

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

between

Mango Airlines SOC Limited (in business rescue)

and

[•]

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ANNEXURES

Annexure A List Of Specific Confidential Information

1 PARTIES

1.1 The Parties to this Agreement are —

1.1.1 Mango Airlines SOC Limited (in business rescue); and

1.1.2 [●].

1.2 The Parties agree as set out below.

2 INTERPRETATION

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings —

2.1.1 "**Agreement**" means this confidentiality and non-disclosure agreement and all annexures thereto (if any);

2.1.2 "**Associated Companies**" means, as the case may be, —

2.1.2.1 all subsidiaries;

2.1.2.2 the holding company; and

2.1.2.3 all other subsidiaries of the holding company,

of the Disclosing Party, and includes a company, not being a subsidiary, in which the Disclosing Party directly or indirectly has a significant shareholding interest;

2.1.3 "**Bidder**" means [●];

2.1.4 "**Confidential Information**" means all and any information or data in whatever form (including in oral, written, electronic and visual form) relating to the Disclosing Party or any of its Associated Companies which by its nature or content is identifiable as, or could reasonably be expected to be, confidential and/or proprietary to the Disclosing Party or any of its Associated Companies and includes, (even if not marked as being confidential, restricted, secret, proprietary or any similar designation), the information described in Annexure A;

2.1.5 "**Data Protection Legislation**" means any and all laws relating to the protection of data or of Personal Information relevant to a Party, including POPI and the protection of Personal Information principles agreed to in this Agreement;

2.1.6 "**Disclosing Party**" means the Party disclosing any Confidential Information to the other Party in terms of this Agreement;

- 2.1.7 **"Exclusions"** means the circumstances in which the undertakings given by the Recipient in this Agreement are not applicable, as described in clauses 7.3.1 to 7.3.3;
- 2.1.8 **"PAI Act"** means the Promotion of Access to Information Act, No 2 of 2000;
- 2.1.9 **"Parties"** means the Target and the Bidder, and **"Party"** means either of them, as the context requires;
- 2.1.10 **"Permitted Disclosees"** means –
- 2.1.10.1 the Associated Companies and ultimate legal and beneficial shareholder of the Recipient who are directly concerned with the Proposed Transaction;
- 2.1.10.2 the Representatives of the Recipient who are directly concerned with the Proposed Transaction; and
- 2.1.10.3 any other person to whom the Recipient discloses Confidential Information with the prior written consent of the Disclosing Party;
- 2.1.11 **"Permitted Purpose"** means the consideration, evaluation and negotiation of the Proposed Transaction;
- 2.1.12 **"Personal Information"** shall have the meaning ascribed thereto in applicable Data Protection Legislation;
- 2.1.13 **"POPI"** means the Protection of Personal Information Act, No. 4 of 2013;
- 2.1.14 **"Process"** shall have the meaning ascribed thereto in applicable Data Protection Legislation;
- 2.1.15 **"Proposed Transaction"** means the acquisition of the entire issued share capital of the Target, subscription of shares in the Target and certain claims against the Target;
- 2.1.16 **"Recipient"** means the Party receiving Confidential Information from the other Party in terms of this Agreement;
- 2.1.17 **"Representatives"** means, in relation to any person, its directors, officers, employees and professional advisers;
- 2.1.18 **"Signature Date"** means the date of signature of this Agreement by the Party last signing;
- 2.1.19 **"South Africa"** means the Republic of South Africa; and
- 2.1.20 **"Target"** means Mango Airlines SOC Limited (in business rescue) (registration number 2006/018129/30) a state-owned company, duly registered and incorporated in South Africa.

- 2.2 In this Agreement —
- 2.2.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.2.2 an expression which denotes —
- 2.2.2.1 any gender includes the other genders;
- 2.2.2.2 a natural person includes a juristic person and *vice versa*;
- 2.2.2.3 the singular includes the plural and *vice versa*;
- 2.2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- 2.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 2.3 Any reference in this Agreement to —
- 2.3.1 "**business hours**" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 2.3.2 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;
- 2.3.3 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "**law**" shall have a similar meaning; and
- 2.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 2.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

- 2.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.7 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.10 Except to the extent that any provision of this Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of any provision of this Agreement falls on a day which is not a business day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding business day.
- 2.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.12 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.13 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.14 Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.15 In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Agreement.

3 INTRODUCTION

- 3.1 It is the intention of the Parties to enter into negotiations relating to the Proposed Transaction.
- 3.2 In the course of such negotiations, the subsequent implementation of any agreement or arrangement which may arise out of such negotiations and in any future interactions between the Parties, the Parties will disclose certain Confidential Information to each other and each will gain knowledge of the Confidential Information of the other.
- 3.3 The Parties are willing to provide each other with an undertaking to maintain the confidentiality of the Confidential Information, on the terms and conditions set out in this Agreement.

4 DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

- 4.1 Each of the Parties undertakes to disclose to the other such Confidential Information as may be in the possession of the Disclosing Party and as will, in the sole and absolute discretion of the Disclosing Party, be necessary for the Recipient to conduct the negotiations contemplated in clause 3.1.
- 4.2 The Parties acknowledge that —
- 4.2.1 the Confidential Information is a valuable, special and unique asset of the Disclosing Party and/or its Associated Companies; and
- 4.2.2 the Disclosing Party and/or its Associated Companies may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used otherwise than in accordance with this Agreement.
- 4.3 All Confidential Information disclosed by the Disclosing Party to the Recipient or which otherwise comes to the knowledge of the Recipient, is acknowledged by the Recipient —
- 4.3.1 to be proprietary to the Disclosing Party and/or one or more of its Associated Companies; and
- 4.3.2 not to confer any rights of whatsoever nature in such Confidential Information on the Recipient.
- 4.4 The Recipient irrevocably and unconditionally agrees and undertakes —
- 4.4.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;
- 4.4.2 not to use or permit the use of the Confidential Information for any purpose other than the Permitted Purpose and, in particular, not to use or permit the use of the Confidential

Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the Disclosing Party and/or its Associated Companies or otherwise use it to the detriment of the Disclosing Party and/or its Associated Companies;

- 4.4.3 except as permitted by this Agreement, not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be granted or withheld in the sole and absolute discretion of the Disclosing Party;
- 4.4.4 not to decompile, disassemble or reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the Confidential Information;
- 4.4.5 not to copy or reproduce the Confidential Information by any means without the prior written consent of the Disclosing Party, it being recorded that any copies shall be and remain the property of the Disclosing Party; and
- 4.4.6 to keep all Confidential Information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties.

5 PERMITTED DISCLOSEES

- 5.1 The Recipient shall be entitled to disclose the Confidential Information only to Permitted Disclosees, and then only to the extent that such disclosure is necessary for the Permitted Purpose and on a "need to know" basis.
- 5.2 The Recipient shall, both before and after the disclosure of any Confidential Information to a Permitted Disclosee, inform such Permitted Disclosee of, and take all practical steps to impress upon him or it, the secret and confidential nature of the Confidential Information and the Recipient's obligations under this Agreement.
- 5.3 The Recipient shall be responsible for procuring that the Permitted Disclosees abide by the provisions of this Agreement and agree to be bound by the confidentiality undertakings given to the Disclosing Party by the Recipient in this Agreement. The Recipient shall be responsible for any breach of the terms of this Agreement by any Permitted Disclosee.
- 5.4 The Recipient shall (if requested to do so by the Disclosing Party) procure that the Permitted Disclosees give a written undertaking in favour of the Disclosing Party in regard to the Confidential Information on substantially the same terms and conditions contained in this Agreement.

5.5 The Recipient's failure to obtain receipt of the written undertaking referred to in clause 5.4 shall in no way detract from the Recipient's obligations in terms of this Agreement and particularly in terms of the remaining provisions of this clause 5 and clause 12.3.

5.6 The Recipient shall keep a written record showing –

5.6.1 as far as reasonably practicable, the location of each item or copy of Confidential Information which is in documentary or other tangible form; and

5.6.2 the names and addresses of all Permitted Disclosees to whom Confidential Information has been disclosed and shall furnish such written record to the Disclosing Party, upon request.

6 RETURN OF CONFIDENTIAL INFORMATION

6.1 The Recipient shall, at its own expense, within 5 business days of termination of discussions concerning the Proposed Transaction, and in any event within 2 business days of written demand from the Disclosing Party —

6.1.1 return or destroy (as stipulated by the Disclosing Party), and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by the Recipient or by a Permitted Disclosee without keeping any copies or partial copies thereof;

6.1.2 destroy, and procure the destruction of all analyses, compilations, notes, studies, memoranda or other documents prepared by the Recipient or by any Permitted Disclosee which contain or otherwise reflect or are generated from the Confidential Information;

6.1.3 delete or procure the deletion of all Confidential Information from any computer, word processor or other device in the possession or control of the Recipient or any Permitted Disclosee; and

6.1.4 confirm in writing to the Disclosing Party that the Recipient and to the best of the Recipient's knowledge, information and belief having made all reasonable enquires all Permitted Disclosees have complied with the provisions of clauses 6.1.1 to 6.1.3.

6.2 The Recipient shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the Recipient or any Permitted Disclosee is subject. For the avoidance of doubt, the obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.

7 EXCLUSIONS

- 7.1 The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade marks or otherwise.
- 7.2 If the Recipient is uncertain as to whether any information is Confidential Information, the Recipient shall treat such information as confidential until the contrary is agreed by the Disclosing Party in writing.
- 7.3 The undertakings given by the Recipient in this Agreement and in particular in clause 4 shall not apply to any information which —
- 7.3.1 is or becomes generally available to the public other than by the negligence or default of the Recipient and/or any Permitted Disclosee, or by the breach of this Agreement by any of them;
- 7.3.2 the Disclosing Party confirms in writing is disclosed on a non-confidential basis; or
- 7.3.3 has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the Disclosing Party or any of its Associated Companies having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Recipient existing at the Signature Date,
- provided that —
- 7.3.4 the onus shall at all times rest on the Recipient to establish that such information falls within the Exclusions;
- 7.3.5 information will not be deemed to be within the Exclusions merely because such information is embraced by more general information in the public domain or in the Recipient's possession; and
- 7.3.6 any combination of features will not be deemed to be within the Exclusions merely because individual features are in the public domain or in the Recipient's possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.

8 FORCED DISCLOSURE

In the event that the Recipient is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will —

- 8.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible;

- 8.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
- 8.3 in the case of any disclosure required in terms of the PAI Act, apply the principles of Chapter 4 of the PAI Act in order to avoid and/or limit the extent of any such disclosure;
- 8.4 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
- 8.5 comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
- 8.6 notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

9 **NON-SOLICITATION**

- 9.1 The Recipient irrevocably and unconditionally agrees and undertakes that for a period of 12 months from the Signature Date, neither the Recipient nor any of its Representatives will, directly or indirectly, —
 - 9.1.1 solicit or entice away or endeavour to solicit or entice away any person who is employed by or provides his services to the Disclosing Party or any of its Associated Companies (whether or not such person will commit a breach of any contractual arrangement as a result), provided that the restrictions in this clause 9.1.1 shall not apply to the placing of any general non-targeted advertisement for the purposes of recruitment;
 - 9.1.2 solicit or entice away or endeavour to solicit or entice away any distributor, agent, customer or supplier of the Disclosing Party or any of its Associated Companies; or
 - 9.1.3 encourage, procure or assist any distributor, agent, customer or supplier of the Disclosing Party or any of its Associated Companies to restrict, vary or cease that relationship.
- 9.2 The Recipient agrees and acknowledges that the restrictions contained in this clause 9 are fair and reasonable and necessary to assure to the Disclosing Party the protection, full value and benefit of the Confidential Information.

10 **DURATION**

The obligations of the Recipient with respect to each item of Confidential Information shall commence on the date on which such information is disclosed or otherwise received (whether before or after the Signature Date) and shall endure for a period of 5 years following termination of the discussions and/or negotiations between the Parties. The obligations

referred to in clause 4 shall endure notwithstanding any termination of the negotiations referred to in clause 3.1 or any subsequent agreement entered into between the Parties.

11 PROCESSING OF PERSONAL INFORMATION

11.1 Each Party warrants to and in favour of the other that it shall at all times during the term of this Agreement comply with Data Protection Legislation.

11.2 The Parties agree that Personal Information disclosed by either Party to the other Party shall constitute Confidential Information.

11.3 The Recipient shall –

11.3.1 treat the Personal Information that comes to its knowledge or into its possession as confidential and shall not disclose such Personal Information without the prior written consent of the Disclosing Party;

11.3.2 notify the Disclosing Party in writing within one business day or otherwise as soon as reasonably possible if any Personal Information has been or is reasonably believed to have been accessed or acquired by an unauthorised person or if a breach has occurred with reference to its use of the Personal Information. Such notification must provide sufficient information to allow affected individuals to take measures against the potential consequences of the compromise, including, if known to the Recipient, the identity of the unauthorised person who may have accessed or acquired the Personal Information;

11.3.3 ensure that where the Personal Information is no longer required to be retained, it is destroyed or returned to the Disclosing Party in accordance with the instructions of the Disclosing Party and in compliance with Data Protection Legislation;

11.3.4 not transfer or allow Personal Information received during its relationship with the Disclosing Party to be transferred outside the Recipient's jurisdiction, unless upon express written consent of the Disclosing Party or unless adequate mechanisms have been employed to ensure an adequate level of protection for the Personal Information; and

11.3.5 secure the integrity of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent –

11.3.5.1 loss of, or damage to, or unauthorised destruction of the Personal Information; and/or

11.3.5.2 unlawful access to or unlawful Processing of the Personal Information.

11.4 The Recipient shall Process the Personal Information only –

11.4.1 in compliance with Data Protection Legislation, the Disclosing Party's instructions and this Agreement; and

- 11.4.2 for purposes connected with performing in terms of this Agreement or as specifically otherwise instructed or authorised by the Disclosing Party in writing.

12 BREACH

- 12.1 Without prejudice to the other rights of the Disclosing Party, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this Agreement, the Recipient shall —
- 12.1.1 immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and
- 12.1.2 use all reasonable commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.
- 12.2 The Parties acknowledge and agree that —
- 12.2.1 cancellation is not an appropriate remedy for breach of this Agreement and this Agreement may not be cancelled or terminated save by written agreement between the Parties; and
- 12.2.2 damages alone may not be an adequate remedy for any breach of the obligations set out in this Agreement and that the remedies of interdict, specific performance and any other equitable relief are appropriate for any threatened or actual breach of this Agreement. The Disclosing Party will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).
- 12.3 Without prejudice to clause 12.2, the Recipient accepts full liability for the maintenance of the confidentiality of the Confidential Information and hereby unconditionally and irrevocably indemnifies and holds the Disclosing Party and each Associated Company harmless against any and all loss, action, expense, claim, harm or damages of whatsoever nature suffered or sustained by the Disclosing Party or any of its Associated Companies pursuant to a breach or threatened breach by the Recipient of the provisions of this Agreement.
- 12.4 Should any unauthorised disclosure of Confidential Information take place in breach of the provisions of this Agreement, the Disclosing Party shall, in addition to the foregoing, be entitled by written notice to the Recipient to terminate all obligations to provide information to the Recipient with immediate effect and no further information will be disclosed to the Recipient in terms of this Agreement.

13 NO WARRANTY OR OFFER

- 13.1 Unless otherwise specifically stated in writing, the Disclosing Party —
- 13.1.1 does not give or make any warranty, representation or undertaking, express or implied, as to the accuracy or completeness of any of the Confidential Information or other information received by the Recipient or its Permitted Disclosees or as to the reasonableness of any assumptions on which any of the same is based;
- 13.1.2 does not accept any responsibility or liability for the use of the Confidential Information by the Recipient or its Permitted Disclosees; and
- 13.1.3 is under no obligation to update or correct any inaccuracies which may become apparent in any of the Confidential Information.
- 13.2 No Confidential Information or other information, communication or document made available to or supplied to the Recipient by the Disclosing Party or any of its Associated Companies shall constitute an offer or invitation to the Recipient, nor will any such information, communication or document form the basis of any contract.

