# MUTUAL NON-DISCLOSURE AGREEMENT

This is a Mutual Non-Disclosure Agreement (the “Agreement”) and takes effect on [DATE],

**BETWEEN: [NAME OF YOUR COMPANY]** (the "Disclosing Party"), a company organised and existing under the laws of the [COUNTRY], with its headquarters at:

[YOUR FULL ADDRESS]

**AND: [NAME OF RECEIVING PARTY]** (the "Receiving Party"), an individual with her or his main address located at OR a company organised and existing under the laws of the [COUNTRY], with its headquarters at:

[FULL ADDRESS]

WHEREAS, in order to pursue the mutual business purpose of a possible transaction between Disclosing Party and Receiving Party and/or their affiliates (the “Transaction”), both Disclosing Party and Receiving Party recognise that there is a need to disclose to one another certain information *in re*spect of itself and/or its affiliates.

WHEREAS, all such information, delivered by or on behalf of one party and/or its affiliates (the “Disclosing Party”) to the other party (the “Receiving Party”) and/or its Representatives (as defined below), whether furnished before or after the date of this Agreement and regardless of the manner in which it is furnished, together with all analyses, compilations, studies or other documents or records prepared by the Receiving Party and/or its Representatives to the extent such analyses, compilations, studies, documents or records contain, otherwise reflect, or are generated from such information, is referred to herein as “Evaluation Material”.

NOW, THEREFORE, in consideration of the opportunity to consider such Evaluation Material, both parties hereby agree as follows:

1. **NON-DISCLOSURE OF EVALUATION MATERIAL**

The Evaluation Material will be used by the Receiving Party solely for the purpose of evaluating the Transaction. Such Evaluation Material will be kept strictly confidential by the Receiving Party, except that the Evaluation Material or any portion thereof may be disclosed to affiliates, directors, officers, employees, advisors, attorneys, agents, controlling persons, potential bidding partners and financing sources or other representatives (each, a “Representative”, and collectively, the “Representatives”) of the Receiving Party who need to know such information for the purpose of evaluating the Transaction and who agree to treat the Evaluation Material in accordance with the terms of this Agreement.

The term “Evaluation Material” does not include information which:

1.1 Is or becomes generally available to the public other than as a result of the breach of the terms of this Agreement by the Receiving Party and/or any of its Representatives;

1.2 Is or has been independently acquired or developed by the Receiving Party and/or any of its Representatives without violating any of the terms of this Agreement;

1.3 Was within the Receiving Party and/or any of its Representatives’ possession prior to it being furnished to the Receiving Party and/or any of its Representatives by or on behalf of the Disclosing Party pursuant to the terms hereof; or

1.4 Is received from a source other than the Disclosing Party and/or any of its Representatives; provided that, in the case of (c) and (d) above, the source of such information was not known by the Receiving Party to be bound by a confidentiality obligation to the Disclosing Party or any other party with respect to such information.

1. **DISCLOSURE UNDER COURT ORDER OR *SUBPOENA***

In the event that the Receiving Party or any of its Representatives receives a request to disclose all or any part of the Evaluation Material under the terms of a *subpoena* or order issued by a court of competent jurisdiction or under a civil investigative demand or similar process, (i) the Receiving Party agrees to promptly notify the Disclosing Party of the existence, terms and circumstances surrounding such a request and (ii) if the Receiving Party or its applicable Representative is in the opinion of its counsel compelled to disclose all or a portion of the Evaluation Material, the Receiving Party or its applicable Representative may disclose that Evaluation Material that its counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that Evaluation Material that is being so disclosed.

1. **CONFIDENTIALITY OF THE TERMS OF THIS AGREEMENT**

Unless otherwise required by law, or unless otherwise provided in a final definitive agreement regarding the Transaction when, as and if executed, both parties and their respective Representatives will not, without the prior written consent of the other party, disclose to any person (other than Representatives of the parties hereto who need to know such information for the purpose of evaluating the Transaction and who agree to treat such information in accordance with the terms of this Agreement) any of the terms or conditions of the Transaction.

1. **OWNERSHIP OF RIGHTS TO THE EVALUATION MATERIAL**

Nothing listed in this Agreement shall prevent the Disclosing Party from accessing any of its right, title or interest in and to any Evaluation Material. Within (NUMBER OF DAYS) days of the disclosing party’s request, the receiving party along with its representatives are obligated to destroy or return all Evaulation Material sent to the receiving party and/or any of its representatives by the disclosing party. The Receving party and its representatives are also obligated to destroy any written material, memoranda, notes, copies, excerpts and other writings or recordings whatsoever prepared by the Receiving Party and/or its Representatives based upon, containing or otherwise reflecting any Evaluation Material unless it has been advised by counsel that destruction of the aforementioned material is prohibited by law. At the behest of the Disclosing Party made at the time of its request for the destruction of all Evaluation Material, any destruction of materials shall be brought to the attention of the Disclosing Party in writing by an authorised officer of the Receiving Party supervising such destruction.

