



INDEPENDENT STATE OF PAPUA NEW GUINEA
OFFICE OF THE STATE SOLICITOR
(COMMERCIAL LAW DIVISION)

TELEPHONE: (675) 301 2882
FACSIMILE: (675) 301 2965
EMAIL: statesol@justice.gov.pg

P. O. BOX 591, WAIGANI
National Capital District
PAPUA NEW GUINEA

Your reference: N/A
Our reference: AGSS 355/2023
Action officer: C Miana

LEGAL-IN-CONFIDENCE

25 July 2023

Steven Matainaho
Secretary
Department of Information and Communication Technology
P. O. Box 85
VISION CITY
National Capital District

Dear Secretary Matainaho,

SUBJECT: PROPOSED MUTUAL NON-DISCLOSURE AGREEMENT WITH SCYTÁLES AB.

1. I refer to your letter and its enclosure dated 4 June 2023 requesting the review and legal clearance of the above captioned Agreement, and to subsequent communication with your Principal Legal Counsel, Mr Oala Moi.

Proposed Agreement

2. The proposed Mutual Non-Disclosure Agreement (the **proposed Agreement**) as initially provided through your letter above was intended to be between Niugini Foundation Inc. (an American entity); **Scytáles AB** (a Swedish entity); and the Independent State of Papua New Guinea (the **State**), represented by the Department of Information and Communication Technology (DICT). However, as advised by Mr Moi, the proposed Agreement will now be between only Scytáles AB and the State, leaving out Niugini Foundation Inc.
3. The purpose of the proposed Agreement is to protect trade-sensitive information that may be disclosed by the parties in the course of exploring Scytáles AB's Digital Identity Wallet and Services, which is in line with DICT's plans to implement a digital identification block as part of the State's National Technology Stack.

Review and Clearance of the Proposed Agreement

4. Having reviewed the draft of the proposed Agreement, I have set out a summary of the outcomes of my review below.

COMMERCIAL LAW

Loans, Grants and Donor Funding
Investment Projects
Forestry & Agro-Industry
Commercial Law
Commercial Contracts
General Commercial Advising

COMMON LAW

Administrative Law
Constitutional Law
Land Law
Property Conveyance
Employment Law
General Legal Advising

INTERNATIONAL

Conventions
Human Rights
Fisheries
Intellectual Property
International Trade,
Environment & Security

PROCUREMENT LAW

Procurement Contract
Procurement Advising
Procurement Arbitration
Public Private Partnership

MINING & PETROLEUM LAW

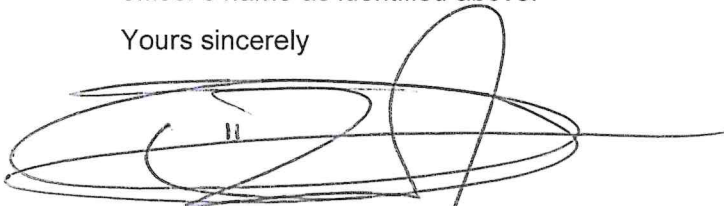
Mining & Petroleum Laws
Mining & Petroleum Contracts
Mining & Petroleum Advising

5. I noted the tracked comments made on the draft requesting my views on the following clauses: 6 (**Remedies**), 10 (**Severability**), 11 (**Governing Law and Dispute Resolution**), 16 (**Term and Termination**) and 17 (**Compliance with Export Controls, Trade Sanctions and Anti-Bribery Regulations**). Apart from Clause 11, I consider the provisions to be sufficient.
6. In relation to Clause 11, I have given some consideration to instances where DICT may have to disclose information, the confidentiality of which is protected under Section 51 of the *Constitution*. I am of the view that to the extent that it concerns the disclosure of information by the State, the laws of Papua New Guinea should apply. I have therefore supplied text in Clause 11 of the proposed Agreement to that effect. This is indicated as blue text in the enclosed document.
7. I have also made edits to the preliminary part of the proposed Agreement to either amend the text or insert further details. The edits relate to the Effective Date and additional details, in particular, details relating to the Parties' physical place of business and Scytáles AB's incorporation as an entity in its respective jurisdiction, as supplied by Mr Moi. The amended preliminary part of the proposed Agreement also reflects the advice on the removal of Niugini Foundation Inc. as a party.
8. Furthermore, I note the changes I have made to Clause 5. The first is the removal of the first sentence of Clause 5 of the initial draft as the sentence appeared to make "required disclosure" by the Recipient a breach of the proposed Agreement. I am of the view that "required disclosure" should not amount to a breach of the Agreement and hence the Clause should only provide for measures to remedy instances where the Recipient of the confidential information is required to disclose the confidential information. The second change done to Clause 5 is the inclusion of the phrase "by any endorsed governmental policy". The intention behind including this phrase is to cover the situation where an endorsed policy requires the furnishing of confidential information to government for its consideration and deliberation, if need be.
9. Subject to the changes alluded to under paragraphs 6, 7 and 8 above, I consider the proposed Agreement to be substantially in order. I hereby grant legal clearance of the proposed Agreement as per the text in the document enclosed herewith.
10. Note, the legal clearance granted herein only stands insofar as the parties accept and hence settle on the text of the proposed Agreement, as per the enclosed document. Should parties propose any other amendments to the enclosed document, further legal clearance will need to be obtained.

Contact Details

12. Please feel free to call the action officer via email Carolyn.Miana@justice.gov.pg or my Deputy, Commercial Law Division, Mr Fredrick Tamarua, on Fredrick.Tamarua@justice.gov.pg, if you have any questions or require any further information in relation to this letter.
13. In any further correspondence with this office please include the file reference and the action officer's name as identified above.

Yours sincerely



DANIEL ROLPAGAREA
State Solicitor

Enclosed.

This letter is confidential and subject to legal professional privilege. Unauthorized disclosure of the existence or content of this letter is strictly prohibited.

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (hereinafter referred to as "the Agreement"), effective as of [INSERT DATE] 2023 (hereinafter referred to as "Effective Date"), is by and between Scytåles AB (a Swedish company) , [Registration No. 556999-7769, Polygonvägen 53, 187 66, TÄBY, Sweden](#) (hereinafter referred to as "Scytåles"), and the Independent State of Papua New Guinea, as represented by the Department of Information and Communications Technology (a public service department of Papua New Guinea), [Level 1, Tisa Ruma, Allotment 03 Section 427, Hohola \(Islander Drive\), Port Moresby City, P.O. Box 784 VISION CITY – WAIGANI 131, National Capital District, Papua New Guinea](#) (hereinafter referred to as "the State") (hereinafter referred to individually as a "Party" and collectively as "the Parties").

Scytåles, Niugini, and the State may disclose certain Confidential Information (as defined below) to another Party or Parties to this Agreement in connection with exploring a potential business cooperation to provide a "Digital Identity Wallet and Services" to Papua New Guinea (hereinafter referred to as the "Purpose"). Each Party disclosing Confidential Information is a "Discloser" and each Party receiving Confidential Information is a "Recipient". The Parties therefore agree as follows:

1. Definition of Confidential Information. "Confidential Information" means any proprietary, confidential and/or trade secret information of Discloser and/or others possessed by Discloser which may include, without limitation, Discloser's products, services, technology, methodologies, specifications, manufacturing or operating methods, know-how, business, marketing, development, sales or other commercial strategies, business relationships, organizational structure and internal practices, any third-party confidential information included with, or incorporated in any information provided by the Discloser to the Recipient, and any information which, given the totality of the circumstances, a reasonable recipient would have reason to believe is proprietary, confidential, or competitively sensitive related to the Purpose. Confidential Information may be disclosed either in documentary form (including without limitation traditional tangible media such as written documents, photographs and drawings, and intangible media such as optical or electronic data), or orally or visually or in other non-documentary form (including without limitation presentations, displays or inspections of writings, designs, drawings, photographs, models, prototypes, samples, or facilities). Without limitation, all samples, software, hardware, components, financial proposals or demonstration systems provided to Recipient will be considered Confidential Information.

2. Exclusions. Confidential Information will not include information that: (a) was in the public domain when disclosed; (b) becomes public domain after disclosure, other than as a result of Recipient's violation of this Agreement; (c) was in Recipient's possession when disclosed and was not acquired directly or indirectly from Discloser; (d) is shown by written evidence to have been developed by Recipient independently after disclosure without benefit of the Confidential Information; or (e) was received after disclosure from a third-party who did not require it to be held in confidence and who did not acquire it directly or indirectly from Discloser.

3. Non-Disclosure Obligations. Recipient: (a) will not disclose Confidential Information except to those of its employees, agents, representatives, and/or subcontractors who are required to know such information, and then only to the extent necessary to achieve the Purpose and only to such persons legally bound by written agreement or otherwise to comply with confidentiality and restriction of use obligations consistent with Recipient's obligations under this Agreement; (b) will not use Confidential Information except for the Purpose; (c) will use at least the same degree of care to safeguard Confidential Information that it uses to protect its own confidential and proprietary information, and in any event not less than a reasonable degree of care under the circumstances; and (d) will make copies of materials embodying Confidential Information only as needed for such purpose, all of which will include any existing markings indicating that they are

Confidential Information of Discloser, or will have markings supplied by Discloser.

4. Return or Destruction. Upon termination of this agreement or upon Discloser's request, Recipient will promptly return or destroy all materials embodying the Confidential Information of the Discloser. If requested, Recipient will provide Discloser with a written certification stating that such Confidential Information has been returned or destroyed.

5. Required Disclosure. In the event that Recipient or its directors, officers, agents, representatives or employees are requested or required by legal process, by order of any court of competent jurisdiction, by any governmental agency, by any applicable law, rule or regulation, [by any endorsed governmental policy](#), or by any applicable stock exchange or stock association rule to disclose any of the Confidential Information of Discloser, Recipient will give prompt written notice so that Discloser may seek a protective order or other appropriate relief. In the event that such protective order is not obtained, Recipient will disclose only that portion of the Confidential Information that its counsel advises that it is legally required to disclose, and will work with Discloser to minimize the extent and effects of such disclosure.

6. Remedies. Money damages would not be a sufficient remedy for any breach of this Agreement by Recipient. The Parties therefore agree that in the event of a threatened or continuing breach of this Agreement, Discloser shall be entitled to equitable relief, including injunctive relief, as a remedy for any such breach, without prejudice to any other available remedies.

7. Ownership of Confidential Information. Nothing in this Agreement is intended to grant any rights to any Party under any patent, copyright, trade secret or other intellectual property right nor will this Agreement grant any Party any rights in or to another Party's Confidential Information, except the limited right to review such Confidential Information solely for the Purpose. Any derivative works, improvements, or modifications to the Confidential Information will be owned by the Discloser and deemed the Discloser's Confidential Information.

8. Representations and Warranties. Each Party represents and warrants that it has the right to disclose the information provided under this Agreement. Except for the foregoing, Confidential Information is provided "as is" and no Party makes any representation or warranty, express or implied, as to the accuracy, completeness, or noninfringement of the Confidential Information that it provides to another Party. Recipient agrees that Discloser will not have any liability to Recipient relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom.



STATE SOLICITOR
OFFICE OF THE STATE SOLICITOR
DEPARTMENT OF JUSTICE & ATTORNEY GENERAL
P.O. Box 591, WAIGANI

9. Entire Agreement. This Agreement is the complete and exclusive agreement of the Parties with respect to its subject matter, supersedes all prior and contemporaneous written or oral understandings relating thereto, and will survive the expiration or termination of any other agreement.

10. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11. Governing Law and Dispute Resolution. The laws of the Kingdom of Sweden, without regard to its choice of laws provisions, govern all matters arising out of this Agreement except to the extent of determining the confidentiality of information disclosed by the State, the law of Papua New Guinea will apply. All disputes arising out of or in connection with this Agreement shall be finally settled under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce by a sole arbitrator appointed in accordance with the said Rules. The decision of the arbitrator shall be final and binding upon the Parties. The arbitration shall take place in Stockholm, Sweden in the English language. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, and in accordance with Section 6, any Party may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

12. Notice. All notices and other communications given under this Agreement will be in writing (including digital signature) in the English language, addressed to the undersigned representatives of the Parties at the addresses below and will be deemed to have been given on the date delivered when hand delivered, one (1) business day after mailing if sent via overnight courier return receipt, or four (4) business days after mailing if sent by first-class registered or certified mail, postage prepaid; or if sent via e-mail at the moment of receipt of a receipt confirmation sent by the receiving Party.

13. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, provided that no Confidential Information will be transferred or disclosed to any successor or assignee without the prior written consent of Discloser.

14. No Waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. No Other Obligation. Nothing herein will obligate any Party to proceed with any transaction with another Party or Parties, and each Party reserves the right, in its sole discretion, to terminate any discussions contemplated by this Agreement. Neither this Agreement nor the disclosure or receipt of Confidential Information constitutes or implies any promise or intention by any Party to

enter into a partnership, agency, employment, or joint venture relationship with any other Party hereto.

16. Term and Termination. This Agreement is effective for a period of one (1) year from the Effective Date and will automatically renew for additional one (1) year terms unless earlier terminated. This Agreement may be terminated at any time upon thirty (30) days' written notice or immediately if any Party has reason to believe that another Party is in breach of any of the obligations contained herein. Such termination or any expiration shall not affect any obligation imposed by this Agreement with respect to Confidential Information received prior to such termination. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of seven (7) years from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient. The obligations of the Parties under this Agreement are in addition to, not in lieu of, any obligations the Parties may have under any applicable trade secret laws.

17. Compliance with Export Controls, Trade Sanctions and Anti-Bribery Regulations. The Parties confirm that performance pursuant to this Agreement does not violate and shall not cause any Party to violate any applicable trade sanction, export control, or anti-bribery/anti-corruption law or regulation.

18. Counterparts/Execution. This Agreement may be validly executed in counterparts, each of which together will constitute one agreement binding on all Parties. This Agreement may be validly executed by electronic delivery of signatures by facsimile or email, which signatures shall be deemed original for purposes of valid execution and delivery of this Agreement.

ACCEPTED AND AGREED BY THE PARTIES:

Scytáles AB

By:

Authorized Signature

Name: Konstantin Papaxanthis

Title: CEO

Date:

August 2, 2023

State

By:

Authorized Signature

Name: Steven Matainaho

Title: Secretary of Information and Communications Technology

Date:

