

# MEMORANDUM OF UNDERSTANDING (MoU)

## Memorandum of Understanding (MoU) with regard to the establishment of a collaborative relationship in areas of research and consulting

Made and entered into by and between

### QUANTUM SOLUTIONS

a Globus T24 service provider company, herein represented by Mr Jakes van den Berg, in his capacity as Partner (Research, Technology and Planning) and duly authorised

(Hereinafter referred to as “**Quantum Solutions**”)

and

**XXXX**

a **xxxxx**, herein represented by **xxx**, in his/her capacity as **xxx** and duly authorised

(Hereinafter referred to as “**XXX**”)

(Individually referred to as “Party” and collectively as “**Parties**”)

## 1. PREAMBLE

The purpose of this Agreement is to define the basis for collaboration between the parties in areas of research and consulting concerning:

xxx

(the "Field")

and the Parties have agreed in principle

- 1.1 To enter into separate Project Agreements for research and consulting projects as required which will provide details of scope, deliverables and costs.
- 1.2 That, notwithstanding the focus of this Agreement on the Field, if opportunities are identified for collaboration in other areas of common interest, these will be explored.

Now therefore the parties wish to record their understanding in writing as follows:

## 2. SCOPE OF THIS MOU

- 2.1 The Parties enter into this MoU as independent contractors and nothing herein contained shall be construed as establishing a partnership or joint venture between the parties, nor may any party profess to represent the other Party, save with the written consent of the other Party.
- 2.2 The Parties retain the right to enter into contractual arrangements with third parties for the execution of specific projects. Nothing in this agreement shall be prejudicial to such arrangements
- 2.3 Except as expressly set out in this MoU, neither Parties shall have any obligation to the other unless and until such obligations are set out in a Project Agreement signed by both Parties. It is understood that while this MoU constitutes a statement of mutual intentions between the Parties, it does not constitute a legally binding obligation, and except for each Party's responsibility for costs incurred arising from this MoU any confidentiality obligations, and dispute resolution provisions, this MoU creates no rights in favour of either Party. A legally binding commitment for the proposed provision of services will result only from the signature by QUANTUM SOLUTIONS of a Project Agreement and such agreement will supersede this MoU.

## 3. COSTS

Each Party will bear its own expenses and costs incurred in connection with this MoU and any due diligence and information gathering with regard to this MoU, including the negotiation and finalisation of a suitable definitive agreement for the contemplated projects ("Project Agreements").

## 4. CONFIDENTIALITY

- 4.1 For the purpose of this clause, "Confidential Information" means specifications, drawings, circuit diagrams, tapes, discs and other computer-readable media, documents, information, technical and commercial data, techniques and know-how.

- 4.2 The Parties hereto recognize that information, agreed or noted by the Parties to be confidential, may be passed from one Party to another for the purpose of the collaboration, and that Confidential Information may arise from the collaboration.
- 4.3 Both Parties undertake to treat the Confidential Information as strictly confidential, not to divulge to any third party or sell, trade, publish, reproduce or reverse engineer any of the Confidential Information and not to put in use for any purpose unrelated to the collaboration, in any manner, any Confidential Information without the Disclosing Party's prior written consent, except as provided by the exclusions specified in Clause 5 below;
- 4.4 The obligation of confidentiality of clause 4.3 shall not apply to information which:
- i. Becomes known by third parties through no fault of the Parties hereto;
  - ii. Is or becomes published otherwise than by unauthorized publication in breach of this Agreement;
  - iii. Is independently developed by an employee of the recipient who has not had access to any of the Confidential Information disclosed to the recipient by the other Party;
  - iv. Is in the public domain;
  - v. Can reasonably be demonstrated to be known to the Parties prior to disclosure under this Agreement;
  - vi. Is disclosed to the Party or Parties by another party entitled to disclose the information;
  - vii. The Parties hereto agree to release; or
  - viii. Is required to be disclosed by law.
- 4.5 The Parties hereto shall take due precautions to ensure that their staff, students and contractors, who have a need to know Confidential Information, undertake the above obligations of confidentiality.
- 4.6 Each Party may not divulge, and will procure that any of its employees or agents do not divulge, to any person, other than the duly authorised representatives of the other Party and its own staff, and only if this is necessary for the proper rendering of the services under the Agreement, any Confidential Information arising out of the performance of, related to or discovered in the course of the performance of the services required under this agreement, without the prior written authority of the other Party.

## 5. PUBLICATION

- 5.1 It is intended that the results of the research arising from this collaboration should be published in accordance with normal academic practice. In order to protect the confidential information and any proprietary rights, neither Party may publish or publicly disclose the results of the research or any confidential information without the prior written consent of the other.
- 5.2 The Party who wishes to publish as described in clause 5.1 shall submit to the other Party a copy of the proposed publication at least thirty (30) days in advance of the submission of the publication to a third party. If the non-publishing Party determines that the proposed publication discloses confidential or proprietary information that requires protection, that Party shall notify the other of this determination within thirty (30) days of receipt of the proposed publication. The non-publishing Party can require a delay of the publication, which delay shall not normally exceed three (3) months, or editing of the proposed publication, such editing not being deemed unreasonable by the Parties hereto.

- 5.3 If the Party, to whom a proposed publication has been submitted according to clause 5.2 fails to notify the submitting Party within thirty (30) days of receipt of the publication, then the submitting Party is free to submit or present the publication.

## **6. THESES/DISSERTATIONS/PROJECT REPORTS**

Nothing in this Agreement shall prevent a registered student of QUANTUM SOLUTIONS from submitting a thesis, dissertation or project report based on the results from the research arising from this collaboration, for the purposes of obtaining a degree at QUANTUM SOLUTIONS. The parties hereto may see the draft material during the writing up period and may, within thirty (30) days of receipt, request the exclusion of confidential or sensitive information, and to correct any errors of fact. If required, the examiners shall be appointed by QUANTUM SOLUTIONS under an agreement of confidentiality between QUANTUM SOLUTIONS and the examiners. Either party may request that access to a thesis, dissertation or project report be restricted for a period up to two (2) years. Such a request will not be unreasonably denied.

## **7. INTELLECTUAL PROPERTY**

- 7.1 The ownership of background intellectual property existing prior to the commencement of the Agreement will be and remains unaffected hereby.
- 7.2 The rights of ownership of foreground intellectual property arising from the research associated with this collaboration will be negotiated in a separate Project Agreement for each project undertaken.

## **8. DISPUTE RESOLUTION**

- 8.1 A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.
- 8.2 The Parties shall use all reasonable efforts to resolve any dispute that may arise under this Agreement through good faith negotiations. Each Party shall nominate a senior representative of its management to meet at any mutually agreed location to resolve the dispute. In the event that negotiations do not result in a mutually acceptable resolution, the dispute shall be handled in accordance with clause 8.3.
- 8.3 Any dispute or difference arising out of or relating to this Agreement shall be referred to arbitration and settled by arbitration according to the rules then in effect of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in Port Elizabeth, and conducted in the English language before one arbitrator appointed in accordance with the said rules. These provisions shall not prevent either Party to approach any court or other judicial forum having appropriate jurisdiction to obtain timely injunctive or other relief in cases of urgency.

## **9. LIABILITY**

- 9.1 Each Party bears the liability arising out of its own negligence, wrongful act or omission, and its own breach of this Agreement.
- 9.2 Accordingly, each Party indemnifies the other against all expenses, losses, damages and costs arising out of any wrongful or negligent act or omission by the Party during the execution of the Project in terms of this Agreement.

9.3 Neither Party shall be liable to the other Party for any indirect or consequential loss or damage sustained by the other Party arising out of or in connection with this Agreement, and each Party releases the other from any such liability.

## 10. TERMINATION

This MoU is effective from the date of signature of the Party signing last and shall continue for **three (3) years** unless terminated by either Party giving written notice to the other. Such termination shall not affect Project Agreements in force at such time. This MoU can be renewed in writing on an annual basis thereafter.

## 11. GENERAL

11.1 The parties do not intend that any agency or partnership relationship be created between them by this Agreement and neither Party may bind the other in any way.

11.2 All additions or modifications to this Agreement must be made in writing and must be executed by both Parties.

11.3 Neither Party may assign or cede any benefit, obligation or interest they may have in this Agreement to any other person without the prior written consent of the other Party.

11.4 Neither Party is regarded as having waived, or is precluded in any way from exercising any right under or arising out of this Agreement by reason of such Party having at any time granted any extension of time for, or having shown any indulgency to, the other Party with reference to any performance of any obligation under this Agreement, or having failed to enforce, or delayed in enforcing any right of action against the other party.

## 12. DOMICILIA

The parties choose as their respective domicilium citandi et executandi for purposes of this Agreement as set out hereunder.

### Quantum Solutions

P.O. Box 353  
5 Loop street  
Ladybrand, 9745  
South Africa

xxx

xxx

**Tel:** 051 924 2220

**Tel:** xxx

**web** [www.t24quantum.com](http://www.t24quantum.com)

Accepted for and on behalf of

**xxx**

and duly authorised

**Signature:** .....

**Name:** .....

**Designation:** .....

**Date:** .....

**Place:** .....

Accepted for and on behalf of

**QUANTUM SOLUTIONS**

and duly authorised

**Signature:** .....

**Name:** Jakes van den Berg

**Designation:** Research, Technology & Planning

**Date:** .....

**Place:** Ladybrand