made and entered into by and between

**BBS BANK LIMITED**

a company established under the Companies Act under **UIN** **BW00001057162** hereinafter referred to as **“BBS Bank”** having its registered office at **Plot 13108 – 13112, BBS Mall Broadhurst, Cnr Lemmenyane Dr & Segoditshane Way, Gaborone** and postal address of **P O BOX 40029** represented herein by **Pedzani Tafa** in her capacity as **Managing Director** she being duly authorised.

And

**XXXXXXXXXXXXXXXX**

a company established under xxxxxxxxxxxxx hereinafter referred to as xxxxxxxx having its registered office at xxxxxxxxxxxxx, and postal address xxxxxxxxxxx Gaborone, Botswana represented herein by **xxxxxxxxxxx** in his/her capacity as **xxxxxxxxxxxxxx** he/she being duly authorized.

 (Collectively referred to as **“the Parties”**)

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**RECITALS**

**WHEREAS** the Parties are in discussions to explore possibilities of establishing a [type of relationship] relationship (“the Relationship”);

**WHEREAS** in connection with the Relationship it will be necessary for certain Confidential Information (as defined below) to be disclosed by the Parties, the Parties agree that the terms and conditions set out in this Agreement will apply when the Disclosing Party discloses Confidential Information to the Receiving Party under this Agreement;

**AND WHEREAS** both Parties recognise that the objective of this Agreement is to provide appropriate protection for such Confidential Information whilst maintaining the Parties' ability to conduct their respective businesses.

**NOW THEREFORE**, it is agreed as follows:

1. **INTERPRETATION AND DEFINITIONS**

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1 **“Agents”** shall mean the directors, officers, employees, agents, professional advisers, contractors or subcontractors of the Parties;

1.1.2 **"Confidential Information"** means all information relating to the Relationship, provided to the Recipient by the Disclosing Party or any of its Representatives, in whatever form (written, oral, visual, electronic or any other way of representing or recording information which contains or is derived or copied from such information) and shall include any of the following information and/or material disclosed or communicated (before or after the signature of this Agreement) by the Disclosing Party to the Receiving Party, in connection with or arising out of the Relationship:

1. technical, commercial, financial or market information, know-how or trade secrets;
2. data concerning business relationships, processes, services, personnel, information, demonstrations, or machinery;
3. functional and technical requirements and specifications;
4. information relating to the Disclosing Party's strategic objectives and planning for both its existing and future information needs;
5. information regarding the Relationship, the fact that discussions are occurring concerning the Relationship, any of the terms and conditions applicable to or being discussed by the Parties in relation to the Relationship as well as the existence and content of this Agreement and any agreements which may be concluded between the Parties pursuant to such discussions and the content of such agreements;
6. information which by its nature or content is identifiable as confidential and/or proprietary to the Disclosing Party and/or any third party in relation to or arising out of the Relationship, or which although not directly related to the Relationship is nevertheless disclosed as a result of or in connection with the Parties' discussions of the Relationship;
7. generally, all information which is disclosed in circumstances of confidence, or which would be understood by either of the Parties, exercising business judgment, to be confidential;
8. but does not include information which-

is or hereafter becomes part of the public domain, otherwise than as a result of the breach or default of any Party or of a representative, officer, agent, employee or affiliate of any Party or its representative, officer, agent, or employee;

can be shown to have been lawfully in the possession of any Party or its affiliates prior to its disclosure and is not subject to an existing agreement between the Parties or any of its affiliates;

is acquired by any Party or its affiliates independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the Confidential Information directly or indirectly under a confidentiality obligation from any Party or its affiliates; and that which;

is disclosed or released by a Party to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at the time or the requirements of any recognized stock exchange,

PROVIDED that, in these circumstances, the Receiving Party shall immediately give written notice to the Disclosing Party that such Confidential Information is so required to be disclosed and before doing so gives the Disclosing Party an opportunity to challenge that requirement (at its own expense) and advises the Disclosing Party to take whatever other steps it deems necessary to protect its interests in this regard and provided further that the Receiving Party will disclose only that portion which it is legally required to so disclose; and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances. The Receiving Party shall cooperate with the Disclosing Party if it wishes to contest any such disclosure.

1.1.3 “**Relationship**” means the [define the type of relationship being created]

1.1.4 **"The Disclosing Party"** means the party disclosing the Confidential Information;

1.1.4 **"Material"** means any direct or indirect expression of thought or of an idea or of a combination of thoughts or ideas in material form, any direct or indirect artistic or aesthetic expression in material form or any data in material form, and shall include (but not by way of limitation): all reports; correspondence; documentation; computer software, computer source-code and object-code; flow-charts; data-bases; designs; tables; calculations; spread-sheets; schematics; plans; drawings; photographs; presentations; lectures; literary, dramatic, musical and cinematographic works; sound recordings; broadcasts; and programme-carrying signals;

1.1.5 **"The Parties"** means both parties to this Agreement and Party shall mean either xxxxxxxx or BBS Bank**;**

1.1.6 **"The Receiving Party"** means the party receiving the Confidential Information.

1.2 The clause headings in this Agreement are for reference purposes only and shall not be used in the interpretation thereof.

1.3 Unless the context clearly indicates a contrary intention:

1.3.1 expressions which denote:

1.3.1.1 any reference to a gender includes the other genders;

1.3.1.2 any reference to natural persons includes legal persons and *vice versa*;

1.3.1.3 any reference to the singular includes the plural and *vice versa*;

1.3.1.4 references to a “person” shall be construed as including references to an individual, firm, company, corporation, partnership, association, unincorporated body of persons, trust, a state or any governmental authority or any other entity whether acting in an individual, financing or other capacity and to such person's permitted successors, and

1.3.1.5 any reference to a “day”, “month” or “year” shall mean a calendar day, month or year unless otherwise indicated.

1.4 If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any Party, notwithstanding that such provision is only contained in the relevant definition, effect shall be given thereto as if such provision is in the body of the Agreement.

**2.** **RESTRICTIONS ON DISCLOSURE AND USE OF THE INFORMATION**

2.1 The Receiving Party may disclose the Confidential Information only to its representatives, agents, professional advisers or consultants, officers, employees, associated entities, subsidiaries or holding companies and only such representatives, agents, professional advisers or consultants, officers, employees, associated entities, subsidiaries or holding company to whom such disclosure is reasonably necessary,

 provided that such agents, representatives, professional advisers or consultants, officers, employees, associated entities, subsidiaries or holding companies are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party on the same terms as contained in this Agreement. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement.

2.2 The Receiving Party agrees:

2.2.1 to treat the Disclosing Party’s Confidential Information, in all respects and without any exceptions, as private and confidential and that it shall safeguard it accordingly;

2.2.2 not to disclose the Confidential 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;

2.2.3 not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever other than strictly in relation to the Relationship; and the Receiving Party shall take all such reasonable steps as may be necessary to prevent the Disclosing Party’s Confidential Information falling into the hands of unauthorised persons or entities;

2.2.4 not to make copies of the Confidential Information and not to transmit outside of its usual place of business any Confidential Information which may be stored electronically;

2.2.5 to use the same degree of care it uses with respect to its own confidential information; and;

2.2.6 that the unauthorised or unlawful use or disclosure of the Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party.

2.3 Unless the Parties otherwise agree in writing, any documentation or records relating to the Disclosing Party's Confidential Information which comes into the possession of the Receiving Party during the existence of this Agreement, shall, subject to the other provisions of this Agreement:

2.3.1 be deemed to form part of the Confidential Information of the Disclosing Party;

2.3.2 be deemed to be the property of the Disclosing Party;

2.3.3 not be published or circulated by the Receiving Party;

2.3.4 not be copied or reproduced by the Receiving Party other than strictly in accordance with the requirements of the Relationship, and any such copies and reproductions shall be kept separate from other documents and records of the Receiving Party; and

2.3.5 be surrendered to the Disclosing Party on request, and the Receiving Party shall not retain any extracts therefrom other than to satisfy any statutory or regulatory reporting obligations to which it may be subject or obligations to its insurers PROVIDED that (in those circumstances) the Receiving Party shall immediately give written notice to the Disclosing Party that such Confidential Information is required for the stated purpose.

2.4 The Receiving Party shall be responsible for any breach of the terms of this Agreement by its officers, employees, subsidiaries or holding companies to whom it discloses Confidential Information of the Disclosing Party and shall at the Receiving Party's sole expense take all reasonable measures to restrain such persons from prohibited or unauthorized use or disclosure of the Disclosing Party's Confidential Information.

**3.** **TITLE**

All Confidential Information that is disclosed by the Disclosing Party to the Receiving Party is:

3.1 proprietary to the Disclosing Party; and

3.2 does not to confer any rights of whatsoever nature in such Confidential Information to the Receiving Party.

**4.** **STANDARD OF CARE**

The Receiving Party agrees to protect the Confidential Information of the Disclosing Party by using the same standard of care used to safeguard its own information of a confidential nature and taking all reasonable steps to prevent any unauthorized disclosure of such Confidential Information.

**5. RETURN OF INFORMATION**

5.1 The Receiving Party shall, within seven (7) calendar days of receipt of a written demand from the Disclosing Party, return any material containing, pertaining to or relating to Confidential Information of the Disclosing Party and to expunge, to the extent reasonably possible, such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by an authorized officer of the Receiving Party) 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. This clause 5 shall not apply to the extent that the Disclosing Party is required to maintain records of or incorporating the Confidential Information in order to satisfy any statutory or regulatory reporting obligations to which it may be subject or obligations to its insurers in accordance with clause 2.3.5 above.

