

**CONFIDENTIALITY, NON-DISCLOSURE AND NON-  
CIRCUMVENTION**

## Introduction

In the course of formal and informal discussions, correspondence, communications, interactions, collaboration, co-operation, networking, volunteering, studies, events, educational programmes, marketing, relating to the work and activities of WQF, the User will acquire or be informed of confidential details and information concerning the WQF, its Partners, Sponsors, Funders, Concessionaires, Licensees, Affiliates, and as defined below, its Associates, Associated or Group of Companies and/or the competitive value and confidential nature of the same, and that damage could result to WQF if it is abused or disclosed to a third party. The purpose of this document is to set out the terms conditions on which WQF exposes or makes confidential details and information available to the User, and how such confidential details and information must be managed. This document is to be construed as an integral part of the Terms and Conditions of use, which the user is deemed to have read, understood and agreed to without any exception, reservation and unconditionally, by making use of this website and participating in all the activities of WQF.

The User therefore hereby unconditionally agrees to the following:

### 1 Definitions

Unless the contrary is clearly indicated, the following words and/or phrases, when used in this Document, shall have the following meaning:

- 1.1 “**Associate**” means, in relation to each party, any holding company or subsidiary company of such party and any other subsidiary undertaking of any such holding company (“**an Associate Company**”) and any director, officer, employee, representative, or agent of such party or of any Associate Company of such party. For these purposes “holding company” and “subsidiary company” have the meanings given in the Companies Act 71 of 2008;
- 1.2 “**Collaborator**” means any other person or entity who collaborates with the User in the furtherance of the activities and interests of WQF, and who the User shares the confidential information with,
- 1.3 “**Confidential or Disclosed Information**” shall mean:
  - 1.3.1 All information which pertains to the Disclosing Purpose, disclosed, revealed or exchanged by WQF to the User, and which pertains to the business of WQF, and includes, but is not limited to marketing strategies, products, tactics and tools used by WQF in marketing its own products and services, all intellectual property rights, licenses, all trade secrets, the content of all possible future documents which WQF intends to enter into with any other party, all knowledge obtained by way of research and development, particularly market research, irrespective of whether the aforementioned information that is revealed is applicable to technical, intellectual property rights, business or financial aspects of WQF; and/or
  - 1.3.2 Any information of whatever nature, which has been or may be obtained by the User from WQF, whether in writing, printed, as notes or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, know-

how, copyright material, layouts, designs, drawings, translations; and/or concepts, compilations, studies and other material prepared by or in possession or control of the User which contain or otherwise reflect or are generated from any such information as is specified in this definition; and/or

1.3.3 Information as defined further in Annexure “A”, including Trade Secrets

- 1.4 “**Disclosing Purpose**” means the furnishing of Confidential or Disclosed Information by WQF to the User for the furtherance of the business activities and interests of WQF;
- 1.5 “**Document**” shall mean this written document together with all written appendices, annexures, exhibits or amendments attached to it from time to time;
- 1.6 “**Electronic Signature**” in relation to any writing, typed or written document communicated electronically shall include the scanned version of the hand signature of the author of the written document and any other method used to identify the author and to indicate his approval of the information communicated in a sufficiently reliable way at the time the communication was first made;
- 1.7 “**Notice**” shall mean a written document;
- 1.8 “**User**” means any person or entity who accesses and consumes the information and products/services of WQF and on its website, including those of its Associates; participates in the activities and all initiatives of WQF, whether as a volunteer or in any other capacity,
- 1.9 “**WQF**” means World Quality Forum NPC, its Associates and any of its successors-in-title
- 1.10 “**Writing**” shall include any document whether available in print, on plain paper or in electronic format accessible in a manner usable for subsequent reference, and “written” shall have a corresponding meaning.

## **2 Obligations of the User**

The User shall:

- 2.1 Use the Confidential or Disclosed Information only for the Disclosing Purpose;
- 2.2 Treat and safeguard the Confidential or Disclosed Information as private, protected and confidential;
- 2.3 Ensure proper and secure storage of all Confidential or Disclosed Information;
- 2.4 Not at any time without the prior written consent of WQF:
- 2.4.1 Disclose or reveal the Confidential or Disclosed Information to any other person or party whatsoever, other than a formal collaborator, who is required in the course of their duties to receive and consider the same for the Disclosing Purpose and who shall be made aware of the obligations of the User to observe the same restrictions on the use of the Confidential or Disclosed Information as are contained in this document and in respect

of whom the undertakings of the User as contained in this document shall apply and, if required by WQF, the User shall take such steps as may be reasonably desirable to enforce such obligations on the part of its collaborators; or

- 2.4.2 Disclose or reveal to any person or party whatsoever either the fact that discussions or negotiations are taking, or have taken place between the User and WQF or the content of any such discussions or other facts relating to the Disclosing Purpose, except where required by law or any governmental, international or domestic regulatory body.
- 2.4.2 If the User or its collaborators to whom it discloses the information receives a request to disclose all or any part of the information under the terms of a subpoena or other order issued by a court of competent jurisdiction or by a government agency, the User shall:
  - a. Promptly notify WQF of the existence, terms and circumstances surrounding such a request;
  - b. Not make commitments to the requester that such information will be provided, but instead allow and not compromise, impede, neutralize, obstruct or interfere with the right of WQF to take whatever steps necessary to defend the protection of the requested information,
  - c. If disclosure of the Confidential Information is to be effected, furnish only such portion of the confidential information as the User is advised by the counsel in consultation with WQF's counsel, which is legally required to be disclosed; and
  - d. Cooperate with WQF in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information which is required to be disclosed.
- 2.5 Maintain complete confidentiality regarding business sources and will only disclose such business sources after written permission has been received from WQF;
- 2.6 Not circumvent, avoid or bypass WQF directly or indirectly in any way with regard to dealings, including but not limited to any specific products and/or projects and/or services that have been introduced, disclosed, exposed, presented or made available to or in any way made possible to the User by WQF;
- 2.7 Refrain from soliciting business and/or contracts from sources not its own and which have been introduced, exposed, presented or uncovered or made available or in any way made possible to it by or as result of connections and dealings with WQF, including sources which may be identified by using the marketing strategies, referrals by clients, tactics and tools of WQF, without the express permission of WQF;
- 2.8 Not at any time use the Confidential or Disclosed Information to solicit or entice away or endeavour to solicit or entice away any suppliers, partners, licensors, licensees, concessionaires, customers and prospective customers or employees of WQF, either to join the User whether as a partner, customer, licensor, employee or independent contractor, etc, directly or indirectly, or for any other purpose which results in direct or indirect competition with or which threatens the interests of WQF;

- 2.9 Notwithstanding any lesser degree of protection that may otherwise be permissible hereunder, where any Confidential or Disclosed Information may be subject of any National or International Government Security Regulations, the User shall, and hereby undertakes, to take such measures as may be required by such Regulations to protect such Confidential or Disclosed Information;
- 2.10 Not in any way force WQF to be obliged to disclose, reveal or exchange any information to the User;
- 2.11 Not create the impression with or lead any third party to interpret or construe any condition contained in this Document, that this Document is an Agency Agreement and/or Partnership Agreement and/or a Joint Venture and/or any other similar arrangement, save to the extent that same may be allowed in terms of any agreement in effect between WQF and the User as of commencement date of such agreement.
- 2.12 Not allege that this Document grants it, either directly, or by implication, or by estoppel or otherwise a license under any patent or patent application, copyright, or that it is entitled to utilise the Confidential or Disclosed Information in any way contrary to the stipulations contained in this Document;
- 2.13 Always act with the Confidential or Disclosed Information, in accordance with a Notice delivered to it by WQF, and if no such Notice was delivered to the User it shall proceed to destroy the Confidential or Disclosed Information in a similar manner to which it would destroy information that it would consider to be its own Confidential or Disclosed Information.
- 2.14 Ensure that its collaborators and other Parties with whom it does its own business do not disclose any of the Confidential Information, and that they are made aware of and are subject to the terms of this document,

### **3 Obligations of WQF**

WQF shall:

- 3.1 In the event where Confidential or Disclosed Information has been orally disclosed, revealed or exchanged to the User, at any time and in any manner confirm, to the User that the Confidential or Disclosed Information is subject to this Document;
  - 3.2 In the event where such confirmation has not been made to User, not be regarded or assumed as having given any permission to the User to disclose such Confidential or Disclosed Information,
4. WQF and the User realize and accept that the User may involve and collaborate with other Users, partners, associates, subsidiaries, employees, suppliers, customers, etc, of WQF and other 3<sup>rd</sup> parties in the performance of its functions and activities in the furtherance of the objectives of WQF, and in this regard WQF agrees to let the User involve and collaborate with such other with persons and entities as the case may be, subject to the terms of this document.

## **5. Exclusions**

Without prejudice to any obligations imposed on and assumed by the User under any National or International Government Security Regulations, the obligations of the User contained herein shall not apply to any Confidential or Disclosed Information which the User can show (and it shall be for the User to prove this by documentary evidence):

- 5.1 Is at the time of disclosure to the User by WQF, within the public domain and could be obtained by any person with no more than reasonable diligence;
- 5.2 Comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Document;
- 5.3 Is, at the time of such disclosure, already within the possession of the User, or it has been independently developed by the User; or
- 5.4 Is subsequently provided to the User by a person who has not obtained such information from WQF, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality whether express or implied;
- 5.5 Is disclosed with the written approval of WQF;
- 5.6 Is or becomes available to a third party from WQF on an unrestricted basis;
- 5.7 Is obliged to be reproduced Confidential or Disclosed Information under order of a court or government agency of competent jurisdiction.

## **6 Commencement and duration**

- 6.1 The terms of this document apply from 1 January 2020 and shall survive and continue in perpetuity.

## **7 Breach**

Without prejudice to any other remedies which WQF may otherwise have in terms of the Document or at law,

- 7.1 In the event of the User's direct or indirect disclosure, abuse of the confidential property of WQF, which results in a loss of business to WQF, the User shall pay to WQF monetary compensation equal to 3 (three) times the maximum fee or revenue which WQF would have realized from the business had the User not breached this Document.
- 7.2 The User specifically agrees to pay for all expenses in connection with the enforcement of this Document, including, but not limited to legal expenses and collection costs that may later be incurred by WQF in the collection of the lost fee or revenue.

## **8 Dispute Resolution**

- 8.1 Any disputes between WQF and the User resulting from breach this Document shall be resolved by means of joint co-operation or discussion within 5 (five) calendar days after a dispute arises or such extended time period as the WQF may in writing allow,
- 8.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved, at the sole election of WQF, in any one of the following manners:
- 8.2.1 In the Magistrate's Court having jurisdiction, notwithstanding that the amount in issue may exceed the jurisdiction of such Court; or
- 8.2.2 In the High Court of South Africa, in a division at the election of WQF.

## **9 Interpretation**

- 9.1 The clause headings in this Document have been inserted for convenience only and will not be taken into consideration in the interpretation of this Document.
- 9.2 Any reference in this Document to the singular includes the plural and *vice versa*.
- 9.3 Any reference in this Document to natural persons includes legal persons and references to any gender include references to the other genders and *vice versa*.

## **10 Notices**

Notices shall be served in any manner as regulated or permitted by law, and at the contact addresses, including by email, social media, SMS, WhatsApp types messaging systems, which is in the possession of WQF at the time,

## **11 Assignment, cession and delegation**

The User shall not be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Document, in whole or in part, to any other party or person without the prior written consent of WQF,

## **13 Indulgences**

No indulgence, leniency or extension of a right, which WQF may have in terms of this Document, and which it may grant or show to the User, shall in any way prejudice or preclude WQF from exercising any of its rights that it has derived from this Document, or be construed as a waiver by WQF of that right.

## **14 Waiver**

No waiver on the part of WQF to this Document of any rights arising from a breach of any provision of this Document will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

**15 Severability**

In the event that any of the terms of this Document are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

**16 Governing law**

The validity and interpretation of this Document will be governed by the laws of the Republic of South Africa.

**17 Entire document and variations**

This Document constitutes the whole document and is enforceable by WQF as is.

The terms of this document shall not apply in a case where WQF and the User or any other party have both signed a specific agreement that governs matters related to confidentiality, non-disclosure and non-circumvention between themselves.



## **ANNEXURE “A”**

### **DEFINITION OF CONFIDENTIAL INFORMATION AND TRADE SECRETS**

- **“Confidential Information”** means all information relating to the business conducted by a Party, its Group and or Associates that is reasonably regarded as confidential, being information not in the public domain, together with the possible or likely function, purpose or application of that information whether in the current activities of the party or its Group or field to which the activities of the Party or its Group may reasonably extend from time to time, any part or improvements to that information, and any recommendation, test or report of the Party or its Group or any consultant or agent in connection with that information, and whether such information is oral or written, recorded or stored by electronic, magnetic, electro-magnetic or other form or process or otherwise in a machine readable form, translated from the original form, recompiled, made into a compilation, wholly or partially copied, modified, updated or otherwise altered, or originated or obtained by, or coming into the possession, custody, control or knowledge of the party or its Group, or any person or entity with which the Party or its Group deals, including but without being limited to all inventions, technical data, research and development information, business records, information and notes, documentation or records from its current and or prospective clients, products and services, know-how, trade secrets, designs, specifications, processes and formulae, planning procedures, techniques or information, marketing plans, strategies and forecasts, business and product development plans, financial statements, business models and methodologies, budgets, prices, costs and financial projections, accounting procedures or financial information, relationships, names and details of consumers, clients, prospects, partners and alliances, funders, investors, donors, sponsors, advertisers, licensees and licensors, concessionaires, agents, employee details, and like information;
- **“Invention”** means any invention, drawing, design, model, contrivance, structure, specification, improvement, discovery, creation, idea, combination, concept, formula, process and other work or contribution however developed, created, made, discovered or conceived, and whether or not patented or patentable (whether by renewal or otherwise), protected by copyright, or otherwise protected or capable of protection by law anywhere;
- **“Trade Secrets”** means any information of the Party or its Group which derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Such secrets include but are not limited to concessions, licensors, permits granted to or by WQF, strategies, and operating models.