


PASSION4PERFORMANCE
SOUTH AFRICA

Passion4Performance South Africa (P4PSA)

Non-Disclosure Agreement

#Decolonizing #Education

2025

Description and Registration No:	Passion4Performance South Africa		
Physical Address:	1005 Koedoeberg Street, Faerie Glen, Pretoria, 0050		
Postal Address:	PO Box 226, Wapadrand, Pretoria, 0050		
Email:	Darryn@p4p.co.za		
Signature: who warrants he/she is duly authorised hereto			
Name:	Darryn Van Den Berg		
Designation:	MD		
Date:	24 June 2025	Place	Pretoria
Description and Registration No:		In this document referred to as "Receiving Party"	
Physical Address:			
Postal Address:			
Email:			
Signature: who warrants he/she is duly authorised hereto			
Name:			
Designation:			
Date:		Place:	
Witnesses:			

THE PARTIES AGREE THAT –**1. DEFINITIONS**

In this Agreement, unless a contrary intention clearly appears, the following terms shall bear the meanings assigned to them and cognate expressions shall have corresponding meanings –

- 1.1 **"Agreement"** means this non-disclosure agreement;
- 1.2 **"Business Day"** means any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3 **"Confidential Information"** means all information and data of any nature, whether tangible, intangible, oral or in writing and in any format or medium, that is obtained or learned by, disclosed to or comes to the knowledge of a Party (**"Receiving Party"**) by or from the other Party (**"Disclosing Party"**) during the course or arising out of this Agreement, by whatsoever means, which by its nature or content is or ought reasonably to be identifiable as confidential or proprietary to the Disclosing Party or which is disclosed in confidence and whether or not it is marked or identified as 'confidential', 'restricted', 'proprietary' or in similar fashion, including –
 - 1.3.1 information and data relating to its strategic objectives, business plans, business relationships, customers and Staff;
 - 1.3.2 information and data contained in or constituting its information technology;
 - 1.3.3 its proprietary Intellectual Property and/or Intellectual Property that is proprietary to a third party and in respect of which it has rights of use or possession.

Confidential Information excludes information or data –

- 1.3.4 in the public domain at the time of its disclosure to the Receiving Party or which subsequently becomes part of the public domain by publication or otherwise, other than by breach of an obligation of confidentiality by the Receiving Party or any third party;
- 1.3.5 becoming available to the Receiving Party from a source, other than the Disclosing Party, other than by breach of an obligation of confidentiality by the Receiving Party or any third party;
- 1.3.6 developed independently by the Receiving Party without the knowledge of, use of or access to the Confidential Information, using Staff who have not in any way been employed (directly or indirectly) in the use of the Services or Goods;
- 1.3.7 disclosed pursuant to a requirement by operation of law, regulation or order of court or other administrative body, but then only to the extent so disclosed and in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

Provided that –

- 1.3.8 the onus shall at all times rest on the Receiving Party to establish that such information or data falls within an exclusion
- 1.3.9 the information or data disclosed is deemed not to be within the foregoing exclusions merely because it is embraced by more general information or data in the public domain or in a third party's possession;
- 1.3.10 a combination of features is deemed not to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession. A combination of features shall be excluded only if the combination itself is in the public domain or was already in a Party's possession.

The determination of whether information is Confidential Information shall not be affected by it being subject to or protected by common law or statute related to copyright, patent, trade marks or otherwise;

- 1.4 **"Effective Date"** means the date so described on the face page hereof, notwithstanding the date of signature hereof;
- 1.5 **"Intellectual Property"** means, collectively, patents, copyright, trade marks, logos, style names, slogans, designs, models, methodologies, Know-How, inventions, trade and business secrets and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain, use or for their protection) which are used or held, whether or not currently, in connection with a party's business;
- 1.6 **"Know-How"** means ideas, designs, documents, diagrams, information, devices, technical data, scientific data, secret and other processes and methods used in connection with a party's business, and, all available information regarding marketing and promotion of the products and services of a party, and, all and any modifications or improvements to any of them which do not constitute entirely new products or services;
- 1.7 **"Losses"** means all losses, damage, damages, liabilities, fines, penalties, claims and all costs and expenses (including related legal fees, tracing and collection charges, costs of investigation, interest and penalties);

1.8 "**Residuals**" means ideas, concepts, know-how or techniques learned or developed by a Party arising out of this Agreement, which do not amount to a disclosure of Confidential Information in breach of this Agreement or infringe the other Party's Intellectual Property rights;

1.9 "**Staff**" means a Party's employees, agents, independent contractors, sub-contractors or other representatives.

2. INTERPRETATION

2.1 Clause headings in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify its terms nor any of its clauses.

2.2 In this Agreement unless a contrary intention clearly appears, words importing: any one gender include the other two; the singular include the plural and vice versa; natural persons include legal entities (corporate or unincorporate) and the state and vice versa.

2.3 Any reference to an enactment in this Agreement is to that enactment as at the Effective Date and as amended or re-enacted from time to time.

2.4 Any substantive provision in any definition in this Agreement which confers rights or imposes obligations on a Party shall, notwithstanding that it is only in a definition, be given effect to as if it were a substantive provision in the body of the Agreement.

2.5 When a number of days is prescribed in this Agreement, they shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day.

2.6 Reference to days, months or years in this Agreement shall be construed as Gregorian calendar days, months, or years.

2.7 The use in this Agreement of any expression covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any Party to this Agreement is subject to the law of another jurisdiction, be construed as including equivalent or analogous proceedings under that law.

2.8 Any term defined within the context of any particular clause in this Agreement shall, unless otherwise determined by the context, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term is not defined in the definition clause.

2.9 Expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they shall continue to operate thereafter or which of necessity must continue to have effect thereafter notwithstanding that the clauses themselves do not expressly provide for this.

2.10 In this Agreement the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

2.11 Any reference in this Agreement to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.

2.12 In this Agreement the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed nor shall they take effect as limiting the generality of any preceding words.

2.13 In this Agreement the words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

3. DURATION

This Agreement shall commence on the Effective Date and endure indefinitely thereafter unless otherwise terminated in accordance with its terms.

4. CONFIDENTIALITY

4.1 Notwithstanding anything to the contrary herein contained, the Parties agree that the provisions of this Agreement shall apply to all Confidential Information disclosed or provided by either Party to the other at any stage during the relationship between them, including that disclosed or provided prior to the Effective Date.

4.2 The Parties shall treat all Confidential Information as strictly confidential. The Receiving Party shall not directly or indirectly use the Disclosing Party's Confidential Information for its own benefit nor for the benefit of any other person nor for any purpose other than to investigate potential opportunities for the Parties to enter into a mutually beneficial business relationship with each other.

4.3 The Receiving Party shall not disclose the Confidential Information to any person whomsoever other than the Receiving Party's Staff who are directly involved in carrying out the Receiving Party's obligations in terms of this Agreement and then only on a need-to-know basis. Before revealing any Confidential Information to them, the

- Receiving Party shall procure that Staff are made aware of the confidential nature of the Confidential Information being made available to them and that Staff who are –
- 4.4 employees, have each signed an undertaking with like obligations of confidentiality; and
 - 4.5 sub-contractors, independent contractors, other representatives or agents, have each signed a separate undertaking in favour of the Disclosing Party with like obligations of confidentiality.
 - 4.6 The Receiving Party shall procure that its Staff observe and comply with these said confidentiality obligations, whether or not they continue to be employed or contracted by the Receiving Party.
 - 4.7 The Receiving Party shall initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure of the Confidential Information.
 - 4.8 The Receiving Party shall use the same standard of care (which shall not amount to less than a reasonable standard of care) in protecting the Confidential Information as it uses to protect its own confidential information.
 - 4.9 Should it be required to disclose Confidential Information pursuant to clause 1.3.6, the Receiving Party shall advise the Disclosing Party thereof prior to disclosure, if possible, and shall further, to the extent it is lawfully able to, take such steps to limit the extent of the disclosure
 - 4.10 and afford the Disclosing Party a reasonable opportunity to intervene in the proceedings and shall comply with the Disclosing Party's requests as to the manner and terms of any such disclosure.
 - 4.11 Upon termination or expiry of this Agreement, the Parties shall deliver to each other or, at the Disclosing Party's written election, the Receiving Party shall destroy all originals and copies (including partial copies) of the Disclosing Party's Confidential Information received by the Receiving Party or in its possession, and all notes (in any media or format) which it may have prepared or may have obtained as a result of the Confidential Information being made available to it. The Receiving Party shall certify its compliance with the aforesaid requirements by way of a written notice addressed by a director of the Receiving Party to the Disclosing Party.
 - 4.12 The Parties acknowledge and agree that for the purposes of section 37(1) and/or 64(1) (as the case may be) of the Promotion of Access to Information Act, 2000, the Confidential Information is information provided in confidence by the Disclosing Party.
 - 4.13 The Parties' respective obligations with respect to Confidential Information shall continue in perpetuity notwithstanding any termination of this Agreement, howsoever caused.

