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| **DATE OF AGREEMENT:**   **2020** | |  |
| **PARTIES** | | |
| (1) | **Company Name** a company registered in **Country** with company number **Company Number** whose registered office address is **Address** (the "**Capacity Seeker”**); and | |
| (2) | a company registered in with company number whose registered office is (the "**Capacity Provider**") | |

**INTRODUCTION**

1. The Capacity Seeker possesses certain confidential information, data, results, trade secrets, know-how and other commercial and proprietary information and intellectual property rights in respect of an insurance program (the "**Program**").
2. The Capacity Seeker has agreed to disclose to the Capacity Provider such information in the course of discussions and communications for the purpose of the Capacity Provider ascertaining interest in assuming underwriting risk pertaining to the Program (the "**Purpose**").

**IT IS AGREED THAT:**

1. **INTERPRETATION**
   1. In this Agreement, the following words and expressions shall have the meanings given to them below:

"**Information**" means such information as the Capacity Seeker or any of its associates or advisers involved in the Program may from time to time provide to the Capacity Provider, whether orally or in writing, and in any format whatsoever and whether marked or declared to be confidential or not, including but not limited to information relating to products and processes, data and results, know-how, technical information, drawings, maps, information in respect of any intellectual property rights whatsoever, all proprietary software (including but not limited to programs, techniques, technical information and any related materials) and all information relating to the business or contractual relationships, permits, licences and other rights or financial affairs of or to be obtained by the Capacity Seeker and their associates and any Programs proposed to be entered into by any of them, including any business plans or projections and any information concerning fundraising by any means, other than in each case information excluded by clause 3.

"**in** **writing**" means any legible communication or any means of transmitting information which may be translated into legible form including (without limitation) information contained in computer readable form.

1. **UNDERTAKINGS OF THE CAPACITY PROVIDER**
   1. In consideration of the Capacity Seeker disclosing Information to the Capacity Provider, the receipt and sufficiency of which the Capacity Provider acknowledges, the Capacity Provider hereby undertakes:
      1. to use all Information so disclosed exclusively for the Purpose;
      2. to maintain confidential all Information that it may acquire in any manner and shall not disclose and will use all reasonable endeavours to prevent disclosure of the Information to any other party whatsoever except as provided in clause 4.1(d) below or to the extent that the Capacity Seeker give written consent to such disclosure; and
      3. not to use any Information for its own or any other person’s commercial or other advantage,

and it will accordingly not directly or indirectly use or disclose any of the Information in whole or in part save for the Purpose and in accordance with this Agreement.

1. **INFORMATION AVAILABLE FROM OTHER SOURCES**
   1. The foregoing restrictions on the Capacity Provider shall not apply to any Information which:
      1. was already in the possession of the Capacity Provider and at its free disposal before the disclosure to the Capacity Provider under this Agreement;
      2. is disclosed to the Capacity Provider without any obligations of confidence by a third party who has not derived it directly or indirectly from the Capacity Seeker; or
      3. is or becomes generally available to the public through no act or default on the part of the Capacity Provider or the Capacity Provider's agents or employees or is otherwise in or subsequently comes into the public domain other than by a breach of this Agreement by the Capacity Provider.
   2. Without prejudice to the generality of clause 3.1(c), Information shall not be deemed to be generally available to the public by reason only that it is known to only persons bound by confidentiality undertakings in similar term to this Agreement and/or a limited number of people to whom it might be of commercial interest and a combination of two or more portions of the Information shall not be deemed to be generally available to the public by reason only of each separate portion being so available.
2. **HANDLING OF CONFIDENTIAL INFORMATION**
   1. To secure the confidentiality attaching to the Information, the Capacity Provider shall:
      1. keep in a separate folder all Information and all information generated by the Capacity Provider based on the Information from all documents and other records of the Capacity Provider;
      2. make copies of the Information only to the extent that the same is required for the purposes of its evaluation by the Capacity Provider;
      3. apply to the Information no lesser security measures and degree of care than those which the Capacity Provider applies to its own confidential and proprietary information;
      4. only disclose the Information to its directors, members, officers and employees and professional advisers, and who are informed by the Capacity Provider of the confidential nature of the Information; and
      5. notify the Capacity Seeker immediately upon becoming aware that Information has been disclosed in breach of this Agreement or that a person to whom disclosure is not permitted has received the Information by whatever means.

1. **DISCLOSURE REQUIRED BY LAW**
   1. If the Capacity Provider becomes aware that it may be required by law, regulation, the rules of any public authority or relevant stock exchange or order of a court of competent jurisdiction to disclose any of the Information it will immediately notify the Capacity Seeker in writing of that fact and of all relevant surrounding circumstances.
   2. The Capacity Provider will, so far as is practicable, seek the approval of the Capacity Seeker regarding the manner and content of any disclosure or, at the Capacity Seeker’s expense, co-operate with any reasonable action which the Capacity Seeker may take to challenge the validity of such requirement.
   3. If the Capacity Provider is unable so to notify the Capacity Seeker before such disclosure is required, it will notify the Capacity Seeker as soon as practicable after the disclosure has been made if the Capacity Provider is allowed to do so by law.
   4. The Capacity Provider will use reasonable endeavours to resist disclosure and to maintain the confidentiality of any Information disclosed but, subject always to this clause 5, may make any disclosure of the Information required by law, regulation, the rules of any public authority or relevant stock exchange or order of a court of competent jurisdiction.
2. **RETURN OF INFORMATION**
   1. The Capacity Seeker may at any time, and in its absolute discretion, determine or require the Capacity Provider to cease all evaluation and use of the Information and, in such event, within 7 days:
      1. the Capacity Provider will return to the Capacity Seeker, or shall destroy (at the Capacity Provider sole discretion) in a secure manner, such of the original versions of the Information and copies thereof that are in its possession except for i) Information that needs to be retain for compliance purposes and ii) Information stored in automatic IT back-up systems; and
      2. the Capacity Provider will certify in writing to the Capacity Seeker, in such form as the Capacity Seeker may reasonably require, that the relevant terms of this clause 6 have been complied with.
3. **NO WARRANTY**

The Capacity Provider understands that the Information is being provided to it for informational purposes only and without representation or warranty, express or implied, by the Capacity Seeker as to its accuracy or completeness and without any responsibility on the part of the Capacity Seeker to revise or update the Information. The Capacity Provider acknowledges that it will make its own analysis and decisions with respect to the Program, independently and without reliance on the Information or on the Capacity Seeker and based upon such investigation and analysis as the Capacity Provider deems appropriate.

1. **REMEDIES**

It is understood that a breach by a Capacity Provider of any of the covenants or provisions contained in this Agreement may cause the Capacity Seeker harm which could not be adequately compensated for by damages and that, in addition to a damages claim, the Capacity Seeker shall be entitled as a matter of right on its own behalf to seek injunctive relief and/or specific performance as additional remedies.

1. **DURATION**

The obligations of the Capacity Provider in clauses 2, 4 and 6 in respect of any piece of information that continues to meet the definition of “Information” shall expire on the date which is one (1) year from the date of the last communication in regards to the Program between the Parties.

1. **GENERAL**
   1. This Agreement and any non-contractual obligations arising from or in connection with it shall in all respects be governed by and interpreted in accordance with the laws of the **Jurisdiction**. The parties irrevocably agree that the courts of **Jurisdiction** are to have exclusive jurisdiction over any dispute: (a) arising from or in connection with this Agreement; or (b) relating to any non-contractual obligations arising from or in connection with this Agreement.
   2. The failure of either party to enforce or to exercise, at any time or for any period of time, any term of, or any right arising pursuant to, this Agreement does not constitute, and shall not be construed as, a waiver of such terms or right and shall in no way affect that party's right later to enforce or exercise it.
   3. The invalidity or unenforceability of any term of, or any right arising pursuant to, this Agreement shall not in any way affect the remaining terms and rights.
   4. If any provision of this Agreement or compliance by any of the parties with any provision of this Agreement constitutes a violation of any law, or is or becomes unenforceable or void, then such provision, to the extent only that it is in violation of law, unenforceable or void, shall be deemed modified to the extent necessary so that it is no longer in violation of law, unenforceable or void, and such provision will be enforced to the fullest extent permitted by law. If such modification is not possible, said provision, to the extent that it is in violation of law, unenforceable or void, shall be deemed severable from the remaining provisions of this Agreement, which provisions will remain binding on the parties.

This Agreement sets forth the complete and exclusive agreement of the parties regarding the subject matter of this Agreement and supersedes all prior agreements, understandings and communications, oral or written, between the parties regarding the subject matter of this Agreement.

**EXECUTED** as an agreement on the date which first appears in this Agreement.

**EXECUTED** by **Capacity Seeker**

acting by its authorised signatory:

|  |  |
| --- | --- |
| Signature | : |
| Name | : [ ] |
| Title | : [ ] |

**EXECUTED** by **Capacity Provider**

acting by its authorised signatory:

|  |  |
| --- | --- |
| Signature | **:** |
| Name | **: [ ]** |

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