14 PUBLICITY

- 14.1 Subject to clause 14.3, each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law (including by the rules of any recognised securities exchange, where applicable) or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by one Party to the other pursuant to this Agreement.
- 14.2 No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any law or by the rules of any recognised securities exchange, in which event the Party obliged to make such statement will first consult with the other Party in order to enable the Parties in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law or rules. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this clause 14.
- 14.3 This clause 14 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

15 BENEFIT

15.1 The undertakings given by the Recipient in this Agreement shall be for the benefit of and may be enforced by the Disclosing Party, any of its Associated Companies, any current or future shareholder of the Disclosing Party and any successors-in-title. The undertakings shall be deemed to have been imposed as a *stipulatio alteri* for the benefit of any Associated Company, any third party which becomes a shareholder in the Disclosing Party and any successor-in-title and such benefit may be accepted by such person at any time. The fact that any undertaking may not be enforceable by one of them will not affect its enforceability by any other party.

15.2 For the purposes of clause 15.1, the term "successors-in-title" shall include any third party which acquires —

15.2.1 the business of the Disclosing Party or any part thereof; or

15.2.2 pursuant to any cession, the right to enforce the undertakings embodied in this Agreement.

16 NOTICES AND DOMICILIA

16.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses —

<u>Name</u>	<u>Physical Address</u>	<u>Email Address</u>
Target	Mezzanine Level Domestic Departures Terminal O.R. Tambo International Airport Kempton Park,1627	sipho.sono@opisadvisory.c o.za

Marked for the attention of: Sipho Sono

<u>Name</u>	<u>Physical Address</u>	<u>Email Address</u>
Bidder	[•] [•] [•] [•]	[•]

Marked for the attention of: [•]

provided that a Party may change its *domicilium* to another physical address in South Africa (provided that such physical address is not a post office box or *poste restante*) or may change its address for the purposes of notices to any other physical address or email

address by written notice to the other Party to that effect. Such change of address will be effective 5 business days after receipt of the notice of the change.

- 16.2 All notices to be given in terms of this Agreement will be given in writing and will —
- 16.2.1 be delivered by hand or sent by email;
- 16.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
- 16.2.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
- 16.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 16.

17 APPLICABLE LAW AND JURISDICTION

- 17.1 This Agreement will in all respects be governed by and construed under the laws of South Africa.
- 17.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, (Johannesburg) in any dispute arising from or in connection with this Agreement.

18 GENERAL

18.1 Whole Agreement

- 18.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 18.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

18.2 Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

18.3 No Indulgences

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

18.4 No Waiver or Suspension of Rights

No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

18.5 Provisions Severable

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

18.6 Continuing Effectiveness of Certain Provisions

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or

termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

18.7 No Assignment

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other, save as otherwise provided herein.

18.8 Exclusion of Electronic Signature

The reference in clauses 18.2, 18.4 and 18.7 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

19 COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

20 SIGNATURE

20.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

20.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

20.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

20.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at on 2021

For and on behalf of
**MANGO AIRLINES SOC LIMITED (in
business rescue)**

Signature

Name of Signatory

Designation of Signatory

SIGNED at on 2021

For and on behalf of
[INSERT BIDDER DETAILS]

Signature

Name of Signatory

Designation of Signatory

List of Specific Confidential Information

- 1 Information relating to the Disclosing Party's or any of its Associated Companies' existing and future strategic objectives and existing and future business plans and corporate opportunities.
- 2 Trade secrets.
- 3 Technical information, techniques, know-how, operating methods and procedures.
- 4 Details of costs, sources of materials and customer lists (whether actual or potential) and other information relating to the existing and prospective customers and suppliers of the Disclosing Party or any of its Associated Companies.
- 5 Pricing, price lists and purchasing policies.
- 6 Computer data, programmes and source codes.
- 7 Information contained in or constituting the hardware or software of the Disclosing Party or any of its Associated Companies, including third party products and associated material.
- 8 Information relating to the network telecommunications services and facilities of the Disclosing Party or any of its Associated Companies.
- 9 Any and all methodologies, formulae and related information in developed software and processes and other business of the Disclosing Party or any of its Associated Companies.
- 10 Products, drawings, designs, plans, functional and technical requirements and specifications.
- 11 Intellectual property that is proprietary to the Disclosing Party or any of its Associated Companies or that is proprietary to a third party and in respect of which the Disclosing Party or any of its Associated Companies has rights of use or possession.
- 12 Information relating to any contracts to which the Disclosing Party or any of its Associated Companies is a party.
- 13 Any information which is not readily available to a competitor of the Disclosing Party or any of its Associated Companies in the normal course of business.