

NON-DISCLOSURE AGREEMENT

between



MINTeK

(hereinafter called "MINTeK")

a statutory body and juristic person existing in terms of the South African Mineral Technology Act 30 of 1989, as amended, with its principal place of business at 200 Malibongwe Drive, Randburg, Republic of South Africa,

And

[Company/Organisation Logo]

[FULL COMPANY/ORGANISATION/INSTITUTION NAME]

(hereinafter called "The Company")

..... *[insert full company details, registration number and physical address]*

1. INTRODUCTION

- 1.1. The Company and MINTEK has agreed to disclose certain information for REQUEST FOR PROPOSAL (RFP) for Upgrade of Control and Instrumentation System for Bay 2.

MINTEK is planning to disclose certain confidential information to potential bidders who wish to bid on the Request for Proposal for Upgrade of Control and Instrumentation System for Bay 2, at MINTEK, including all Statements of Work, as issued on the RFP dated on or about July-August, 2023 (collectively, the "RFP"),

Therefore, each potential bidder who wishes to submit a response to the RFP must have access to that confidential information in order to construct a response to the RFP, including a bid; and

MINTEK requires each potential bidder identified to receive the RFP to sign this Confidentiality Agreement and return it to MINTEK as a condition of receiving the RFP.

- 1.2. "Confidential Information" as used in this agreement shall mean all information of either the Client or MINTEK disclosed or supplied by or on behalf of one party ("the Disclosing Party") to the other ("the Recipient"), including but not limited to prints, drawings, microfilms, notes, memoranda, reports, test results, specifications, computer disks or information obtained through the visual observation of written information, equipment or plant, relating to Upgrade of Control and Instrumentation System for Bay 2.

2. UNDERTAKING BY THE PARTIES

In consideration of the promises and of the mutual promises and agreements herein contained, it is agreed by and between the parties hereto as follows:

- 2.1. The Company agrees that all information, documents, data, materials and the MINTEK's proprietary Plant Design and Process Design documentation disclosed to, or accessed by, Company in connection with, or related to, the RFP or the RFP process, in any form whether oral or written, or in any medium, including but not limited to any of the following is "Confidential Information" under the terms of this Agreement;
- a) The subject matter described in, and referred to, in the RFP, its associated Statements of Work ("SOWs") or any other attachments, or during the RFP process (collectively "MINTEK Requirements");
 - b) The RFP document (including all attachments), its content, and all supporting data, materials and all other information provided to Company in any form or medium in or in relation to the MINTEK's RFP;
 - c) Any information, data, document or material concerning or related to the MINTEK Requirements, including but not limited to the MINTEK Requirements described in the RFP, SOWs, and all subsequent

information, data, document or materials that may be provided to Company from time to time during the RFP process, including but not limited to any information, data, document or materials provided during or in response to any questions from Company or another recipient of the RFP

- d) The SOW documents (including all attachments), their content, and all supporting data, materials and all other information provided to Company in any form or medium in relation to the MINTEK's RFP process;
- e) All fees including base charges for services, Additional Resource Charge (ARC) or Reduced Resource Charge (RRC) rates, termination fees, resource baseline, volume discounts, new service rates, and skill categories for services;
- f) Any information, data, document or material provided to Company in any form or medium to conduct any capability test pilot or demonstration, whether at the Company's facilities or the MINTEK's facilities;
- g) Description of the MINTEK's finance, information technology, engineering Plant and Process Design, and purchasing activities;
- h) MINTEK's objectives and strategies, including without limitation, the MINTEK's direction and the MINTEK's sourcing objectives;
- i) MINTEK's standards, policies, procedures and methodologies;
- j) MINTEK's volume information provided in the RFP;
- k) Any and all other information, data or materials that Company receives access to or obtains in connection with onsite visits, meetings or in any other forms of communication whether oral or written with MINTEK personnel and contractors; and
- l) Any and all other information, data or materials learned by Company through inspection of the MINTEK's property regarding the MINTEK's products, designs, business plans, strategies or processes, business opportunities, procurement or supply business plans, strategies or process, sales or marketing plans, strategies or processes, technical plans, strategies, or architecture, financial plans, strategies or processes, research, development, know-how, personnel, or third-party confidential information disclosed to Company by MINTEK.

- 2.2. All Confidential Information disclosed by the MINTEK to Company shall be received in confidence by Company. Company agrees that it shall undertake all necessary and appropriate steps to ensure that the secrecy of the Confidential Information in its possession shall be maintained. Company also agrees that it shall treat the Confidential Information with not less than the same degree of care and confidentiality with which it treats its own confidential information, but in no event less than reasonable care. Company agrees that access to the Confidential Information shall be given by it only to those of its employees who have a need to know to

engage in the business relationship contemplated by this Agreement and who have signed a non-use and non-disclosure agreement in content at least as protective of the Confidential Information as the provisions hereof, prior to any disclosure of the Confidential Information to such employees.

- 2.3. All Confidential Information, and any Derivative of it, whether created by MINTEK or Company, remains the property of MINTEK and no license or other rights to Confidential Information is granted to Company. For the purpose of this Agreement, "Derivative" means: (i) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted, (ii) for patentable or patented material, any improvement or enhancement of it; and (iii) for material which is protected by trade secret, any new material derived from existing trade secret material, including new material which may be protected by any of the following: copyright, patent or trade secret.
- 2.4. Except as otherwise provided in any future agreement, at any time, Company agrees that it shall return to MINTEK upon request all documents, records, notebooks, computer media or other stored information of any form or type whatsoever containing any Confidential Information, including all copies thereof, then in its possession or control (directly or indirectly), whether prepared by it or others and it shall at such time immediately discontinue all use of the Confidential Information
- 2.5. Nothing in this Agreement is intended to grant any rights to either party under any patent or copyright rights, nor shall this Agreement grant to any rights in or to the Confidential Information, except as expressly set forth herein.
- 2.6. Any Engineering drawings and other technical information disclosed under this Agreement may be subject to restrictions and controls imposed by the Export Administration Act, Export Administration Regulations and other laws and regulations of the South Africa and any other applicable government or jurisdiction, as enacted from time to time (the "Acts"). Each party agrees to comply with all restrictions and controls imposed by the Acts.
- 2.7. All confidential information is provided "as is". MINTEK makes no warranties, express, implied or otherwise, regarding its accuracy, completeness, fitness for a particular purpose, or performance.
- 2.8. The parties acknowledge and agree that the Confidential Information and rights related thereto being protected by MINTEK hereunder are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which may not be adequately or reasonably compensated for in damages in an action at law, and further agree that the breach by Company of any of the provisions of this Agreement shall cause the other party irreparable injury and damage. In such event, the party alleging breach of this Agreement shall be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts and undertakings required of the other party hereunder and to obtain injunctive and other equitable relief in any competent court to prevent the violation or threatened violation of any of the provisions of this Agreement by the other party. Neither this provision nor any exercise by either party of its rights to equitable relief or specific performance herein granted shall constitute a

waiver by either party of any other rights which it may have to, damages or otherwise. If either party brings suit to enforce the terms hereof, the successful party in such suit shall be entitled to receive all of its reasonable costs of litigation, including attorneys' fees.

- 2.9. If any provision of this Agreement is declared void, or otherwise unenforceable, to any extent, the parties shall endeavour in good faith to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such provision shall be deemed to have been severed from this Agreement, which shall otherwise remain in full force and effect.
- 2.10. Company warrants and represents that the individual who signs this Agreement for Company below has all requisite power and authority to enter into this Agreement on behalf of Company and to bind Company.
- 2.11. This Agreement contains the sole and entire agreement between the parties relating to the subject hereof and any representation, promise or condition not contained herein, or any amendment hereto or waiver hereunder shall not be binding on either party unless in writing and signed by an authorized representative of the party to be bound thereby.
- 2.12. This Agreement and all rights and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, affiliates, agents, employees and assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party. This Agreement shall be governed by, and construed and enforced in accordance with all applicable legislation, including without limitation in compliance with the provisions of the Protection of Personal Information Act, Act 4 of 2013.
- 2.13. This Agreement shall survive until such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of Company. Except as otherwise provided in any future agreement, either party may terminate this Agreement by written notice to the other. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.

3. EXCLUSIONS

The Confidential Information excludes any information which –

- 3.1. is in the public domain, or subsequently comes into the public domain through no fault of either party;
- 3.2. was at the time of disclosure known to the Recipient; or
- 3.3. is received from a third party not subject to similar obligations who may lawfully disclose the information.

4. FORCED DISCLOSURE

In the event that the Recipient is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will –

- 4.1. advise the Disclosing Party thereof in writing prior to disclosure, if possible;
- 4.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
- 4.3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings; and
- 4.4. comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure.

5. GENERAL

- 5.1. This agreement shall be effective on the earlier of the date of first disclosure of any of the Confidential Information or the last date of signature of the agreement and shall endure indefinitely for a period of ten (10) years from the last date of signature of the agreement, unless a party expressly waives its rights in terms hereof by written notice to the other.
- 5.2. This agreement shall be interpreted and enforced in accordance with the laws of South Africa.
- 5.3. The Recipient acknowledges that any breach of this agreement could cause substantial and irreparable economic harm to the Disclosing Party. Accordingly the Recipient hereby agrees that the Disclosing Party will be entitled to an injunction or other remedy of specific performance to enforce the provisions of this agreement, without prejudice to any other remedy that the Disclosing Party may have in law.
- 5.4. This document contains the entire agreement between the parties in regards to the subject matter thereof.
- 5.5. Neither party shall be bound by any express or implied term, representation, warranty, or promise not recorded herein.
- 5.6. No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 5.7. No indulgence granted by any party to any other party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other party which may have arisen in the past or which may arise in the future.
- 5.8. Where it is specified in this agreement that certain matters are to be agreed between the parties, failure to reach agreement in respect of such matter will not affect the validity and enforceability of the whole or any other part of this agreement.

- 5.9. If any clause or term of this agreement shall be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of this agreement shall be deemed to be severable and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of this agreement.

6. SIGNED ON BEHALF OF BOTH PARTIES

Signed at _____ on _____ 20_____

As witnesses:

1. _____
2. _____

FOR: MINTEK

Name: _____

Capacity: _____

As witnesses:

1. _____
2. _____

FOR: THE CLIENT

Name: _____

Capacity: _____