

**CONFIDENTIALITY AGREEMENT**

**(RECIPROCAL)**

1. INTERPRETATION AND DEFINITIONS

1.1 In this agreement, unless inconsistent with, or otherwise indicated by the context:

1.1.1 "CompanyA" is .....

1.1.2 CompanyA's physical address is .....

.....;

1.1.3 "CompanyB" is .....

1.1.4 CompanyB's physical address is .....

.....;

1.1.5 "the Parties" are CompanyA and CompanyB;

1.1.6 "the Project" means .....

.....

.....;

1.1.7 "Confidential Information" means confidential information generally relating to the Project including, without limiting the generality of the foregoing, all technical and design information, manufacturing techniques and specifications, processes, information concerning materials, design, technical and concept drawings, technical, marketing and sourcing information, business information generally, and other related materials of whatever description in which the disclosing Party has an interest in being kept confidential; and

1.1.8 "Commencement Date" means the date of signature of this agreement by the last Party to sign.

1.2 Words in the singular include the plural and *vice versa*.

1.3 Words importing, and references to any one gender include each of the other two genders.

2. PREAMBLE

2.1 The Parties possess valuable Confidential Information and have agreed to exchange aspects of their respective Confidential Information for the purpose of the Project.

2.2 Any Confidential Information disclosed between the Parties by virtue of such interaction is subject to the terms and conditions in this agreement.

### 3. NON-DISCLOSURE

- 3.1 Each of the Parties retains all right, title and interest in and to its Confidential Information and each party acknowledges that it has no claim of any nature in and to the Confidential Information that is proprietary to the other Party.
- 3.2 Each of the Parties undertakes to maintain the confidentiality of any Confidential Information of the other Party to which it may gain or have gained access whether before or after the Commencement Date, and whether intentionally disclosed or inadvertently made available or exposed to the receiving Party. The receiving Party may not divulge or permit to be divulged to any person any aspect of the Confidential Information of the disclosing Party, save as may be authorised in writing by the disclosing Party or as may have been contemplated by the Parties and is necessary for the purpose of the Project, in which events such disclosure are subject to the provisions of clause 4 of this agreement.
- 3.3 Each of the Parties will abide by all the rules and procedures of the other Party designed to protect such other Party's Confidential Information and shall take all such reasonable steps to prevent the Confidential Information of the other Party falling into the hands of an unauthorised third party.
- 3.4 Any documents and/or material embodying Confidential Information of either of the Parties which comes into the possession of the other Party or that may be generated by the other Party in the performance of the Project will (unless the disclosing Party provides its written consent to the contrary):
  - 3.4.1 not be copied, reproduced, published or circulated by the receiving Party other than for those purposes contemplated by the Parties and only insofar as it is necessary for the purpose of the Project; and
  - 3.4.2 be surrendered to the disclosing Party on demand, and in any event on termination of the Project.

### 4. DISCLOSURE TO PERSONNEL

- 4.1 Notwithstanding anything contained in clause 3, the receiving Party is entitled to disclose such aspects of the Confidential Information of the disclosing Party as may be relevant to one or more technically qualified employees or consultants of the receiving Party, provided that the employee or consultant concerned:
  - 4.1.1 has a legitimate interest therein, and then only to the extent necessary for the purpose of the Project; and
  - 4.1.2 is informed by the receiving Party of the confidential nature of the Confidential Information and the obligations of confidentiality to which such disclosure are subject.
- 4.2 The receiving Party shall notify the disclosing Party of the name of each person or entity to whom any Confidential Information of the disclosing Party has been disclosed in terms of clause 4.1 as soon as practicable after such disclosure.
- 4.3 The receiving Party will procure that all person to whom it discloses Confidential Information of the disclosing Party accepts all related obligations that the receiving Party has accepted in this agreement as if such person had signed this agreement.

4.4 The receiving Party is responsible for any breach of the provisions of this agreement by any persons to whom Confidential Information has been disclosed in terms of clause 4.1 and indemnifies the disclosing Party in this regard.

## 5. USE

Neither of the Parties will use or attempt to use the Confidential Information of the other Party for any purpose other than for those purposes authorised in writing by the other Party or for such purposes as may have been contemplated by the Parties. In any event, any use of the other Party's Confidential Information will be limited to such use as is necessary for the purpose of the Project.

## 6. EXCEPTIONS

6.1 The obligations set out in this agreement do not apply to information which:

6.1.1 is in fact lawfully in the public domain at the Commencement Date or lawfully comes into the public domain after the Commencement Date otherwise than as a result of the conduct of the receiving Party;

6.1.2 is already in the possession of the receiving Party at the Commencement Date and did not emanate from the disclosing Party; or

6.1.3 becomes available to the receiving Party from a party (other than the disclosing Party) not being subject to any related obligation of confidentiality in favour of the disclosing Party.

6.2 The receiving Party bears the onus of proving any of the exceptions in clause 6.1.

## 7. OBLIGATIONS ON TERMINATION OF THE PROJECT

7.1 On termination of the Project, each Party shall deliver to the other Party all documents and/or material containing Confidential Information of the other Party in its possession or control.

7.2 The rights, obligations and restraints imposed on the Parties in terms of this agreement will survive termination of the Project.

## 8. TERMINATION

The obligations accepted by the Parties hereunder will terminate on the ..... anniversary of the Commencement Date.

## 9. INTERIM RELIEF

The Parties acknowledge that a breach of any of the provisions contained herein would cause the disclosing Party to suffer loss which could not adequately be compensated for by damages and that the Parties may, in addition to any other remedy or relief, enforce the performance of this agreement by interim interdict or specific performance upon application to a court of competent jurisdiction without proof of actual or special damages

