

NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

entered into by and between:

PERPERTUAL GROWTH (PTY) LTD

and

.....

PARTIES

The parties to this Agreement are:

PERPETUAL GROWTH (PTY) LTD, registration no. 2022/659880/07, a proprietary limited company, incorporated under the laws of the Republic of South Africa, duly represented by Maxwell Mojapelo in his/ her capacity as Director and he/she being duly authorised thereto (hereinafter referred to as “**Disclosing Party**”)

and

....., registration number or Identity Number
....., a proprietary limited company, incorporated under the laws of the Republic of South Africa, duly represented byin his/her capacity as and he/she being duly authorised thereto (hereinafter referred to as “**Receiving Party**”)

Also hereinafter individually referred to as a “Party” and jointly as the “Parties”.

PREAMBLE

- A. The Parties intend to enter into discussions in respect of the appointment of the Receiving Party by the Disclosing Party for the development of an Automated Budgeting, Cashflow Reallocation and Assisted Investment Software Application and System (“the Product”) for the Disclosing Party (“the Purpose”).
- B. The Disclosing Party hereto possess Confidential Information, as defined hereinbelow, all of which is regarded by it as its commercial asset and of considerable value.
- C. The Disclosing Party is willing to disclose, and the Receiving Party is willing to receive Confidential Information, in pursuance of the Purpose, subject to the terms and conditions as set out in this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement. “Control” for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of said entity;
- 1.2 “**Confidential Information**” means any tangible or intangible information disclosed by the Disclosing Party to the Receiving Party directly or indirectly, which is not generally known to the public, including, but not limited, to software application and/or system design, code technical information, specifications, data, process information or parameters, product formulation, product information, research information, designs, materials, trade secrets,

customer information, marketing information, pricing information, sales information, supplier information, business contacts, correspondence and any other information relating to the technology, processes, products, operations or business of the Disclosing Party, which information may be the property of the Disclosing Party or may be the property of any third party;

- 1.3 “**Disclosing Party**” means the Party disclosing Confidential Information under this Agreement, being **PERPETUAL GROWTH (PTY) LTD**;
- 1.4 “**Effective Date**” means the date of commencement of this Agreement, which shall be the date of last signature of this Agreement by the Parties or 03 October 2023, whichever date occurs earlier;
- 1.5 “**Intellectual Property**” means any creation of the mind, including inventions (whether patentable or not); ideas, discoveries, inventions, technology, technical information, data, know how, trade secrets, drug master files, materials, designs; trademarks (whether registered or not), copyrightable works, methods or processes, information used in commerce such as customer information and list, price lists or pricing methodologies, supplier information and lists, data, and confidential information;
- 1.6 “**Intellectual Property Right**” means any right in respect of Intellectual Property;
- 1.7 “**Receiving Party**” means the Party receiving Confidential Information under this Agreement, being

2. **CONFIDENTIALITY**

The Disclosing Party is willing to disclose its Confidential Information in respect of the Purpose, and the Receiving Party is willing to receive the same, and the Parties agree to do so, subject to the provisions of this Agreement, including the following provisions:

- 2.1 The Receiving Party shall keep strictly confidential and shall not disclose, directly or indirectly, or cause or permit to be disclosed, to any third party the Confidential Information, in whole or in part, without the prior written approval of the Disclosing Party.
- 2.2 The Receiving Party shall exercise no less care to safeguard the Confidential Information than the Receiving Party exercises in safeguarding its own Confidential Information, which care shall in any event not be less than reasonable care.
- 2.3 The Receiving Party shall not use the Confidential Information, for any purpose other than the Purpose, without prior written approval of the Disclosing Party.
- 2.4 The Receiving Party shall disclose the Confidential Information only to those of its officers, directors, employees, to whom disclosure is reasonably necessary in connection with the Purpose and who shall agree to be bound by the terms of this Agreement or are otherwise bound to the Receiving by the same restrictions as those imposed by this Agreement, provided that the Receiving Party will be responsible for any breach of this Agreement by its employees, officers, directors.

- 2.5 The Receiving Party may disclose Confidential Information received under this Agreement to its Affiliates provided that such Affiliate observes all the rights, restrictions and obligations for the protection of Confidential Information as set out in this Agreement. Each party will be responsible and liable to the other party for any breach of this Agreement by its Affiliates.
- 2.6 The restrictions on the Receiving Party's disclosure and use of Confidential Information shall not apply to the extent that such information:
- 2.6.1 can be clearly demonstrated that it was already rightfully known to the Receiving Party prior to receipt from the Disclosing Party;
 - 2.6.2 is or becomes public knowledge without breach of the Receiving Party's obligations under this Agreement;
 - 2.6.3 is rightfully acquired by the Receiving Party from a third party with authority to disclose, without restriction on disclosure or use to the Disclosing Party;
 - 2.6.4 is independently developed by the Receiving Party without resort to the Disclosing Party's disclosure; or
 - 2.6.5 is disclosed or used following the Receiving Party's receipt of express written consent from a duly authorised representative of the Disclosing Party.

Information which consists of a combination of more than one aspects shall not be deemed to be of public knowledge by virtue of the fact that said aspects have been disclosed separately.

- 2.7 If disclosure of Confidential Information is required or requested by a court order or statute, the Receiving Party, if permissible, shall promptly notify the Disclosing Party in writing in such detail and give the Disclosing Party a reasonable time, if possible, to seek a protective order or otherwise appear to intervene for the purposes of protecting the Confidential Information. Any disclosure under such a requirement shall be limited only to the information required.
- 2.8 Confidential Information shall not be mechanically copied or otherwise reproduced by the Receiving Party without the express written permission of the Disclosing Party, except for such copies as the Receiving Party may require pursuant to this Agreement on a need-to-know basis for the purpose of the Purpose.
- 2.9 Upon written demand from the Disclosing Party, or termination of this Agreement, whichever is earlier, the Receiving Party shall (1) cease all use of the Disclosing Party's Confidential Information, and (2) within 30 days of the demand, return to the Disclosing Party or destroy all documents or material embodying Confidential Information received under this Agreement, whether tangible or intangible (3) delete all Confidential Information residing on non-portable electronic media, e.g., e-mails and other electronic documents residing on networks. The requirements of this subsection 2.9 shall extend to excerpts, summaries or reports of Confidential Information, as well as all notes of verbal communications of Confidential Information. One copy may be retained for archival purposes only and for purposes of managing its obligations under this Agreement, and Receiving Party shall not make commercial use of the information.
- 2.10 The Receiving Party shall promptly advise the Disclosing Party in writing if it learns of any misappropriation or unauthorized use or disclosure of Confidential Information by any person, including any Receiving Party personnel or former Receiving Party personnel. The Receiving Party shall take all steps reasonably requested by the Disclosing Party to limit, stop or otherwise remedy such misappropriation or unauthorized use or disclosure.

3. NON-CIRCUMVENTION

- 3.1 The Receiving Party hereby irrevocably agrees and warrants that it shall not, directly or indirectly, interfere with, circumvent, attempt to circumvent, avoid, obviate or bypass the Disclosing Party in respect the development and/or commercial implementation of the Product whether by the Disclosing Party or any assignee or licensee of the Disclosing Party, and shall not obviate or interfere with any relationship of the Disclosing Party and its contacts for the purpose of gaining any benefit for itself, whether such benefit is monetary or otherwise.
- 3.2 The Receiving Party further undertakes not to use Confidential Information of the Disclosing Party to enter into, or pursue, any business transactions with any third party, for its own benefit, whether such benefit is monetary or otherwise.
- 3.3 The Receiving Party further undertakes not to make use of a Third Party to circumvent this Agreement.
- 3.4 In the event of circumvention of this Agreement by the Receiving Party, directly or indirectly, the Disclosing Party shall be entitled to a legal monetary penalty equal to the maximum earnings that it should have realized from such a transaction plus any and all expenses, including but not limited to all costs and expenses incurred to recover the lost revenue, including legal costs on an attorney to own-client scale. Where appropriate, the Disclosing Party shall be entitled to such other penalties, injunctory relief, or any other equitable relief available to it under the law.

4. OWNERSHIP, PROVISION AND USE OF CONFIDENTIAL INFORMATION

- 4.1 The ownership of the Confidential Information disclosed under this Agreement by or on behalf of the Disclosing Party vests and shall remain vested in the Disclosing Party.
- 4.2 No provision of this Agreement shall create, imply or be construed to grant to the Receiving Party any title, licence or other rights in or to the Confidential Information and/or to any Intellectual Property or Intellectual Property Rights related thereto.
- 4.3 The Disclosing Party provides the Confidential Information “as is” and disclosure thereof under this Agreement shall not constitute any representation, warranty, assurance, guarantee or inducement as to the accuracy, completeness, or technical or scientific quality of the Confidential Information of the Disclosing Party, and the Disclosing Party shall have no liability to the Receiving Party as a result of the use of the Confidential Information by the Receiving Party. Only those specific representations and warranties, which may be made in a definitive agreement with respect to the Purpose when, as and if such an agreement is executed, shall have any legal effect.
- 4.4 Each Party agrees not to file any patent applications, or applications for Intellectual Property rights, claiming any information, developments, discoveries, technologies, inventions and the like (“Developments”) arising from the use of the Confidential Information of the other Party for the Purpose under this Agreement, or that which could not have been made, developed or discovered without access to Confidential Information in terms of this Agreement. The parties shall determine the creators or inventors of the Developments and shall enter into discussions and/or negotiations in good faith to agree on the ownership of the Developments, in

compliance with applicable laws and where necessary, the rights and obligations in respect of using the same.

5. NO BINDING COMMITMENT

5.1 This Agreement does not in any way constitute a binding commitment between the Parties, with respect to the Purpose, other than those set out specifically herein, and does not in any way constitute a partnership or joint venture or a binding commitment on the part of either Party to enter into or complete negotiations or any transactions with the other Party.

5.2 In the event that the Parties enter into a subsequent written agreement, the terms of such agreement concerning confidentiality of information shall supersede any conflicting terms of this Agreement.

6. DURATION

6.1 This Agreement shall commence on the Effective Date and remain in effect for a period of two (2) years or such other time that a substantive agreement relating to or emanating from the Purpose and containing the same or similar confidentiality and non-circumvention provisions as those contained in this Agreement, is concluded between the Parties, whichever occurs earlier.

6.2 Any confidentiality and non-circumvention clause obligations and liabilities for any breach thereof, shall survive any termination or expiration of this Agreement for a period of five (5) years or until the Confidential Information comes into the public domain whichever occurs earlier.

7. BREACH

7.1 The Parties acknowledge that breach of this Agreement by the Receiving Party may cause irreparable injury to the Disclosing Party and that monetary damages may not be a sufficient remedy for such breach and the Disclosing Party shall be entitled to equitable relief, including, but not limited to, an injunctory relief or specific performance, in the event of a breach of this Agreement.

8. GOVERNING LAW AND DISPUTE RESOLUTION

8.1 This Agreement shall be governed by and construed in terms of the laws of the Republic of South Africa.

8.2 The parties agree that prior to commencing any proceedings under this clause, the parties will hold a meeting between their executive managers to discuss resolution of the dispute.

8.3 If no resolution is achieved by executive managers, the dispute will be referred to and finally resolved by arbitration in Johannesburg, under the applicable rules and procedures of the Arbitration Foundation of South Africa (AFSA), or its successor in title. The number of arbitrators shall be one unless the parties otherwise agree. The Parties shall mutually agree on an arbitrator with relevant experience, failing which, the President/Chairperson of AFSA shall appoint the arbitrator.

9. NOTICES

The Parties choose the following addresses as their *domicilium citandi executandi*;

9.1 PERPETUAL GROWTH (PTY) LTD

Physical Address:

For the Attention of:

Email: Perpetual Growth (Pty) Ltd

9.2

Physical Address:

For the Attention of:

Email:

9.3 Any notice given by post shall be deemed to have been served on the expiry of 7 (seven) working days after it is posted by registered post. Any notice delivered by hand shall be deemed to have been served at the time of delivery or sending. Any notice sent by facsimile or electronic mail (e-mail) shall be deemed to have been served on the expiry of 24 (twenty four) hours after it has been sent.

9.4 A party may change that party's address for this purpose, by notice in writing to the other party. No notice shall be necessary in respect of a new or changed telefax number.

10. ENTIRE AGREEMENT

This Agreement constitutes the sole record of the agreement between the Parties in regard to its subject matter and replaces any prior agreement, which may exist between the Parties, and such prior agreement is of no further effect whatsoever.

11. NO AMENDMENT OR VARIATION

This Agreement cannot be varied, added to or cancelled otherwise than by means of a further written agreement between the Parties.

12. WAIVER

Any failure by a Party to insist upon strict adherence to any one or more of the terms of this Agreement on one or more occasions shall not be construed as a waiver of any such term by that Party nor deprive that Party of the right to require strict compliance thereafter with the same or any other term of this Agreement.

13. WARRANTY OF AUTHORITY

The signatories to this Agreement personally warrant and represent that they have been duly authorised to sign this Agreement and thereby bind their respective Parties.

14. COUNTERPARTS

This Agreement may be executed in counterparts, including signed counterparts exchanged by fax or as attachments to email (the receipt of which emails has been acknowledged), which counterparts taken together shall constitute the one binding agreement.

15. SUCCESSORS AND ASSIGNS

This Agreement is intended to benefit and is binding on the successors and assigns of each Party. Except in the case of a change of control, this Agreement shall not be assigned by a Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld. In the event of a change of control, such Party's obligations **hereunder** shall be automatically assumed by the new controlling entity.

16. COSTS

16.1 Each party shall bear that party's own legal costs of and incidental to the negotiation, preparation, settling and signing of this agreement.

16.2 Any costs, including attorney and own client costs, incurred by either party arising out of the breach by the other party of any of the provisions of this agreement shall be borne by the party in breach.

SIGNED AT _____ on this the _____ day of _____ 2023.

WITNESSES:-

1. _____

2. _____

**For and on behalf of: PERPETUAL
GROWTH (PTY) LTD
Name:
Designation:**

SIGNED AT _____ on this the _____ day of _____ 2023.

WITNESSES:-

1. _____

2. _____

For and on behalf of: [INSERT]

Name:

Designation: