

# NON-DISCLOSURE & CONFIDENTIALITY AGREEMENT

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This Agreement is made and entered into this day the *[date of signature]* by and between

- , a *[type of company]* company organized and existing under the laws of with its office located at - , (hereinafter referred to as "*[shortened name of first party]*")

and

- *[name of second party]* (hereinafter referred to as "*[shortened name of second party]*", which expression shall include its successors and permitted assigns, a *[type of company]* company, organized and existing under the laws of *[country of second party]* and having an office at *[address of second party]*).

and *[shortened name of second party]* may be referred to below individually or collectively, as the context may require, as "Party" or "Parties".

Whereas, both Parties, for their mutual benefit, desire to disclose to one another and exchange certain information and data in connection with *[name of project]* as proposed by and in particular the exchange of information and data regarding *[detail part of project object of this agreement]* ("**the Project**").

## 1. DEFINITION OF CONFIDENTIAL/PROPRIETARY INFORMATION

Confidential Information and / or Proprietary Information means any information related to the Project or otherwise and defined as follows:

- 1.1. any information transmitted by one Party (the **Disclosing Party**) to the other Party (the **Receiving Party**) in connection with the Project, including such information as was transmitted prior to the completion of this Agreement, provided always that it is clearly marked and indicated as "confidential" and / or "proprietary".
- 1.2. any information, knowledge or data, transmitted on whatever media (written, telephonic, magnetic, electronic, digital) and in whatever form (technical data, graphs, drawings, plans, formulae, lists, figures, statistics, correspondence, presentations and reports) including but not limited to technical plans and specifications, geological data, test results, financial, economic and commercial data, trade secrets, pricing, customer information and identity, software, and/or technical information necessary to evaluate the viability of *[the project]* which is proprietary to the Disclosing Party, or in which the Disclosing Party has a right or interest.

Together hereinafter referred to as "**Confidential Information**".

Now, therefore, the Parties agree as follows:

## **2. NON-DISCLOSURE, PRESERVATION & RESTRICTED USE**

For the duration of the validity of this Agreement each Party agrees the following obligations as a Receiving Party:

- 2.1. to protect Confidential Information with the same degree of care and security afforded to its own confidential / proprietary information in order to prevent disclosure;
- 2.2. to use Confidential Information only in connection with evaluating the Project and the proposed cooperation. In no event will the Receiving Party use any Confidential Information for any other commercial purpose or for any purpose which might be competitively disadvantageous to the Disclosing Party;
- 2.3. to reproduce such Confidential Information only to the extent necessary for the purposes contemplated herein;
- 2.4. to restrict disclosure of such Confidential Information to its employees, directors, and professional advisors (and those of its affiliated companies) with a need to know (and advise such persons of the obligations assumed herein);
- 2.5. to not disclose Confidential Information to any third party without prior written approval of the Disclosing Party. The Receiving Party will advise all third parties who receive any Confidential Information (from the Receiving Party) of its confidential nature, and will obtain their written assurance that they will abide by the terms and conditions of this Non Disclosure and Confidentiality Agreement as if such parties were parties hereto;
- 2.6. at the written request of the Disclosing Party, to certify in writing that all copies of such Confidential Information have been destroyed.

## **3. EXCLUSIONS**

The restrictions on the use or disclosure of Confidential Information in clause [2.non-disclosure, preservation & restricted use](#), shall **not** apply:

- 3.1. to any Confidential Information which the Receiving Party can demonstrate by documentation as independently developed or acquired by the Receiving Party, or lawfully received free of restriction from another source having the right to so furnish such information;
- 3.2. after the Confidential Information has become generally known or available in the public domain without breach of this Agreement by the Receiving Party;
- 3.3. to any Confidential Information which at the time of disclosure to the Receiving Party was known to such receiving Party free of restriction and evidenced by documentation in such Party's possession;
- 3.4. to the extent that the Disclosing Party agrees in writing that the Confidential

Information is free of such restrictions;

- 3.5. to any Confidential Information that a receiving Party is required to produce pursuant to force of law, an order issued by a court or regulatory body, provided that the Receiving Party shall immediately notify the Disclosing Party of such order prior to such production and shall use best efforts to obtain protective orders preventing the further disclosure of Confidential Information beyond that mandated by the relevant court or regulatory body.

#### **4. LIMITATIONS / RESTRICTIONS**

- 4.1. Each Party hereto shall endeavour to keep to a minimum the amount of Confidential Information that is furnished to the other upon which restrictions are imposed.
- 4.2. Each party acknowledges that the providing of Confidential Information or other information hereunder in no way constitutes or gives rise to or will be deemed to constitute or give rise to any representation or warranty as to the accuracy or completeness thereof.
- 4.3. Nothing contained herein shall be construed as granting or conferring any rights by license, copyright, or similar right with respect to any of the Confidential Information or any other information provided by either Party to the other Party hereunder.
- 4.4. Except upon mutual written agreement, or as may be required by law, neither Party shall in any way or in any form disclose the discussions that gave rise to this Agreement or the fact that there have been or will be discussions or negotiations covered by this Agreement. Neither Party will disclose to Third parties that either Party has expressed an interest in the proposed Project without prior consultation and without consent of the other.
- 4.5. Neither this Agreement nor the disclosure or receipt of Confidential Information shall constitute or imply any promise or intention to enter into a cooperation, or to make any purchase of products or services, or to enter into any commitment by either Party in respect to the Project and / or any other related business.
- 4.6. All Confidential Information shall remain the property of the Disclosing Party and shall be returned upon written request or upon the Receiving Party's determination that it no longer has a need for such Confidential Information.

#### **5. VALIDITY & DURATION**

This Agreement shall come into force upon execution and shall terminate one year from such date. Each Party agrees that all of its obligations undertaken herein as a Receiving Party, including but not limited to the obligation to keep confidential and restrict the disclosure and use of Confidential Information, shall survive and continue for a period of three years from the date of termination.

**6. JURISDICTION, DISPUTES & NOTICES**

- 6.1. This Agreement shall be governed in accordance with the laws of .
- 6.2. Any disputes arising in connection with or out of the interpretation of this Agreement, which the Parties cannot settle amicably, shall be finally settled by three arbitrators under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The board of arbitrators shall convene in *[chosen city]*.
- 6.3. The Parties agree that any violation of the terms of this Agreement may constitute irreparable harm and that money damages may be insufficient to remedy such harm. Therefore and notwithstanding the above and without prejudice to the rights and remedies otherwise available a Party shall be entitled to equitable relief by way of injunction in the event the other Party breaches or threatens to breach any of the provisions of this Agreement. The Parties further agree that the prevailing party in any litigation concerning this Agreement shall be entitled to reasonable attorney fees and any and all other costs associated with enforcing the terms of this Agreement.
- 6.4. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements. Any amendments hereto must be in writing and signed by each Party. This Agreement shall benefit and be binding upon the Parties hereto and their respective successors.
- 6.5. All notices shall be considered as validly served if sent by registered mail (return receipt requested) to the addresses at the head of this Agreement.

Executed in , on *[date of signature]*

\_\_\_\_\_  
for  
(duly authorized to signed)  
date of signature.....

\_\_\_\_\_  
for **[second party]**  
(duly authorized to signed)  
date of signature.....