

**EXECUTION VERSION**

**SERUM STANDARD TERMS AND CONDITIONS**

**applicable to and between**

**ENERGY SERUM GLOBAL PROPRIETARY LIMITED**

Registration Number: **2022/659269/07**

E-mail Address: **[info@drinkserum.com](mailto:info@drinkserum.com)**

**("the Company")**

**and**

**THE TOKEN HOLDER**

**Dated: 23 December 2022**

## SECTION A – PRELIMINARY

- A. Please read the terms and conditions contained herein (“**Terms and Conditions**”) carefully.
- B. These Terms and Conditions shall govern the relationship between the Token Holder and the Company and set out the rights of the Token Holder in respect of the Company, the Brand and the Council.
- C. Accordingly, the Token Holder’s –
- i) transfer, sale and disposal of Tokens;
  - ii) participation in the Brand;
  - iii) use of the Platform; and
  - iv) use and enjoyment of any services offered by the Company and all matters ancillary thereto;

shall be subject to these Terms and Conditions and, by acquiring a Token and/or by otherwise making use of the Platform and/or any other services of the Company, the Token Holder agrees and undertakes to be bound by these terms and conditions.

- D. You agree and acknowledge that you will not use the Tokens, the platforms and/or the services in respect of the Company, the Tokens and the Brand –
- i) in a manner that violates any Applicable Law or regulation;
  - ii) to fund terrorism or other criminal activity;
  - iii) to circumvent any export restrictions or economic sanctions; and/or
  - iv) to engage in unlawful money transfers, currency exchanges, or money laundering; and

the Token Holder undertakes that it shall not use the Tokens, the platforms and/or the services of the Company if it is restricted or prohibited by any Applicable Law and/or regulation from doing so.

- E. **It is specifically recorded that the Company shall (in its sole and absolute discretion) be entitled to change, update, amend and/or replace these Terms and Conditions from time to time. Any changes, updates, amendments and/or replacements of these Terms and Conditions shall be published on the Serum Website. It is the Token Holder’s responsibility to regularly visit the Serum Website and view the Terms and Conditions**

**applicable as at the time and date in question. Should the Token Holder not accept the new Terms and Conditions applicable as at the time and date in question, then the Token Holder shall immediately cease its use of any and all products and/or services offered by the Company. Any continued use of the products and services offered by the Company (in particular, the use of the Tokens, the Platform and the Serum Website) shall constitute deemed acceptance of the Terms and Conditions applicable as at the time and date in question.**

- F.** Notwithstanding anything herein to the contrary, should the Company, for any reason whatsoever, be restricted by Applicable Law from (i) issuing Tokens and/or repurchasing Tokens via the Liquidity Pool in accordance with clause 6 below and/or (ii) allowing the Token Holder to use and/or enjoy the benefit of a Token (including, in particular, the use of any of the services offered by the Company and/or its service providers), then the Company shall do whatever may be necessary in order to comply with such Applicable Law. The Token Holder waives any claim which it may have against the Company for any loss and/or damage which it may suffer arising from such termination of service and/or other restriction which the Company may, in its sole discretion, deem necessary to comply with such Applicable Law.

## **SECTION B – STANDARD TERMS AND CONDITIONS OF USE**

<b>TABLE OF CONTENTS</b>
--------------------------

<b>1. INTERPRETATION AND DEFINITIONS</b>	<b>5</b>
<b>2. TOKENS</b>	<b>8</b>
<b>3. THE BRAND</b>	<b>9</b>
<b>4. POWERS OF THE COMPANY</b>	<b>10</b>
<b>5. TRANSPARENCY, MEETINGS AND PROPOSALS</b>	<b>11</b>
<b>6. LIQUIDITY POOL AND TRADE OF TOKENS</b>	<b>12</b>
<b>7. WARRANTIES</b>	<b>13</b>
<b>8. LIMITATION OF LIABILITY AND INDEMNITY</b>	<b>14</b>
<b>9. FORCE MAJEURE</b>	<b>15</b>
<b>10. CONFIDENTIALITY</b>	<b>15</b>
<b>11. BREACH AND TERMINATION</b>	<b>16</b>
<b>12. LAW AND JURISDICTION</b>	<b>16</b>
<b>13. ASSIGNMENT</b>	<b>17</b>
<b>14. MISCELLANEOUS</b>	<b>17</b>
<b>ANNEXURE A – COUNCIL MEMBER UNDERTAKING</b>	<b>18</b>

## 1. INTERPRETATION AND DEFINITIONS

- 1.1 The headings of the clauses hereof are for the purpose of convenience and reference only and shall not be used in the interpretation hereof (or any clause hereof). Unless a contrary intention clearly appears, words importing:
- 1.1.1 any one gender includes the other genders;
  - 1.1.2 the singular includes the plural and *vice versa*; and
  - 1.1.3 natural persons include juristic persons and *vice versa*.
- 1.2 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting and/or preparation thereof shall not apply to this Agreement.
- 1.3 In this Agreement, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.3.1 “**Agreement**” means the Terms and Conditions contained herein, including all annexures hereto;
  - 1.3.2 “**Applicable Law**” means any law or regulation (including statutory, common or customary law), statute, constitution, decree, treaty, judgement, directive, by-law, order, other legislative measure, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally complied with by the person to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court;
  - 1.3.3 “**Brand**” means the Serum brand name, logo, design and all other Intellectual Property associated therewith;
  - 1.3.4 “**business day**” means a day which is not a Saturday, Sunday or official public holiday in South Africa;
  - 1.3.5 “**Company**” has the meaning given thereto on the front page of this Agreement;
  - 1.3.6 “**Confidential Information**” means Personal Information and all other information of and relating to any of the Parties that is reasonably regarded as confidential, being information not in the public domain, 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 possession, custody, control or knowledge of a Party or its agents, including, but without being limited to, Intellectual Property and all

inventions, technical data, research and development information, records, information and notes, products, product blueprints, software, 3D and 2D artwork, research and development capacity and processes, manufacturing capacity and processes and other business processes, business value propositions, know-how, trade secrets, designs, specifications, processes and formulae, recipes, planning procedures, techniques or information, marketing plans, strategies and forecasts, product development plans, financial statements, budgets, prices, costs and financial projections, accounting procedures or financial information, names and details of consumers, clients, potential clients and agents, employee details, and like information;

- 1.3.7 “**Controlled Entity**” means any entity in which the person in question can, as at the date in question, fully control the decision-making of such entity;
- 1.3.8 “**Council**” means the Serum DAB Council governing the Token Holders’ participation in Token Matters and all matters ancillary thereto, having the powers and responsibilities as set out in clause 5.1 below;
- 1.3.9 “**Council Member**” means a member of the Council, appointed in accordance with clause 5.1 below;
- 1.3.10 “**Discourse**” means the online, open-source, software that allows for long-form discussions on which Token Holders can engage;
- 1.3.11 “**Ether**” means the native cryptocurrency of the Ethereum blockchain;
- 1.3.12 “**fiat currency**” means a type of currency that is declared legal tender by a government but has no intrinsic or fixed value and is not backed by any tangible asset, such as gold or silver;
- 1.3.13 “**Intellectual Property**” means patents, inventions, trademarks, service marks, registered designs, applications for any of the foregoing, copyright (including computer programs), designs, know-how, Confidential Information, trade and business names, domain names and any other intellectual property (whether registered or unregistered);
- 1.3.14 “**Liquidity Pool**” means a pool of tokens secured under a Smart Contract that provides for ease of token exchange on decentralised exchanges;
- 1.3.15 “**Meeting**” means has the meaning given thereto in clause 5.2.3 below;
- 1.3.16 “**Parties**” means, collectively, the Token Holder and the Company and “**Party**” shall refer to either one of them, as the context requires;

- 1.3.17        **“Personal Information”** shall mean personal information as defined in POPIA and includes, but is not limited to, -
- 1.3.16.1.        information relating to the race, gender, sex, pregnancy, marital status, national or ethnic origin, colour, sexual orientation, age, physical or mental health, disability, religion, conscience, belief, culture, language and birth of a person;
- 1.3.16.2.        information relating to the education or the medical, financial, criminal or employment history of a person;
- 1.3.16.3.        any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to a person;
- 1.3.16.4.        the biometric information of a person;
- 1.3.16.5.        the personal opinions, views or preferences of a person;
- 1.3.16.6.        correspondence sent by a person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 1.3.16.7.        the views or opinions of another individual about the person whether the information is recorded electronically or otherwise; and
- 1.3.16.8.        the name of a person, if it appears with other personal information relating to such person, or if the disclosure of the name itself would reveal information about such person;
- 1.3.18        **“Platform”** means the communication platform(s) used by the Council for communicating with Token Holders and/or the public;
- 1.3.19        **“POPIA”** means the Protection of Personal Information Act No. 4 of 2013;
- 1.3.20        **“Proposal”** has the meaning given thereto in clause 5.2.2 below;
- 1.3.21        **“Rand”** means South African Rand, the lawful currency of South Africa;
- 1.3.22        **“Services”** means any services offered by the Company for use of the Tokens and/or participation in the Brand, including (but not limited to) the Website, the Platform, Discourse, the Smart Contract in respect of the Liquidity Pool and Uniswap;
- 1.3.23        **“Smart Contract”** means a protocol written in computer code that executes pre-determined commands to carry out specified functions;
- 1.3.24        **“South Africa”** means the Republic of South Africa;

- 1.3.25 “**Token**” means the cryptographically-secured ERC20 utility token on the Ethereum blockchain network created and offered by the Company;
- 1.3.26 “**Token Holder**” means the holder of a Token, whether as the owner thereof or otherwise;
- 1.3.27 “**Token Matter**” has the meaning given thereto in clause 3.3 below;
- 1.3.28 “**Uniswap**” means the decentralised protocol, known as “Uniswap”, that enables users to trade Ethereum tokens on the Ethereum blockchain;
- 1.3.29 “**Wallet**” means a cryptocurrency wallet, used to store the public and/or private keys for cryptocurrency transactions; and
- 1.3.30 “**Year**” means a period commencing on 1 March and ending on the last day of February each calendar year.

## 2. TOKENS

- 2.1 Tokens shall constitute ‘utility tokens’ (and not ‘security tokens’) and, as stated in clause 4 below, -
- 2.1.1 they do not grant the Token Holder any right of ownership of the assets of the Company;
- 2.1.2 they do not grant the Token Holder any right of participation in the Company and/or any right of control in respect of the Company and its decision-making; and
- 2.1.3 apart from the indirect control over the Brand (as contemplated in clause 2.2 below), they do not grant the Token Holder any right of control over the assets of the Company.
- 2.2 Token Holders shall, by virtue of holding Token(s), be entitled to –
- 2.2.1 exercise indirect (but limited) control over the Brand, as contemplated in clause 3 below;
- 2.2.2 vote on any Proposals presented to the Token Holders by the Council, as contemplated in clause 5 below;
- 2.2.3 attend, observe and participate in meetings of the Token Holders;
- 2.2.4 vote on the appointment of Council Members from time to time; and
- 2.2.5 attend and (where applicable) participate in any events and functions planned and hosted by the Council from time to time.



- 2.3 It is recorded that all of the Tokens that the Company is authorised to issue are already in issue. The Company undertakes that it shall not increase the number of Tokens available to the public.
- 2.4 Tokens shall, unless otherwise stated in this Agreement, be available for purchase through Uniswap from time to time. The Parties record and agree that, in addition to any provision of this Agreement governing such matters, Uniswap's terms and conditions in respect of the acquisition and/or transfer of Tokens ("**Uniswap Terms**") shall govern the acquisition and/or transfer of Tokens from time to time. The Token Holder undertakes that it shall familiarise itself with the Uniswap Terms and with any amendments thereto from time to time prior to making use of Uniswap and its services.
- 2.5 Whilst it is not the intention of the Company that Tokens be held and acquired for the primary purpose of selling such Tokens for a profit at a later stage, Token Holders shall, subject to any provision of this Agreement to the contrary, be free to do so.
- 2.6 It is specifically recorded that the Token Holder (and not the Company) shall be responsible for ensuring the safety and security of Token(s) purchased by it from time to time. The Company shall bear no responsibility and/or liability for any loss of, access to and/or missing Tokens, howsoever arising, and the Token Holder hereby undertakes to hold the Company harmless in relation to any such circumstances arising.
- 2.7 All Token purchases are final, and there shall be no refunds or cancellations of such transactions, except as may be required by applicable law or regulation or unless expressly agreed upon by the Company in writing

### **3. THE BRAND**

- 3.1 Notwithstanding that ownership of the Brand vests in the Company, the Brand is a 'decentralised' brand insofar as decision-making in respect of Token Matters vests in the Token Holders, through the submission by the Token Holders of Proposals and the approval or rejection of such Proposals (as the case may be) by the Token Holders in accordance with clause 5 below.
- 3.2 It is intended that the Brand become synonymous with excellence, quality and style through a collaborative effort between the Company and the Token Holders. As such, the Token Holders' participation in Token Matters is key to the success of the Brand.
- 3.3 Each of the following matters regarding the use, promotion and development of the Brand shall constitute a "**Token Matter**" and shall be governed by the Council via the implementation of Proposals voted on by the Token Holders:
- 3.3.1 the election of Council Members in accordance with clause 5.1 below;

- 3.3.2** any designs to be attached and/or drawn on products to be produced by the Company under the Brand;
- 3.3.3** general matters relating to any events proposed to be held by the Company in respect of the Brand, including (where applicable) the guest speakers and/or performers to be appointed to perform at such events and the location of any such events, provided that the Company shall be entitled to determine the possible guest speakers and/or performers and the locations on which the Token Holders may vote by compiling a list thereof and submitting such to the Token Holders; and
- 3.3.4** any business endeavours for the Company to enter into in respect of the Brand which a Token Holder may suggest by way of a Proposal, provided that the Company, in its sole and absolute discretion, deems such suggestion to be appropriate and feasible and which the Company is prepared to undertake.

#### **4. POWERS OF THE COMPANY**

- 4.1** It is specifically recorded that, save in respect of Token Matters, the Company shall enjoy full and unconditional control over its assets and its business operations and, save in respect of Token Matters, the Company shall not require any approvals from the Council or the Token Holders to make any decision regarding the Company and/or its business operations.
- 4.2** The Company shall be entitled to deal with its equity, its assets and its liabilities as the Company and its shareholders deem fit. Neither the Token Holders nor the Council shall have any rights in respect of the Company other than in respect of Token Matters. Thus, for the avoidance of doubt, the Company shall (*inter alia*) be free to –
- 4.2.1** sell and/or otherwise dispose of any of its assets (including the Brand and/or any products associated therewith);
- 4.2.2** purchase and/or otherwise acquire new assets;
- 4.2.3** obtain funding from financial institutions and/or otherwise incur liabilities of any nature whatsoever;
- 4.2.4** issue and/or repurchase any of its securities and/or create new classes of securities;
- 4.2.5** give effect to the transfer of any securities disposed of by a shareholder of the Company;
- 4.2.6** subject to clause 6 below, use all funds held by the Company for such purposes as the Company may, in its sole and absolute discretion, decide;
- 4.2.7** change its business activities and/or cease to conduct any or all of its business activities; and

4.2.8 place the Company in business rescue and/or procure the winding up of the Company.

## **5. TRANSPARENCY, MEETINGS AND PROPOSALS**

### **5.1 *The Council***

5.1.1 The Council is established for the benefit of the Token Holders to consider the opinions and comments of the Token Holders in respect of Token Matters.

5.1.2 The Company shall give effect to decisions of the Council in respect of Token Matters and any approved Proposals, as the Council may instruct from time to time.

5.1.3 The Council shall consist of no less than 3 (three) and no more than 5 (five) Council Members.

5.1.4 It is specifically recorded that the Company shall, at all times, be entitled to elect 1 (one) person for appointment (and removal, should the Company so elect) to the Council.

5.1.5 Council Members shall serve on the Council for a period of 1 (one) Year. On or before the expiry of the Year in question, the Council shall hold a Meeting to appoint the Council Members for the next Year.

5.1.6 Council Members shall be elected by the Token Holders Present at the Meeting.

5.1.7 In any election of Council Members –

5.1.7.1. the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single position on the Council, with the series of votes continuing until all vacancies on the Council have been filled; and

5.1.7.2. a person shall only be elected if a majority of the votes exercised on the matter are in support of the appointment of the candidate in question.

5.1.8 A person shall be eligible for election to the Council only if –

5.1.8.1. such person is, directly or indirectly through a Controlled Entity, a Token Holder; and

5.1.8.2. the service of such person on the Council will not give rise to a breach of any Applicable Law.

5.1.9 Any person elected to serve on the Council shall sign an undertaking, substantially similar to the undertaking annexed hereto as **Annexure A**, in terms whereof he/she, inter alia, undertakes to serve on the Council with utmost good faith to the benefit of the Token Holders.

5.1.10 Unless a vote in favour of compensation for the Council Members is passed by the Token Holders at a Meeting and the Company has (in its sole discretion) given its approval thereof, Council Members shall not be entitled to compensation for their services as Council Members. For the avoidance of doubt, where a Council Member provides goods and/or services to the Company in respect of the Brand outside of its services as a Council Member, such Council Member shall be entitled to compensation in accordance with the terms of such provision of goods and/or services as agreed to between the Company and such Council Member.

5.1.11 Council Members shall convene on a regular basis (at least once a month) to discuss Token Matters.

## 5.2 *Meetings with the Token Holders*

5.2.1 The Company undertakes (and shall use its best endeavours to procure that the Council does so as well), in good faith, to hold free and open discussions with the Token Holders in respect of Token Matters and to consider the input given by the Token Holders from time to time.

5.2.2 Whenever a Token Holder wishes to make a suggestion to the Council in respect of a Token Matter, it shall submit a proposal ("**Proposal**") in writing. The Proposal process shall be as stated on the Serum website from time to time (see [www.drinkserum.com/dab](http://www.drinkserum.com/dab)).

5.2.3 Meetings with the Token Holders for the purposes of, *inter alia*, voting on Proposals ("**Meetings**") shall be held and conducted in accordance with the meeting and voting processes set out on the Serum website from time to time (see [www.drinkserum.com/dab](http://www.drinkserum.com/dab)).

## 5.3 *Transparency*

The Council shall from time to time provide details of any material decisions of the Council and/or the Company (insofar as it relates directly to Token Matters) on the communication platforms generally used for communication with the Token Holders.

# 6. **LIQUIDITY POOL AND TRADE OF TOKENS**

6.1 A Wallet ("**Liquidity Pool**") has been established in order to secure sufficient Ether and Tokens to facilitate the issue and repurchase of Tokens.

6.2 It is specifically recorded that the Liquidity Pool shall be governed by a Smart Contract. As such, control of the Liquidity Pool shall not vest in the Company and all payments (and

receipt of payments) and the transfer and issuance of Tokens shall be executed in accordance with the rules of the Smart Contract.

- 6.3 A Token Holder shall acquire Tokens by purchasing such Tokens from the Company through the Liquidity Pool and a Token holder shall dispose of Tokens by electing that the Company repurchase such Tokens from the Token Holder. Such transactions shall be effected in accordance with clause 6.2 above.
- 6.4 Ether shall be the only acceptable currency for the purchase of Tokens from the Company and the repurchase thereof by the Company.
- 6.5 The sales value of a Token shall be calculated as the amount of Ether in the Liquidity Pool, divided by the number of Tokens in issue.
- 6.6 On every purchase and sale of a Token by the Company, 5% (five percent) of the sales value of the Token, as determined in accordance with clause 6.5 above, shall (unless the Company elects that a different percentage apply, provided that such percentage shall not be more than 10% (ten percent)) be retained by the Company and transferred to the Company's Wallet (or to such other account as the Company, in its sole discretion, may elect) and the remaining portion thereof (less any withholding taxes and/or any other amounts which the Company may, under Applicable Law, be required to withhold) shall be transferred (in Ether) to the selling Token Holder in question into such Wallet as specified by such Token Holder.

## **7. WARRANTIES**

- 7.1 The Token Holder hereby represents and warrants in favour of the Company that –
  - 7.1.1 (in the case of a natural person) he/she is 18 (eighteen) years of age or older; and
  - 7.1.2 the obligations expressed to be assumed by the Token Holder in terms of this Agreement are and shall be legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof and will not conflict with any Applicable Law binding on it and/or its assets.
- 7.2 Each warranty shall (to the extent applicable) remain in force, notwithstanding the sale by the Token Holder of all (or any) of its Tokens.
- 7.3 Each of the warranties shall be construed and be enforceable as a separate and severable warranty from the remaining warranties and no warranty will limit or otherwise adversely affect any other warranty.

- 7.4 All the warranties provided by the Token Holder in terms of this Agreement are deemed to be material.
- 7.5 Insofar as any warranty is promissory or relates to a future event, it shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be.

## 8. LIMITATION OF LIABILITY AND INDEMNITY

- 8.1 Use of the Services (or any of them), the purchase and/or disposal of Tokens and the participation in Token Matters, in any manner whatsoever, is entirely at the Token Holder's own risk and the Token Holder assumes full responsibility for any loss, damage and/or harm which may arise from the Token Holder's aforementioned activities, including, without limitation, any loss arising from –
- 8.1.1 the Token Holder's Wallet being hacked and/or its cryptocurrencies otherwise being lost;
  - 8.1.2 a sale and/or purchase of Token(s) failing or being delayed for whatsoever reason;
  - 8.1.3 its computer and/or programs being infected with viruses and/or otherwise being damaged; and/or
  - 8.1.4 its Personal Information being stolen and/or used without authorisation.
- 8.2 It is specifically recorded that the views expressed by other Token Holders on the Website, Discourse and/or any other communication platform which may be used by Token Holders are not necessarily the views of the Company. Save for any warranty expressly given by the Company in writing, the Company gives no warranty in respect of the Brand, its value and/or profitability and/or any other matter which may entice the Token Holder to acquire (or dispose of, as the case may be) a Token and/or participate in the Brand.
- 8.3 Save in respect of a loss caused by the gross negligence and/or wilful misconduct of the Company and/or one of its employees, consultants and/or agents ("**Associates**"), neither the Company nor its Associates shall take any responsibility for any loss arising from errors in and/or problems with the Services, the Liquidity Pool, the Serum Funds and/or any other technology used in pursuance of the objectives contemplated in this Agreement, including a lack of access thereto.
- 8.4 Whilst the Company undertakes to use its reasonable endeavours to protect any Personal Information of the Token Holder which may come into the Company's possession, the Company shall not, provided that it has complied with all Applicable Laws in respect of the protection of Personal Information (in particular, POPIA), accept any responsibility or liability

for any unauthorised and/or unlawful disclosure of any of the Token Holder's Personal Information, howsoever arising.

- 8.5 The Token Holder hereby indemnifies the Company and its Associates and undertakes to hold them harmless against any claim which may be brought against them (or any of them) as a result of the Token Holder's use of the Services (or any of them), the purchase of sale of a Token and/or its participation in the Brand in any matter whatsoever, as contemplated herein and/or as a result of any matter for which the Company is indemnified under this clause 8.

## **9. FORCE MAJEURE**

In the event that the Company is prevented from carrying out any term of this Agreement as a result of any circumstance beyond its reasonable control including, without limiting the generality of the foregoing, acts of God, strikes or other labour unrest (including stay-aways), fire, riot, war, civil commotion, accident, embargoes, sanctions, boycotts, import-control, international restrictions, and/or natural disasters ( each a "**force majeure event**"), the Company shall be excused from performing or timeously performing the obligations affected by that force majeure event for the duration that such force majeure event persists.

## **10. CONFIDENTIALITY**

- 10.1 Each Party undertakes that it will use the same means as it uses to protect its own Confidential Information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of the disclosing Party's Confidential information. No such information will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the disclosing Party.
- 10.2 The foregoing provision shall not apply to information which is –
- 11.2.1. publicly known or becomes publicly known through no unauthorised act of the recipient Party;
  - 11.2.2. rightfully received by the recipient Party from a third party;
  - 11.2.3. independently developed by the recipient Party without use of the disclosing Party's information;
  - 11.2.4. disclosed by the disclosing Party to a third party without similar restrictions;
  - 11.2.5. required to be disclosed pursuant to a requirement of a governmental agency, registered securities exchange or any Applicable Law, so long as the Party required to release the information provides the disclosing Party with prior notice of such disclosure; and/or

- 11.2.6. publicly disclosed with the disclosing Party's prior written consent.
- 10.3 The Company specifically undertakes that it shall keep confidential any Personal Information which it may collect from the Token Holder from time to time in accordance with the provisions of POPIA and/or any other Applicable Law.

## **11. BREACH AND TERMINATION**

- 11.1 If the Token Holder breaches any provision of this Agreement and remains in breach for 14 (fourteen) days after written notice to the Token Holder by the Company, requiring the Token Holder to rectify that breach, then, in addition to any other remedies to which the Company may be entitled under Applicable Law (including any right to claim damages), the Company, by written notice to the Token Holder, shall be entitled to –
- 11.1.1 demand specific performance by the Token Holder of any and all obligations owing to the Company under this Agreement;
- 11.1.2 repurchase from the Token Holder any and/or all of its Tokens at nominal value; and/or
- 11.1.3 refuse the transfer of any further Tokens to the Token Holder.
- 11.2 the Company shall be entitled to claim from the Token Holder all costs incurred by the Company in the enforcement of its rights under this Agreement on the scale as between attorney and own client and shall include collection charges, the costs incurred by the Company in enforcing its rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of the Company in relation to its rights in terms of or arising from this Agreement.

## **12. LAW AND JURISDICTION**

- 12.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.
- 12.2 The Parties agree that the courts of South Africa shall, subject to clause 13.4 below, have exclusive jurisdiction in respect of any action or proceedings arising out of or in connection with this Agreement.
- 12.3 Save for any provision of this Agreement which provides for its own method of dispute resolution, the Parties submit to the exclusive jurisdiction of the Western Cape High Court (Cape Town) in respect of any dispute which may arise out of this Agreement.
- 12.4 Notwithstanding clauses 13.2 and 13.3 above, should the Company, in its sole and absolute discretion, deem it necessary or more appropriate to bring a claim in a court outside South Africa in order for a claim against the Token Holder to be effectively enforced, then the



Company shall be entitled to elect, in writing, to institute action against the Token Holder in such appropriate court outside South Africa.

### **13. ASSIGNMENT**

The Token Holder shall not be entitled to cede and/or assign any of its rights and/or obligations under this Agreement, in whole or in part, to any third party without the prior written consent of the Company.

### **14. MISCELLANEOUS**

- 14.1 Notwithstanding any express or implied provision of this Agreement the contrary, no latitude, extension of time or other indulgence which may be given or allowed by a Party ("**Grantor**") to the other in respect of such other Party's obligations hereunder, shall, under any circumstances, be deemed to be a waiver by the Grantor of its rights to require strict and punctual compliance with each and every provision or term hereof.
- 14.2 Subject to the Company's entitlement to amend, update and/or replace this Agreement in accordance with clause E of **Section A** above, no alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by both Parties.
- 14.3 The Token Holder's use and/or acquisition of a Token, its use of any of the Services and/or its participation in the Brand in any other manner whatsoever, shall constitute deemed acceptance of the provisions of this Agreement and the express acceptance of the provisions of this Agreement by the Token Holder shall not be required to impose valid obligations on the Token Holder.
- 14.4 Each provision in this Agreement is severable, the one from the other, and, if, at any time, any provision is or becomes or is found to be illegal, invalid, non-conforming or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.
-

## ANNEXURE A – COUNCIL MEMBER UNDERTAKING

To: The Serum DAB Council

By e-mail: [info@drinkserum.com](mailto:info@drinkserum.com)

### COUNCIL MEMBER UNDERTAKING

1. I, ....., confirm that I wish to serve on the Serum DAB Council (**"the Council"**).
2. I confirm that I am a Token Holder (personally and/or through a Controlled Entity), as defined in the terms and conditions of Energy Serum Global (Pty) Ltd (**"the Company"**) (**"the Terms and Conditions"**).
3. I hereby undertake that, should I be elected to serve on the Council, I shall –
  - 3.1. at all times adhere to the Terms and Conditions to the extent that such Terms and Conditions relate to my service as a Council Member;
  - 3.2. serve the Token Holders and the Company as a Council Member in good faith and to the best of my abilities;
  - 3.3. not do (or cause to be done) anything which may bring the Brand and/or the Company into disrepute; and
  - 3.4. upon the period of my term of service on the Council coming to an end (for any reason whatsoever), immediately (i) return to the Company all confidential information and/or other information held by me for the purpose of serving on the Council, (ii) cease to hold myself out as a Council Member and (iii) do all such things as may be necessary to effect my removal as a Council Member.

Sincerely

.....

---

Date:

Place: