



## MUTUAL NON-DISCLOSURE AGREEMENT (“AGREEMENT”)

Mutual NDA are generally are required to maintain confidentiality such as the instance where there is a candidate employed and disclosure of his job replacement could harm the company revenues and morale’ or where an individual is currently employed and is concerned if he sends his personal information it may get disclosed to his current employer.

It is often used by organizations who may be making a confidential acquisition or a public company where disclosure of staff changes, especially in a COO or CEO level could affect stock prices.

### MUTUAL NON-DISCLOSURE AGREEMENT (“AGREEMENT”)

This Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_ by and between:

1. \_\_\_\_\_, of \_\_\_\_\_, with commercial license number \_\_\_\_\_ and any holding, subsidiary and/or sister companies and affiliates (“\_\_\_\_\_”); and
2. [ ], of P.O. Box [ ], [INSERT LOCATION], with commercial license number [ ] (Telephone: [ ]; Fax No: [ ]) (the “**Company**”),

each a “**Party**” and together, the “**Parties**”.

#### IT IS AGREED AS FOLLOWS:

##### 1. DEFINITIONS

###### 1.1 In this Agreement:

“**Confidential Information**” means all information in whatever form (including in written, oral, visual or electronic form, and copies thereof) that is directly or indirectly disclosed by either Party to the other Party in connection with the Permitted Purpose, or otherwise relates to the disclosing Party or its business but excludes:

- (a) information which is in the public domain other than as a result of a breach of this Agreement;
- (b) information independently derived, or sourced from a third party that is not under any obligation of confidence; and
- (c) information already known to the receiving Party prior to disclosure;

“**Effective Date**” means the date first written above;

“**Expiry Date**” means the date \_\_\_\_\_ years after the Effective Date;

**“Permitted Purpose”** means considering, evaluating, negotiating, undertaking or completing a potential business relationship in relation to [insert commercial description]; and

**“Representatives”** means the officers, employees, agents or advisers of a Party.

## **2. OBLIGATION**

### **2.1 Each Party shall:**

- (a) keep the Confidential Information secret and protected against theft and unauthorized access;
- (b) use the Confidential Information only for the Permitted Purpose, only disclose Confidential Information to such of its Representatives as need to know that Confidential Information for the Permitted Purpose and only make such copies as are strictly necessary for the Permitted Purpose;
- (c) not directly or indirectly disclose any Confidential Information to any person and ensure that no other person obtains access to Confidential Information unless authorised by this Agreement; and
- (d) inform the other Party immediately on becoming aware, or suspecting, that an unauthorised person has become aware of Confidential Information.

### **2.2 Each Party shall:**

- (a) inform any person to whom it discloses Confidential Information that it is confidential; and
- (b) procure that any such person complies with this Agreement as if they were a Party to it, provided that such disclosing Party shall continue to be liable for any breach.

### **2.3 If discussions in relation to the Permitted Purpose cease or either Party so requests in writing at any time or this Agreement terminates for any reason, each Party shall immediately:**

- (a) return to the other Party all the Confidential Information received by it; and
- (b) destroy or permanently erase all copies of Confidential Information supplied to it or made by it, or by the persons who have received Confidential Information,

and a senior officer of the relevant Party shall certify the same. The Parties shall not thereafter make any further use of the Confidential Information.

## **3. FORCED DISCLOSURE**

### **3.1 A Party may disclose Confidential Information to the minimum extent required by:**

- (a) any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body; or
- (b) the rules of any listing authority or stock exchange on which the shares of any company in the Party's group are listed or traded; or

- (c) the laws or regulations of any country with jurisdiction over the affairs of any company within the Party's group.

#### **4. DURATION**

The obligations and responsibilities of the Parties contained in this Agreement shall come into force and be binding as from the Effective date and shall continue up until the later date of either: (i) the Expiry Date; or (ii) one (1) year from the date the Confidential Information was disclosed prior to the Expiry Date, to the other Party.

#### **5. INDEMNITY**

- 5.1 Each Party shall indemnify, and keep indemnified, (i) each company in the other Party's group, and (ii) the other Party's respective Representatives (each an "**Indemnified Person**") from and against all actions, claims, demands, liabilities, damages, losses, costs, charges and expenses (including, without limitation, consequential losses, loss of profit and loss of reputation and all interest, penalties and legal and other professional costs and expenses) that an Indemnified Person may suffer or incur in connection with, or arising (directly or indirectly) from, any breach of this Agreement by the Party or any person to whom it has disclosed or given access to any part of the Confidential Information.
- 5.2 The Parties acknowledge that damages are unlikely to be an adequate remedy in the event of a breach by a Party of its obligations under this Agreement and that the other Party may consequently be entitled to specific performance and injunctive or other equitable relief. Such remedy shall be in addition to all other remedies available at law or equity to that Party.

#### **6. NO REPRESENTATIONS OR WARRANTIES**

The Confidential Information has not been verified by either Party or any of its advisers and may not be accurate or complete and neither Party makes any representation or warranty as to the accuracy, completeness or reasonableness of the Confidential Information and no such representation or warranty shall be implied. Neither Party shall be liable to the other Party nor to any person to whom a Party discloses the Confidential Information if it is relied upon by that Party or person.

#### **7. INTELLECTUAL PROPERTY**

None of the Confidential Information is the property of the Party to whom it may be disclosed. The disclosure to a Party of any Confidential Information shall not give that Party any licence or other rights whatsoever in respect of any part of such Confidential Information beyond the rights contained in this Agreement.

#### **8. SEVERANCE**

- 8.1. If any court or administrative body of competent jurisdiction finds any provision of this Agreement to be invalid, unenforceable or illegal, the other provisions of this Agreement shall remain in force.
- 8.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to make it valid, enforceable and legal.

## 9. WAIVER & EXECUTION

- 9.1 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or will prevent any future exercise in whole or in part thereof. No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 9.2 This Agreement may be executed in one or more counterparts and when so executed, all such counterparts together shall constitute one agreement. This Agreement shall constitute the entire agreement between the Parties and shall supersede all previous arrangements, understandings or agreements between the Parties as to its subject matter.

## 10. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of \_\_\_\_\_ and the Federal laws of \_\_\_\_\_ and the Parties hereby submit to the exclusive jurisdiction of the \_\_\_\_\_.

The Parties hereby acting by their duly authorised representatives agree to be bound by the terms of this Agreement:

For \_\_\_\_\_

For the Company

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date: