# Confidentiality & Non-Disclosure Agreement (NDA)

Entered into by and between

# C Angel Ecommerce (Pty) Ltd

Trading as: C-Angelx

(Registration No.: 2018/040114/07)

and

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trading as:

(Registration/Identity No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

Herein collectively referred to as **“the parties”**

# INTRODUCTION

## During the course of their business relationship, the parties disclose to each other certain information pertaining to their operations which information is of a proprietary, sensitive or confidential nature (“restricted information”).

## The parties wish to record the terms and conditions upon which each has, and shall in the future disclose restricted information to the other, which terms and conditions shall constitute a binding and enforceable agreement between the parties.

## This agreement shall also bind the parties, notwithstanding the date of signature hereof, in the event that either party shall have disclosed any restricted information to the other party prior to date of signature hereof.

## For the purpose of this agreement the party which discloses restricted information shall be referred to as “the disclosing party” and the party which receives the restricted information shall be referred to as “the receiving party”.

# THE RESTRICTED INFORMATION

## “Restricted information” shall, for the purpose of this agreement include, without limitation, any technical, commercial or scientific information, know-how, trade secrets, processes, machinery, designs, drawings, visual merchandising, technical specifications, strategy, client/customer/supplier particulars, financial information and other information of a sensitive, proprietary or confidential nature (including, but not limited to, the information set out in 1.1 above) in whatever form, disclosed to the receiving party during the course of its relationship with the disclosing party.

# DISCLOSURE OF RESTRICTED INFORMATION

## The disclosing party shall only disclose the restricted information to the receiving party to the extent deemed necessary or desirable by the disclosing party in its discretion.

## The receiving party acknowledges that the restricted information is a valuable, special and unique asset proprietary to the disclosing party.

## The receiving party agrees that it will not, during or after the course of their relationship, disclose the 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. For avoidance of doubt, in this agreement “third party” means any party other than the disclosing party and the receiving party. In particular, the receiving party agrees not to divulge the disclosing party's restricted information, in whole or in part, to any third party, including, without limitation, to any Competitor, or representatives, agents or employees of such Competitor.

## Notwithstanding anything to the contrary contained in this agreement the parties agree that the restricted information may be disclosed by the receiving party to its professional advisors on a need-to-know basis, provided that party takes whatever steps are necessary to procure that such professional advisors agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the restricted information to third parties. For purposes of this agreement, the receiving party’s professional advisers and employees, directors or managers shall be deemed to be acting, in the event of a breach, as that party’s duly authorised agents.

## The receiving party agrees:

### not to utilise, exploit or in any other manner whatsoever use the restricted information disclosed pursuant to the provisions of this agreement for any purpose whatsoever without the prior written consent of the disclosing party;

### that the unauthorised disclosure of the restricted 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 the loss, claim harm or damage of whatsoever nature, suffered or sustained by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement.

### that the restricted information disclosed or to be disclosed to it may constitute “insider information” as defined in the Insider Trading Act No. 135 of 1998 and undertakes to adhere to the provisions of the mentioned Act.

# TITLE

## All restricted information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:

### to be proprietary to the disclosing party; and

### not to confer any rights to the receiving party of whatsoever nature in the restricted information.

# RESTRICTIONS ON DISCLOSURE AND USE OF THE RESTRICTED INFORMATION

## The receiving party undertakes not to use the restricted information for any purpose other than:

### that for which it is disclosed; and

### in accordance with the provisions of the agreement.

# STANDARD OF CARE

## The receiving party agrees that it shall protect the restricted information disclosed pursuant to the provisions of this agreement using at least the same standard of care that the receiving party applies to safeguard its own restricted information and that the information shall be safeguarded and handled in such a way as to prevent any unauthorised disclosure thereof.

# RETURN OF MATERIAL CONTAINING OR PERTAINING TO THE RESTRICTED INFORMATION

## The disclosing party may, at any time, request the receiving party to return any material containing, pertaining or relating to restricted information disclosed pursuant to the terms of this agreement and may, in addition request the receiving party to furnish a written statement 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.

## As an alternative to the return of the material contemplated in 7.1 above, the receiving party shall, at the instance and specific request of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that such material has been destroyed.

## The receiving party shall comply with a request in terms of this clause, within 7 (seven) days of receipt of such a request.

# EXCLUDED RESTRICTED INFORMATION

## The obligations of the receiving party pursuant to the provisions of this agreement shall not apply to any restricted information that:

### is known to, or in the possession of the receiving party prior to disclosure thereof by the disclosing party;

### is or becomes publicly known, otherwise than as a result of a breach of a duty of confidentiality by the receiving party or a third party;

### is developed independently of the disclosing party by the receiving party in circumstances that do not amount to a breach of the provisions of this agreement;

### is disclosed by the receiving party to satisfy an 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 to take whatever steps it deems necessary to protect its interests in this regard and provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the greatest extent possible in the circumstances;

### is disclosed to a third party pursuant to the prior written authorisation of the disclosing party;

### is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

# PROMOTION OF ACCESS TO INFORMATION ACT

## For the purpose of avoidance of any doubt, no provision of this agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the information in the event that the receiving party receives a request for the whole or any part of the information in terms of the provisions of the Access to Information Act, no. 2 of 2000, as amended (“the Act”).

## Subject to the provisions of clause 9.3, the parties agree that the disclosure of information by the receiving party otherwise than in accordance with the provisions of this agreement shall entitle the disclosing party to institute action for breach of confidence against the receiving party in terms of section 65 of the Act.

## The parties acknowledge that the provisions of clause 9.2 shall not be construed in such a manner as to exclude the applicability of any ground of refusal contained in the Act which may be applicable in the event that the receiving party receives a request for the whole or any part of the information.

# TERM

## This agreement shall commence upon the date of signature of the last signing party hereto (“the effective date”) and shall endure indefinitely thereafter.

# ADDITIONAL ACTION

## Each party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

# BREACH

## In the event that the receiving party should breach the provisions of this agreement and fail to remedy such breach within 7 (seven) days from date of a written notice to do so, then the disclosing party shall be entitled to invoke all remedies available to it in law including the institution of urgent interim proceedings and/or an action for damages.

# AMENDMENTS

## No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced in writing and signed by both parties.

# ENFORCEMENT

## The failure by the disclosing party to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of the disclosing party to enforce the provisions of this agreement.

# HEADINGS

## The headings of the clauses of this agreement are used for convenience only and shall not affect the meaning or constructions of the contents of this agreement.

# REPRESENTATIONS & WARRANTIES

## Each party represents that it has authority to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

# ENTIRE AGREEMENT

## This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this agreement.

# GOVERNING LAW

## This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

# ADDRESSES

## Any written notice in connection with this agreement may be addressed:

### In the case of C Angel Ecommerce (Proprietary) Limited to:

Address: H84 Midway Gardens, First Avenue

 Midrand

 1685

and shall be marked for the attention of the Head of Legal or Chief Operating Officer;

### In the case of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to

Address:

and shall be marked for the attention of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## A party may change its address, by prior notice in writing to the other party.

## If any notice is to be sent by mail, it shall be sent by prepaid registered mail and shall then be deemed until and unless the contrary is proved, to have been received 10 (ten) days after the date of posting.

## If any notice is sent by telefax, it will be deemed, until and unless the contrary is proved, to have been received on the date recorded on the transmission slip.

## If any notice is delivered by hand, it will be deemed to have been received on proof of the date of delivery.

# SEVERABILITY

## In the event of any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, and this agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

Signed at ………………………………………. on this ……… day of ………………………………………………. (Month & Year)

AS WITNESS:

1. …………………………………………… ………………………………………….

 **C Angel Ecommerce (Pty) Ltd**

Duly authorised to so sign

Name:

1. ……………………………………………

Signed at ………………………………………. on this ………… day of ……………………………………………. (Month & Year)

AS WITNESS:

1. …………………………………………… ………………………………………….

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Duly authorised to so sign

Name:

2. ……………………………………………