NON-DISCLOSURE AGREEMENT

Private & Confidential

**THIS AGREEMENT** is dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BETWEEN:**

**(1) [PARTY A],** a company registered in [Country], with commercial licence number [●] and having its registered office at [●] (“**Party A**”); and

**(2)** **[PARTY B]**, a company registered in [Country], with commercial licence number [●] and having its registered office at [●] (“**Party B**”),

(collectively the “**Parties**”, and each a “**Party**” to this Agreement).

**RECITALS**

1. The Parties [wish to enter] / [have entered into discussions] in relation to the Project and have agreed to exchange Confidential Information.
2. The Parties wish to ensure that any Confidential Information exchanged between them in connection with the Project remains confidential.
3. The Parties agree to give effect to Recital B above subject to and in accordance with the terms and conditions of this Agreement.

**IT IS HEREBY AGREED** as follows:

* 1. DEFINITIONS
     1. The defined terms in this Agreement shall have the meaning ascribed to them in **Schedule 1 (Definitions)**.
  2. INTERPRETATION
     1. In this Agreement, the following rules of interpretation shall apply:
        1. acceptance by a Party under this Agreement shall not be deemed to waive the other Party’s obligation to fully perform all associated obligations under or in connection with this Agreement; and
        2. a reference to “including” shall be deemed to be one without limitation.
  3. PROJECT DISCUSSIONS
     1. Each Party acknowledges and agrees that nothing in this Agreement creates any obligation on either Party to proceed and/or enter into any arrangement connected with the Project or any part of it.
     2. The Parties acknowledge and agree that they will be solely responsible for their own costs and expenses incurred in connection with this Agreement.
  4. CONFIDENTIALITY
     1. During the Term and for [3] years afterwards, each Party shall keep the other Party’s Confidential Information strictly confidential.
     2. Each Party shall use their best endeavours to protect and safeguard the Confidential Information from unauthorised disclosure, loss, theft, destruction, or the like.
     3. Each Party may only use the other Party’s Confidential Information strictly for the purpose of considering, discussing and/or engaging in the Project.
     4. Neither Party shall disclose Confidential Information to any Person other than an Authorised Recipient and even then, only on a strictly ‘need to know’ basis.
     5. Each Receiving Party shall procure that its Authorised Recipients (including their own Personnel) are aware of, and fully comply with, its obligations under this Clause 4 as if they were themselves a Party.
     6. This Clause 4 does not apply to Confidential Information which:
        1. is the subject of a Mandatory Disclosure;
        2. is in or comes into the public domain other than by breach of this Agreement or of any obligation of confidence owed under or in connection with this Agreement;
        3. the Receiving Party can show it knew before disclosure;
        4. was subsequently disclosed to the Receiving Party lawfully by a Third Party who did not acquire the information under an obligation of confidentiality; or
        5. is independently developed by or for the Receiving Party at any time by Persons who have had no access to or knowledge of the said information.
     7. For the purpose of Clause 4.6.1, where a Receiving Party is required to make a Mandatory Disclosure, then that Party shall:
        1. give the Disclosing Party as much notice of such disclosure as is reasonably practicable (provided Applicable Law permits the same); and
        2. take into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure before it is made.
  5. PUBLICITY
     1. Neither Party shall issue any press release nor other public document about the Project or the entering into of this Agreement or its content without the prior written approval of the other Party.
  6. TERMINATION
     1. Either Party may terminate this Agreement:
        1. by giving [30] calendar days’ written notice of such termination; or
        2. with immediate effect, if the other Party has breached its obligations hereunder.
  7. CONSEQUENCES OF TERMINATION
     1. Upon the termination of this Agreement, each Receiving Party must if requested by a Disclosing Party in writing:
        1. promptly return all Confidential Information to the Party that disclosed it, or destroy such Confidential Information and provide evidence of destruction where requested; and
        2. to the extent reasonably practicable, expunge any Confidential Information from any computer, word processor or other electronic device; and
        3. provide evidence to that Disclosing Party of the Receiving Party’s compliance with this Clause 7.1.
     2. The termination or expiry of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued under this Agreement or Applicable Law up to the date of termination.
     3. The provisions of Clauses 4, 7, 8, 11 and 12 shall survive the termination and/or expiry of this Agreement.
     4. Clause 7.3 does not limit the survivability of other provisions, which by their nature, are likewise intended to survive the termination and/or expiry of this Agreement.
  8. RESERVATION OF RIGHTS
     1. Each Party acknowledges and agrees that:
        1. the Disclosing Party reserves all rights of whatever nature in the Confidential Information they make available under this Agreement; and
        2. save as set out in Clause 4.3, no rights in respect of the Confidential Information are granted by the Disclosing Party to the Receiving Party.
  9. WARRANTIES
     1. Each Party warrants and represents to the other that:
        1. this Agreement shall constitute valid and binding obligations on that Party;
        2. it is duly incorporated and has the legal capacity to enter into this Agreement; and
        3. it shall not breach the terms of this Agreement.
  10. INDEMNIFIED MATTERS
      1. Each Party shall fully indemnify the other from all Losses suffered, sustained or incurred as a result of their breach of Clauses 4 and/or 5.
      2. For the purposes of the indemnity in Clause 10.1, the indemnified Party shall be deemed to include its Personnel, directors, shareholders and its officers.
  11. NOTICES
      1. Any notice or other communication given under or in connection with this Agreement shall be in writing.
      2. The Parties’ addresses (physical and email) for the purposes of this Agreement are as set out in **Schedule 3 (Notices)**, as may be updated in accordance with this Clause 11.
      3. No change to a Party’s contact details for notices shall be effective until the other Party has been notified of the change in writing in accordance with this Clause 11.
  12. GENERAL PROVISIONS
      1. **Cumulative Rights:** Unless otherwise stated, the rights and remedies of a Party under this Agreement are cumulative and do not exclude any other right or remedy provided by Applicable Law.
      2. **Entire Agreement:** This Agreement constitutes the entire agreement of the Parties relating to the matters discussed herein, to the exclusion of all other terms and conditions, and any prior written or oral agreement between them.
      3. **Novation & Assignment:** Neither Party may assign, novate, or otherwise transfer all or any of its rights, benefits or obligations under this Agreement without the prior written approval of the other Party.
      4. **Variation:** No variation of this Agreement shall be effective unless in writing and signed by each Party’s Authorised Representative.
      5. **Specific Performance:** Nothing in this Agreement prevents a Party from seeking interim or interlocutory relief to prevent a breach of, and to compel specific performance by the other Party of, this Agreement.
      6. **Waiver:** No failure to exercise, nor any delay in exercising, any right, power or remedy under this Agreement shall operate or be deemed a waiver of the same. Waivers must always be given in writing.
      7. **Illegality:** If any provision of this Agreement is determined to be invalid, illegal or void by any court or administrative body of competent jurisdiction then the rest of this Agreement shall still remain in full force and effect.
      8. **Relationship:** Nothing in this Agreement shall be construed to make either Party an agent, employee, franchisee, joint venturer or legal representative of the other Party.
      9. **Third Party Rights:** Except where expressly contemplated, this Agreement does not create any rights which are enforceable by any person who is not a Party to this Agreement.
      10. **Governing Law:** This Agreement is governed by, and shall be construed in accordance with, the laws of the Territory.
      11. **Jurisdiction:** The Parties irrevocably submit to the exclusive jurisdiction of the courts of the Territory in relation to any Disputes.

EXECUTION

**EXECUTED** as an Agreement on the date and year first above written.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Signed** for and on behalf of | |  |  | |
| [●]  as its duly authorised representative: | |  |  | |
|  | |  |  | |
|  | Signature of authorised representative |  |  | Signature of witness |
|  | |  |  | |
|  | Name & title of authorised representative (print) |  |  | Name of witness (print) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Signed** for and on behalf of | |  |  | |
| [●]  as its duly authorised representative: | |  |  | |
|  | |  |  | |
|  | Signature of authorised representative |  |  | Signature of witness |
|  | |  |  | |
|  | Name & title of authorised representative (print) |  |  | Name of witness (print) |

SCHEDULE 1 | DEFINITIONS

* 1. DEFINITIONS
     1. In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meaning:

|  |  |
| --- | --- |
| **Affiliate** | means any entity that is Controlled by a Party or under common Control of that Party; |
| **Agreement** | means this agreement and the schedules hereto; |
| **Applicable Law** | means all national, state, local and municipal legislation, regulations, statutes, by-laws, approvals and/or other laws relating to or connected with the activities contemplated under this Agreement wherever so located and/or performed; |
| **Authorised Recipient** | means any Third Party to whom a Party may disclose Confidential Information under this Agreement (including, without limitation, its Personnel and any external advisors engaged for the purposes of performing its obligations under this Agreement) and/or as may be required by Applicable Law; |
| **Authorised Representative** | means the duly authorised representative of the Parties as may be notified by one Party to the other from time to time; |
| **Confidential Information** | means this Agreement and all information of any nature which a Party may have or acquire before or after the Agreement Date, however conveyed (whether in writing, verbally, in a machine- readable format or by any other means and whether directly or indirectly), which relates to the business, products, price lists, developments, Personnel, suppliers and customers of a Party and its Affiliates (whether or not designated as Confidential Information by the disclosing Party), and all information designated as confidential or which ought reasonably to be considered confidential; |
| **Control** | means the: (1) ownership or control (whether directly or indirectly) of more than 50% of the voting share capital of the relevant entity; (2) ability to direct the casting of more than 50% of the votes exercisable at general meetings of the relevant entity on all, or substantially all, matters; or (3) right to appoint or remove directors of the relevant entity holding a majority of the voting rights at meetings of the board on all, or substantially all, matters, and the terms “Controls”, “Controlled” and “Controlling” shall have the equivalent grammatical meaning; |
| **Disclosing Party** | means the Party that is disclosing Confidential Information to the other Party under or in connection with this Agreement; |
| **Dispute** | means any dispute between the Parties under or in connection with this Agreement; |
| **Loss or Losses** | means any loss, expense, claim, penalty expenses or equivalent as may be suffered by a Party directly as a result of the other Party’s breach of this Agreement; |
| **Mandatory Disclosure** | means any announcement or disclosure of Confidential Information that a Party is required to make under Applicable Law or as otherwise required by any order of a court of competent jurisdiction; |
| **Person** | means any natural person, corporate or unincorporated body (whether or not having separate legal personality), individual, corporation, partnership, limited liability company or similar entity; |
| **Personnel** | means all employees, agents and Subcontractors of a Party who are assigned, engaged or otherwise employed from time to time to work in connection with the performance or discharge of a Party’s obligations under this Agreement; |
| **Project** | means the proposed project and/or purpose in pursuance of which the Parties are exchanging Confidential Information as set out in Schedule 2 (Project); |
| **Public Official** | means a public official, member of the judicial system or any other government-related or state-owned entity or Person; |
| **Receiving Party** | means the Party receiving Confidential Information from the other Party under or in connection with this Agreement; |
| **Term** | means the period from the date of this Agreement until it is terminated in accordance with Clause 6; |
| **Territory** | means [Jurisdiction]; and |
| **Third Party** | means a Person who is neither Party A nor Party B. |

SCHEDULE 2 | PROJECT

[Drafting Note: Include statement / statement giving clear articulation about the proposed project and /or purpose and circumstances in which the parties are exchanging information. This statement should be as specific and precise as possible. Some illustrative (but non-exhaustive) examples are given below.]

[Example 1: The proposed supply by Party B to Party A of [●].]

[Example 2: A proposed Joint Venture opportunity by and between Party A and Party B to conduct / develop / create [●].]

[Example 3: The proposed acquisition by Party A of [●] from Party B.]

[Example 4: The development by Party B of [●] for and on behalf of Party A.]

[Example 5: The audit by Party B of [●] for and on behalf of Party A.]

[Example 6: The proposed provision by Party B of [●] services for and on behalf of Party A.]

[Example 7: The entering into of discussions by and between Party A and Party B to establish the feasibility of [●].]

SCHEDULE 3 | NOTICES

* 1. ADDRESSES
     1. The Parties addresses for the purpose of receiving notices under this Agreement are as follows:
        1. For Party A:

Attention: [●]

Physical address: [●]

Email address: [●]

* + - 1. For Party B:

Attention: [●]

Physical address: [●]

Email address: [●]