



Reciprocal Non-disclosure Terms

1. Introduction

The parties may have disclosed or may wish to disclose to each other information of a confidential and proprietary nature. This agreement governs the parties' rights and obligations to the confidential and proprietary information.

The agreement consists of these terms and any separate document or form (including a written contract, agreement, estimate, quote, proposal, engagement letter, statement of work, email, form or invoice) that incorporates these terms.

2. Definitions

In this agreement:

confidential information means all information of a confidential nature owned or used by, or relating to, discloser regardless of form (oral, written or electronic), whether identified or designated as confidential or proprietary or not, or that, due to the nature of such information or under the circumstances surrounding its disclosure reasonably should be understood to be treated as confidential by recipient, whether disclosed before, on or after the date of agreement.

discloser means the party disclosing confidential information.

personnel means any director, employee, agent, consultant, contractor or other representative.

recipient means the party receiving confidential information.

3. Duration

This agreement is effective from date of agreement by the party agreeing last in time and will continue indefinitely.

4. Information being disclosed

Confidential information is being disclosed in order to investigate or formalise a possible commercial relationship between the parties.

5. Recipient obligations

5.1. Keep confidential. Each party will keep the confidential information confidential and will take all reasonable and appropriate security precautions to maintain the confidentiality of the confidential information (which will include applying the same degree of care and security precautions as it takes to protect its own confidential

information).

5.2. *The recipient's responsibilities.* Each party will:

- only use confidential information to comply with its responsibilities under this agreement;
- only give confidential information to any of its personnel that need it, and only give as much of it as they need;
- use reasonable security procedures to make sure personnel keep the confidential information confidential;
- get written promises of confidentiality from those personnel who need access to the confidential information;
- not reveal the confidential information to anyone else; and
- only use the confidential information for the purpose and for no other purpose unless with the prior physical written consent of discloser.

5.3. *Restrictions of use.* Each party will not:

- use the confidential information for its own benefit or for the benefit of any third party;
- use the information for any commercial purpose not permitted by this agreement, unless authorised in physical writing by discloser;
- copy or duplicate in any form confidential information, or knowingly assist or allow anyone else to copy or duplicate any confidential information in its possession or under its control, without the discloser's prior physical written approval;
- reverse engineer, decompile or disassemble any computer programs forming part of the confidential information; and
- use the confidential information in any manner that will cause loss or damage to discloser.

5.4. *Duty to notify.* As required by applicable law, recipient will promptly notify discloser upon becoming aware of any unauthorised:

- loss,
- disclosure,
- breach of confidentiality, or
- use or misappropriation,

of confidential information.

5.5. *Exceptions.* These responsibilities will not apply to any information that:

- recipient already had knowledge of prior to disclosure by discloser and was not received by recipient from discloser under an obligation of confidence;

- is lawfully in the public domain (available to the general public) when recipient received it;
- lawfully becomes part of the public domain afterwards;
- is independently developed by recipient (or those related to it) or for it by third parties independently of the information disclosed by discloser; or
- is disclosed by recipient with the prior written approval of an authorised representative of discloser.

6. Disclosure required by law

Recipient can disclose confidential information if required by law or in accordance with a judicial, administrative or governmental order, provided recipient:

- gives discloser reasonable physical written notice prior to disclosure, to the extent such notice is permitted by law, and other than in connection with a routine audit or examination by, or a blanket document request from, a regulatory or governmental entity that does not reference discloser or the agreement;
- consults with discloser on possible steps to be taken in order to avoid or limit disclosure and takes steps agreed with discloser; and
- uses its reasonable endeavours to obtain any assurance or order that disclosed confidential information will be treated confidentially by the authority or person to which it is disclosed.

7. Return of confidential information

On receipt of a written request from discloser, recipient will:

- return to discloser all documentation and materials (including any originals, copies, reproductions or summaries) containing discloser's confidential information; or alternatively
- at the request of discloser, destroy the documentation and materials. Recipient will certify in physical writing as soon as possible from the date of the destruction of the documentation and materials that it has complied with these requirements.

8. Ownership

Confidential information will remain the exclusive property of discloser and there is no granting or conferring, whether by sale, license or otherwise, to recipient of any right, title or interest to or in any of the confidential information disclosed, nor in any of the patents, trademarks, copyrights or other intellectual property rights of discloser or its licensors.

9. Accuracy of the confidential information

Both parties agree that the confidential information provided is believed by discloser to be generally accurate and correct. However, in no event will discloser, its employees, consultants or third parties be liable for errors, omissions or inaccuracies of any kind in

the confidential information and recipient will be responsible for verifying the accuracy and correctness of the confidential information disclosed. No warranty of any kind is given under this agreement regarding the confidential information, it being provided as is and with all faults, and any guarantees or warranties (including warranties of merchantability and fitness for purpose and non-infringement) are excluded.

10. Compliance with laws

Recipient agrees to comply with all applicable international and national laws that apply to the confidential information, or any product, process or service that is the direct product of the confidential information, as well as end-user, end-use and destination restrictions issued by the relevant government.

11. Breach and dispute

11.1. *Injunctive relief.* If recipient breaches or threatens to breach this agreement, discloser will be entitled to seek injunctive, protective or other appropriate relief in any court of competent jurisdiction restraining recipient from breaching the terms or from disclosing or using any confidential information to any person.

11.2. *Remedies.* Despite anything to the contrary, discloser may pursue any other remedies available to it, either at law or in equity, for breach or threatened breach, including recovery of liquidated damages.

11.3. *Onus of proof.* In the event of a dispute arising under this agreement relating to a disclosure of confidential information, the onus of proof will be on recipient to show that the disclosure was authorised in accordance with the terms of this agreement.

11.4. *Continuing obligations.* Despite the termination of this agreement, completion of the purpose or return or destruction of confidential information, the recipient will continue to be bound by its obligations under clause 5 of this agreement with regard to all confidential information.

12. Notices and domicile

12.1. *Notices.* The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in this agreement.

12.2. *Service (delivery) address for legal documents.* Each party chooses its street addresses and numbers as its domicilium citandi et executandi (its address for the service of any document used in legal action) for this agreement.

12.3. *Change of addresses or numbers.* Each party may change the addresses or numbers in this agreement to any other addresses or numbers in South Africa by writing to the other party 14 days before the change.

12.4. *Deemed delivery.* Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

12.5. *Notice actually received.* If a party actually receives any notice or other communication, this will be good enough.

13. Assignment

No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. However, either party may assign this agreement to any successor or purchaser of its business or some of its assets.

14. General

14.1. Entire agreement. The agreement is the entire agreement between the parties on the subject.

14.2. No future agreements. If the parties elect not to pursue a new or expanded commercial relationship, all tangible confidential information will be returned to the discloser in line with clause 7 above, unless the parties subsequently enter into a written agreement that provides otherwise.

14.3. Changes. No change to this agreement is effective unless in writing and signed by authorised signatories of both parties.

14.4. Waiver (giving up rights). Any favour discloser may allow recipient will not affect or substitute any of discloser's rights against recipient.

14.5. Severability. If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

14.6. Governing law. South African law governs this agreement.

14.7. Jurisdiction for our action. You consent to the jurisdiction of the magistrates' courts of South Africa in respect of any action or proceedings Eighty20 may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction, without prejudice to our right to institute any action in any other court having jurisdiction.

14.8. Costs. Each party is responsible for its own costs of drafting and negotiating this agreement.

14.9. Publicity. Neither party will make or issue any formal or informal announcement or statement to the press in connection with this agreement, without the prior written consent of the other party.

15. Last updated

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