1. **DISCLAIMER**

The Receiving Party acknowledges and agrees that neither the Disclosing Party nor any of its Representatives are making any representation or warranty as to the accuracy or completeness of any of the information furnished hereunder to the Receiving Party or any of its Representatives and each of the Receiving Party and the Disclosing Party further acknowledges and agrees that no party has any obligation to the other party or any of its Representatives to authorise or pursue with the other party the Transaction. Each of the Receiving Party and the Disclosing Party may at any time terminate any discussions or negotiations regarding the Transaction that may be taking place, and only those terms and conditions of the Transaction, if any, which are made in a final definitive agreement, when, as and if executed, will have any legal effect.

1. **INJUNCTIVE RELIEF**

Both parties agree that money damages may not be a sufficient remedy for any breach of the terms of this Agreement by the Receiving Party or any of its Representatives, and that, in addition to all other remedies at law or in equity to which the Disclosing Party may be entitled, the Disclosing Party may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.

1. **NON-PARTICIPATION IN SECURITIES OF INVOLVED COMPANIES**

Both parties agree to be aware, and will advise their respective representatives, that the South African securities law prohibit individuals in possession of material, non-public information regarding a company, which can include matters within this agreement, from buying or selling shares securities of the company. The law also prohibits communicating the aforementioned information to anyone under circumstances where it is reasonably foreseeable that such person is likely to buy or sell such securities. Each party agrees to fully comply with this provision.

1. **PROTECTION WITHIN ATTORNEY-CLIENT PRIVILEGE**

Both parties agree that sharing information with a lawyer shall not waive or diminish the confidentiality of the Evaluation Mateial under work product doctrine or any type of privilege, including attorney-client. All the Evulation Material which is enjoys protection under attorney-client privilege, work product doctrine or other applicable privilege shall remain entitled to protection under this agreement.

1. **ABSENCE OF RESTRICTION ON INDEPENDENT WORK**

The terms of this Agreement shall not be construed to limit either the Disclosing Party’s or the Receiving Party’s, or any of their Representatives’ right to independently develop or acquire products without the application of the opposing party's Evaluation Material. Further, the Receiving Party is free to use the residuals resulting from access to or work with the Disclosing Party’s Evaluation Material for any purpose. The receiving party may enjoy this right provided that the Receiving Party does not disclose the Evaluation Material to anyone except as expressly permitted in accordance with the terms of this Agreement. The term “residuals” means information in an intangible form, which has been retained in memory by persons who have enjoyed access to the Evaluation Material, including but not limited to, ideas, concepts, know-how or techniques contained therein. Neither the Receiving Party nor any of its Representatives shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this paragraph shall not be deemed to grant a licence to the Receiving Party under the Disclosing Party’s copyrights or patents.

1. **NO licence GRANTED**

Both parties recognise and agree that, on and after the date hereof, neither party will have the right to use the other party's service marks, trademarks, trade names, licenses, procedures, processes, labels, trade secrets or customer lists without explicit written consent.

1. **NON-ASSIGNMENT OF RIGHTS**

Neither party hereto shall assign in whole or in part its rights or obligations under this Agreement without the express written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of each of the party’s successors and permitted assigns.

1. **SEVERABILITY**

If it is found in a final judgement  by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

1. **PRIOR UNDERSTANDINGS**

This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorised representative of each party.

1. **COPIES**

For the convenience of the parties involved, any counterpart agreement akin to this one may be executed by the parties involved. Every counterpart shall be as well as deemed to be, an original instrument of the agreement. Every counterpart shall be treted as the sam agreement.

1. **DURATION**

The duration of this Agreement will be [NUMBER] years from the date above.

1. **LAW GOVERNING AGREEMENT**

The validity and interpretation of this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the [Country] of [COUNTRY] apply to agreements made and to be fully performed therein (excluding the conflicts of laws rules).

This agreement will take effect on the date mentioned above

**[NAME OF YOUR COMPNY] [NAME OF RECEIVING PARTY]**

Authorised Signature Authorised Signature

NAME AND TITLE IN PRINT NAME AND TITLE IN PRINT