

**CONFIDENTIALITY**

**AND**

**NON-DISCLOSURE AGREEMENT**

(hereinafter referred to as this 'Agreement')

between

**KZN GROWTH FUND TRUST**

Registration number: IT 1437/2007(PMB)

Address: 303 Dr. Pixley Kaseme Street, 28<sup>th</sup> floor, Delta Towers, Durban, 4001

e-mail: \_\_\_\_\_

(hereinafter referred to as the 'KGFT')

And

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Registration number: \_\_\_\_\_

(hereinafter referred to as the 'Company')

Physical Business Address: \_\_\_\_\_

e-mail: \_\_\_\_\_

## 1. INTRODUCTION

- 1.1. The parties intend to have discussions and/or negotiations relating to the provision of services or supplies by the Company to the KGFT. In the course of the discussions and/or negotiations between the parties and thereafter in the implementation of the business relationship and in any future interactions between the parties there is likelihood that the parties will gain knowledge of one another's confidential information and personal information.
- 1.2. If the confidential information so disclosed is used by the receiving party for any purpose other than that for which its use is authorised for the purposes of the KGFT's business requirements and in terms of this Agreement, or is disclosed or disseminated by the receiving party to another person or entity which is not a party to this Agreement, the parties acknowledge that this may cause the divulging party to suffer damages and material financial or reputational loss.
- 1.3. In the circumstances the Company is willing to provide the KGFT with an undertaking in regard to maintaining the confidential information secret and not disclosing it, and in regard to matters related thereto, on the terms and conditions set out herein.

## 2. INTERPRETATION

In this agreement:

- 2.1. Clause headings are for convenience and shall not be used in its interpretation;
- 2.2. unless the context indicates a contrary intention an expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa and the following expressions bear the meaning assigned to them below and cognate expressions bear corresponding meanings:

2.2.1. "the business" means the general business operations carried on by the KGFT;

2.2.2. "confidential information" means any personal information and data which by its nature or content is identifiable as confidential and/or proprietary to the divulging party and/or any third party or which is provided or disclosed in confidence by either party to the other, and which the divulging party or any person acting on its behalf may disclose or provide to the receiving party or which may come to the knowledge of the receiving party by whatsoever means. Without limitation the confidential information shall include the following:

2.2.2.1. any information in respect of the business, know-how, information technology, formulae, statistics, processes, systems, business methods, trade secrets, marketing, trading and merchandising methods and information, promotional and advertising plans, strategies, financial plans and models, inventions, long term plans, analyses, research and development data, user or consumer data and profiles, ideas, computer programs, computer hardware, equipment, drawings and any other information of a confidential nature of the divulging party in whatever form it may be;

2.2.2.2. the contractual and financial arrangements between the divulging party and others with whom it has business arrangements of whatever nature;

2.2.2.3. all information peculiar to the Business of the divulging party which is not readily available to a competitor of the divulging party in the ordinary course of business;

2.2.2.4. the fact of, and the content of, the discussions between the parties as well as the existence and content of this and any other agreement which may be concluded between the parties pursuant to such discussions;

2.2.2.5. information relating to the divulging party's Business activities, Business relationship, products, services and customers and personnel;

2.2.2.6. intellectual property that is proprietary to the divulging party or that is proprietary to a third party and in respect of which the divulging party has rights of use or possession;

2.2.2.7. all other information in whatsoever form, whether subject to or protected by common law, or statutory law, or otherwise;

2.2.2.8. all personal information of the KGFT as defined under the Protection of Personal Information Act 2013.

but does not include information which:

2.2.2.9. Is lawfully in the public domain at the time of disclosure to the receiving party; or

2.2.2.10. subsequently becomes lawfully part of the public domain by publication or otherwise; or

2.2.2.11. is acquired or developed by a party independently of the other party and in circumstances which do not amount to a breach of the provisions of this agreement; or

2.2.2.12. subsequently becomes available to the receiving party from a source other than the divulging party which is lawfully entitled without any restriction on disclosure to disclose such confidential information to the receiving party; or

2.2.2.13. is disclosed pursuant to a requirement or request by operation of law, regulation or court order;

provided that the onus shall at all times rest on the receiving party to establish that such information falls within the exemptions contained in the clauses 2.2.2.8 to 2.2.2.12 and provided further that the information disclosed in terms of this agreement will not be deemed to be within the

foregoing exemptions merely because such information is embraced by more general information in the public domain or in a party's possession.

2.2.3. "divulging party" means the party disclosing confidential information in terms of this agreement, which is for purposes of this agreement, the KGFT;

2.2.4. "receiving party" means the party receiving confidential information from the divulging party, which for purposes of this agreement includes the Company;

2.2.5. "the parties" mean the parties to this Agreement.

### **3. DURATION**

3.1. This Agreement will commence on the date of last signature hereof and shall endure for a period of 2 (two) years.

3.2. The duration set out in sub-clause 3.1 above may be extended or shortened by agreement between the parties.

### **4. NON-DISCLOSURE**

The parties agree and undertake in favour of each other:

4.1. to treat the divulging party's confidential information as private and confidential and safeguard it accordingly;

4.2. except as permitted by this Agreement, not to disclose, publish, copy, reproduce, reverse engineer, circulate, decompile or otherwise transfer, whether directly or indirectly, the confidential information of the other party in any manner, for any reason or purpose whatsoever without the prior written consent of the divulging party, and provided that in the event of the confidential information being proprietary to a third party, it shall also be incumbent on the receiving party to obtain the consent of such third party;

- 4.3. except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the confidential information for any purpose whatsoever without the prior written consent of the divulging party, and provided that in the event of the confidential information being proprietary to a third party, it shall also be incumbent on the receiving party to obtain the consent of such third party;
- 4.4. to restrict the dissemination of the confidential information to only those employees, shareholders, partners, members, consultants, professional advisors, contractors, sub-contractors or agents of the receiving party (collectively referred to herein as "representatives") who are actively involved in activities for which use of the confidential information is authorised and then only on a "need to know" basis and the receiving party shall at its own cost initiate, maintain and monitor internal security procedures reasonable to prevent unauthorised disclosure by such representatives. In this regard the Company warrants that it has robust security systems relating to the storage of personal and confidential information of the KGFT.
- 4.5. In this regard the receiving party shall procure that its representatives who have access to the divulging party's confidential information, give a written undertaking in favour of the divulging party regarding the divulging party's confidential information on substantially the same terms and conditions contained within this Agreement;
- 4.6. to take all practical steps, both before and after disclosure, to impress upon the receiving party's representatives who are given access to the confidential information, the secret and confidential nature thereof; and
- 4.7. to take all such steps as may be reasonably necessary to prevent the divulging party's confidential information falling into the hands of unauthorised persons or entities.

## **5. TITLE**

All confidential information disclosed by the divulging party to the receiving party or which otherwise comes to the knowledge of the receiving party, is acknowledged by the receiving party:

- 5.1. to be proprietary to the divulging party or where applicable, the relevant third party proprietor; and
- 5.2. not to confer any rights of whatsoever nature in such confidential information on the receiving party.

## **6. RETURN OF INFORMATION**

- 6.1. The divulging party may at any time on written request to the receiving party, require that the receiving party immediately returns to the divulging party any of the divulging party's confidential information and may, in addition, require material containing, pertaining to or relating to such confidential information and may require the that receiving party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such confidential information or material.
- 6.2. Alternatively to 6.1 above, the receiving party shall, as and when required by the divulging party on written request to the receiving party, destroy all confidential information and material referred to in 6.1 above and furnishes the divulging party with a written statement to the effect that same has been destroyed.
- 6.3. The parties shall comply with any request from the other in terms of 6.1 or 6.2 within 7 (seven) days of receipt of such request.

## **7. INDEMNITY**

The receiving party hereby indemnifies and holds the divulging party harmless against any loss, action, expenses,

claim, harm or damage or whatsoever nature suffered or sustained by the divulging party pursuant to a breach by the receiving party or the receiving party's representatives, of the provisions of this Agreement.

## **8. DOMICILIA AND NOTICES**

8.1. The parties choose domicilia citandi et executandi ("domicilium address") for all purposes arising from or pursuant to this Agreement, as set out in the heading to this Agreement.

8.2. Any party shall be entitled from time to time, by written notice to the other(s), to vary its domicilium address to any other address within the Republic of South Africa which is not a post office box or poste restante.

8.3. All notices given in terms of this Agreement shall be in writing and any notice given by any party to another ("the addressee") which:

8.3.1. Is delivered is delivered by hand or transmitted by electronic mail shall be deemed to have been received by the addressee on the first business day after the date of delivery or transmission by the sender, as the case may be; and

8.3.2. If posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 14th (fourteenth) day after the date of such posting.

8.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication received by one of the parties from another, including by way of electronic transmission, shall be adequate written notice or communication to such party.

## **9. GOOD FAITH**

Each party shall observe good faith in implementing the provisions hereof.

## **10. GENERAL**

10.1. This Agreement shall be governed by and interpreted according to the laws of the Republic of South Africa and, in the event of a conflict between or inconsistency in the laws applicable in the various provinces of the Republic of South Africa, the law as applied and interpreted in KwaZulu Natal shall prevail.

The parties irrevocably submit to the exclusive jurisdiction of the KwaZulu- Natal, Durban High Court of the RSA in respect of any dispute or claim arising out of or in connection with this Agreement.

10.2. The parties agree that, in the event of a breach of this Agreement, monetary damages would not, alone, be an adequate remedy. In the event of a breach or threatened breach of any provisions of this Agreement by the receiving party, the divulging party (and/or its relevant associate entity) shall be entitled to injunctive relief in any court of competent jurisdiction and the receiving party shall reimburse the divulging party for any costs, claims, demands or liabilities arising directly or indirectly out of a breach. Nothing contained in this Agreement shall be construed as prohibiting a party or its affiliate from pursuing any other remedies available to it for a breach or threatened breach.

10.3. No party shall be bound by any representation, warranty, undertaking, promise or the like not recorded in this Agreement.

10.4. No addition to, variation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

10.5. Any indulgence that either party may show to the other in terms of or pursuant to the provisions contained in this Agreement shall not constitute a waiver of any of the rights of the party, which granted such indulgence.

10.6. The parties acknowledge that this Agreement and the undertakings given by it in terms hereof are fair and reasonable in regard to their nature, extent and period and go no further than is reasonably necessary to protect the interests of the parties.

10.7. The parties agree that, if any provision of this Agreement is found by a court to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.

10.8. The parties hereby confirm that they have entered into this Agreement with full and clear understanding of the nature, significance and effect thereof and freely and voluntarily and without duress.

10.9. Neither party shall have the right to assign or otherwise transfer any of its rights or obligations under this Agreement.

10.10. 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.

## **11. COSTS**

Every party shall pay its own costs relating to the negotiation, drafting, preparation and implementation of this Agreement.

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022

\_\_\_\_\_  
**Signature**

**Full Name of Signatory:** \_\_\_\_\_

**KZN GROWTH FUND TRUST**

Duly authorised hereto on behalf of the Company

**AS WITNESS:**

\_\_\_\_\_

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022

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**Signature**

**Full Name of Signatory:** \_\_\_\_\_

**The Company (NAME) :** \_\_\_\_\_

Duly authorised hereto on behalf of the Company

**AS WITNESS:**

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