5.2 As an alternative to the return of the material contemplated above, the Receiving Party shall, at the written demand of the Disclosing Party, destroy such material and subsequently furnish the Disclosing Party with a written statement within 14 days of the demand (certified as correct by a director of the Receiving Party) to the effect that such material has been destroyed as contemplated in clause 5.1.

5.3 The Receiving Party shall be responsible for the return or destruction in terms of this clause 5 of all material containing Confidential Information of the Disclosing Party which has been disclosed to any officers, employees, subsidiaries or holding companies of the Receiving Party in terms of this Agreement.

1. **GOVERNING LAW**

6.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of Botswana.

6.2 The Parties irrevocably submit to the exclusive jurisdiction of the Courts of Botswana in respect of any action or proceeding arising from this Agreement.

1. **NOTICES AND DOMICILIA**

7.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

7.2 For the purpose of this Agreement the parties' respective addresses shall be:

 7.2.1 **XXXXXXXXXXXXXX**

7.2.2 **BBS BANK LIMITED:** Plot 13108 – 13112,

 BBS Mall, Broadhurst

 Gaborone

 P O Box 40029

 Gaborone

 Tel No. +267 3971396

or at such other address, not being a post office box or poste restante, of which the Party concerned may notify the other/s in writing.

7.3 Any notice given in terms of this Agreement shall be in writing and shall:

7.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; or

7.3.2 if transmitted by facsimile or email be deemed to have been received by the addressee one (1) day after dispatch.

7.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of telex or facsimile or email transmission shall be adequate written notice or communication to such Party.

1. **NON-CIRCUMVENTION**

The Receiving Party shall not, directly or indirectly through any third party, or internally through its own representatives, officers, employees, agents or sub-contractors, in any manner exploit (including but not limited to the sale, marketing, development and design of) the Confidential Information and intellectual property owned by, accruing, or under license to the Disclosing Party for the duration of this Agreement other than expressly provided for in terms of this Agreement.

1. **BREACH**

9.1 The Receiving Party acknowledges and agrees that the unauthorised disclosure or use of Confidential Information by the Receiving Party or a third party may cause irreparable loss, harm and damages to the Disclosing Party.

9.2 Should the Receiving Party (including its representatives set out in clause 2.1) breach any of the provisions or undertakings set out in this Agreement, the Disclosing Party shall be entitled to proceed to recover such loss, damages or expense suffered by it and shall, notwithstanding any claim for damages, and without notice to the Receiving Party, bring an application in a court of competent jurisdiction, whether on an urgent basis or not, for the granting of an interdict against the Receiving Party to prevent any further breach of the terms of this Agreement.

1. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties on the subject-matter hereof and no agreements, representations or warranties between the Parties other than those set out herein are binding on the Parties.

1. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties or by their duly authorised representatives and no waiver of any right of either Party arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Party waiving its right.

1. **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by either Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

1. **SEVERABILITY**

If any provision in this Agreement is found by any court of competent jurisdiction to be invalid, unlawful or unenforceable, such provision shall not invalidate the remaining provisions of this Agreement.

1. **DISCLAIMER OF INFORMATION**

14.1 The Parties shall during the course of their Relationship with each other and in terms of this Agreement, provide various materials to one another containing Confidential Information and intellectual property. The Disclosing Party makes no representation nor gives any warranty relating to the accuracy thereof or that in fact such disclosures are exhaustive. The Disclosing Party does not provide any warranty that the materials shall be fault free or that same shall not contain any defects of whatsoever nature.

14.2 The Receiving Party shall have no claim, nor shall the Disclosing Party be liable to the Receiving Party for any damages and/or losses arising from the use of Disclosing Party's Confidential Information or any inaccuracies, faults or defects therein.

1. **ASSIGNMENT**

Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement.

1. **ADVERTISING AND MARKETING**

Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter hereof to any other person without the prior written consent of the other Party.

1. **DURATION**

This Agreement shall remain in force for [X] years from the Signature Date (date of last party’s signature) hereof. The termination of the business relationship of the Parties shall however not release the Parties from the obligations set out in this Agreement.

**18. RELATIONSHIP OF THE PARTIES**

18.1 A Party will not be obliged, by reason of this Agreement, to disclose any of its Confidential Information to the other Party or to enter into any further Agreement or business Relationship with the other Party.

18.2 The termination of the business Relationship of the Parties shall not release the Parties from the obligations set out in this Agreement.

1. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute the same Agreement.

In witness whereof the undersigned, duly authorized, have signed this Agreement in two originals of which this is one.

On behalf of **BBS Bank Limited,** she being duly authorized

Name: **Pedzani Tafa** in her capacity as **Managing Director**

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

Witness:

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

On behalf of **XXXXXXXXXXX,** he being duly authorized

Name: **XXXXXXXXX** in his/her capacity as **XXXXXXXXXXX**

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

Witness:

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