5. INTELLECTUAL PROPERTY

- 5.1** Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property owned by the other Party. All Intellectual Property owned by a Party and all modifications made by it to that Intellectual Property, shall at all times remain the sole property of that Party. Unless specifically authorised in this Agreement or in writing by Receiving Party and then only to the extent so authorised, Client shall have no right to use Receiving Party's Intellectual Property in any manner whatsoever.
- 5.2** Subject to clause 5, any Intellectual Property rights including those contained in material or documentation (in any media or format) which are prepared, created or authored by Receiving Party for Client (and whether or not by Receiving Party alone or by Receiving Party in conjunction with Client) in terms of this Agreement shall belong exclusively and in totality to Receiving Party and in this regard Client hereby irrevocably and in perpetuity cedes, assigns and makes over (with effect from inception in respect of future copyright, as the case may be) its entire world-wide right, title and interest in and to any such Intellectual Property rights to Receiving Party and, further, hereby waives in favour of Receiving Party the full and complete right to claim authorship of and all rights to object to any distortion, mutilation or other modification to any such Intellectual Property rights which would be prejudicial to its honour or reputation. Receiving Party shall be entitled by written notice to request Client, from time to time, to sign any deeds and documents and to take all such actions as may be necessary for Innervation to perfect its rights of ownership over any such Intellectual Property. Client hereby irrevocably appoints Receiving Party as its attorney *in rem suam* with the right on behalf of Client to sign all such deeds and documents and to take all such actions as may be necessary for Receiving Party to perfect its rights of ownership over such Intellectual Property should Client fail to comply with any such written request within 3 Business Days after date thereof.
- 5.3** Nothing contained in this Agreement shall restrict either Party from the use of any Residuals.
- 5.4** The Parties' respective obligations with respect to Intellectual Property shall continue in perpetuity notwithstanding any termination of this Agreement, howsoever caused.

6. NON-SOLICITATION

- 6.1** Each Party acknowledges that the other Party has invested substantial time and expense in recruiting, hiring, training and retaining its Staff.
- 6.2** Neither Party shall without the prior written consent of the other Party, for a period of 36 months from the Effective Date, solicit for employment, whether directly or indirectly, any person who at any time during the duration of this Agreement, was a member of the other Party's Staff and was directly involved with any activity relating to this Agreement.
- 6.3** Should any Party breach the provisions of this clause 6, that Party shall be liable to pay the other Party should it so elect, as a penalty, an amount equivalent to twice the then-current gross annual package on a 'total cost to company' basis (including incentives, bonuses, allowances and all employer contributions) to which such Staff member was entitled and/or which were made on behalf of or to the direct or indirect benefit of such Staff member during his/her employment immediately prior to termination thereof.

7. BREACH

Should either Party breach any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fail to remedy such breach within 7 days of receipt of notice requiring it to do so and warning that if the breach is not so remedied, the other Party may exercise its rights in terms of this clause, then the other Party shall be entitled without notice, in addition to any other remedy available to it at law or in terms of this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the other Party's right to claim Losses. If any aforementioned breach is not capable of being remedied, it shall be deemed to have been remedied (but without prejudice to the other Party's right to claim Losses) provided that the Party in breach has caused it to cease within the period aforesaid.

8. DOMICILIUM CITANDI ET EXECUTANDI

- 8.1 The Parties choose as their *domicilia citandi et executandi* for all purposes in terms of this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), their respective addresses described on the face page hereof.
- 8.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by fax.
- 8.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa, or its postal address or its fax number, provided that the change shall become effective on the 5th Business Day from the deemed receipt of the notice by the other Party.
- 8.4 A notice to a Party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered, shall be deemed to have been received on the 5th Business Day after posting (unless the contrary is proved).
- 8.5 A notice to a Party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi*, shall be deemed to have been received on the day of delivery.
- 8.6 A notice to a Party sent by fax to its chosen fax number, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

9. Notwithstanding the foregoing, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi RELATIONSHIP OF PARTIES

The Parties' relationship shall be governed by this Agreement. Nothing in this Agreement shall be deemed to constitute any Party the partner of the other nor constitute any Party the agent or legal representative of the other. It is not the Parties' intention to create nor shall this Agreement be construed to create any commercial or other partnership. Neither Party shall have any authority to act for or to assume any obligation or responsibility on behalf of the other Party nor hold itself out as a partner or agent of the other Party.

10. LANGUAGE

This Agreement has been concluded in the English language. In the case of any conflict between the English version of this Agreement and any translation version, the English version shall prevail. Notices required in terms of this Agreement shall be given in the English language.

11. GOVERNING LAW

- 11.1** Subject to clause 11.1, this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 11.2** To the extent that this Agreement is concluded outside of the Republic of South Africa, or, where a Party to this Agreement is domiciled in a country other than the Republic of South Africa, the Parties agree that this Agreement shall be governed by the substantive laws of the Republic of South Africa (and if the prescription laws of Republic of South Africa are not considered to be substantive laws thereof, by the prescription laws as well but excluding its conflict of law principles), provided that if the major part of the Agreement is to be performed outside the Republic of South Africa, no laws of the Republic of South Africa which promote competition in the Republic of South Africa shall govern. All disputes, actions and other matters relating to his Agreement shall be determined in accordance with such law.

12. SUBMISSION TO JURISDICTION

The Parties hereby irrevocably submit to the exclusive jurisdiction of the High Court of South Africa (Gauteng South Division) (or any successor to that court) in respect of all matters arising out of or in connection with this Agreement. Each Party appoints any person at the address chosen as its *domicilium citandi et executandi* to receive for and on its behalf, service of process in such jurisdiction in any legal action or proceedings with respect to this Agreement. The Parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. The Parties further irrevocably consent

to the service of process in any such action or proceeding as contemplated in the *domicilium* clause. Nothing herein shall affect the right to serve process in any other manner permitted by law.

13. ASSURANCE THAT THIS AGREEMENT IS BINDING

The Parties warrant to each other that they have taken or caused to be taken all steps, actions and corporate or executive proceedings necessary to cause this Agreement to be binding on themselves. Either Party shall, if requested by the other, furnish to it sufficient evidence of the authority of the person or persons who shall, on its behalf, take any action or execute any documents required or permitted to be taken or executed by such person in terms of this Agreement.

14. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement.

15. WHOLE AGREEMENT, NO AMENDMENT

15.1 This Agreement constitutes the whole agreement between the Parties relating to its subject matter and replaces, supersedes and cancels in its entirety, with effect from the Effective Date, any other agreements whatsoever (whether written or oral) in force between the Parties relating to the subject matter of this Agreement.

15.2 No amendment or consensual cancellation of this Agreement or any of its provisions or terms or of any agreement or other document or instrument issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising out of this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement or other document or instrument issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation).

15.3 Any extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document or instrument issued or executed pursuant to or in terms hereof, shall be strictly construed as relating strictly to the matter in respect whereof it was made or given, shall not operate as an estoppel against any Party in respect of its rights in terms of this Agreement, and, shall not operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

15.4 No failure or delay on the part of either Party in exercising any right, power or privilege in terms of this Agreement shall operate as a waiver thereof, nor shall 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.

16. EXECUTION IN COUNTERPARTS

16.1 This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.

16.2 Each Party hereto hereby waives any right which it may have to dispute the validity or enforceability of Agreement by virtue of its failure to either initial each page of this Agreement and/or have its signatory's signature verified by a witness.

17. LEGAL COSTS

Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement