

Annex J - Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

BETWEEN

(Reg No.)

AND

TRANSNET SOC LIMITED,

acting through its operating division

TRANSNET NATIONAL PORTS AUTHORITY

(Reg No. 1990/000900/30)

This agreement entered into between

_____ located at and

Transnet SOC Limited, acting through its operating division, Transnet National Ports Authority ("TNPA"),

(hereinafter referred to respectively as 'a Party' or 'the Parties'),

concerns the safeguarding of proprietary and company confidential information to be provided by each Party to the other in connection with discussions regarding

WITNESSED THAT: It is agreed between the Parties as follows:

1. For purposes of this Agreement, company confidential and/or proprietary information, hereinafter called "proprietary Information", shall be construed to mean

any information disclosed by a Party to the other Party, including without limitation all computer software, which is identified as such by an appropriate stamp or legend or any other notice in writing, or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (30 (thirty) days at the latest) confirmed and designated in writing as Proprietary Information of the disclosing party, hereinafter called the 'Disclosing Party', in either hard copy or electronic media and which each Party considers to be material to its business operations, including, without limitation, wage and salary information, technical information, commercial information, financial information and personnel records.

2. The receiving party, hereinafter called the 'Receiving Party' of any Proprietary Information covenants that, for a period of 5 (five years) from the effective date of this Agreement, the Proprietary Information received from the Disclosing Party:
 - 2.1. shall not be used, duplicated, in whole or in part, for any purpose other than the purpose here above stated, without the prior written consent of the Disclosing Party,
 - 2.2. shall be protected and kept in confidence said Proprietary Information by using the same degree of care and safeguard as it uses to protect its own Proprietary Information of like importance,
 - 2.3. shall only be disclosed to persons within the Receiving Party's organisation who have a need to know and solely for the purpose mentioned in the preamble.
3. Nothing contained in the Agreement shall be construed as granting or conferring, expressly or impliedly, any rights in or title to the proprietary information disclosed hereunder. It is agreed that no license under any patents of either Party is granted by this Agreement or by any disclosure or use of such Proprietary Information which:
 - 3.1. Was at the time of receipt otherwise known to the Receiving Party
 - 3.2. Has been published or is otherwise within the public knowledge or is generally known to the public at the time of its disclosure to the Receiving Party

- 3.3. Subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information
 - 3.4. Becomes legally known or available to the Receiving Party from a source other than the Disclosing Party, and without breach of the Agreement by the recipient
 - 3.5. Becomes part of the public domain without breach of the Agreement by the recipient
 - 3.6. Is so disclosed or used with the written approval of the Disclosing Party
- 4. Unless extended in writing by mutual agreement and unless earlier terminated as hereafter, this Agreement shall terminate upon the expiration of 5 (seven) years from its effective date. This Agreement including all rights and obligations of the Parties hereto, except the obligations specified in paragraph 2 hereof, may be earlier terminated by either Party by operation of law and without demand at any time upon 30 (thirty) days written notice. The end of termination of the Agreement shall not relieve either Party from complying with the obligations of paragraph 2 with respect to the use and protection of the Proprietary Information received prior to the date of termination or the end of this Agreement. Such obligations shall continue for the period applicable as set forth in said paragraph.
 - 5. Each Party shall bear its own costs incurred under or in connection with the Agreement. Nothing in the Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract or any other business relationship with the other Party or to disclose any Proprietary Information to the other Party.
 - 6. It is understood that this Agreement constitutes a Non-Disclosure Agreement only. Nothing in this Agreement shall grant either Party the right to make any commitments of any kind for, or on behalf of, the other Party without the prior written consent of the other Party.
 - 7. This Agreement and the rights and obligations hereunder may not be transferred or assigned by a Party without the proper written approval of the other Party hereto.
 - 8. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa

9. Any dispute arising from or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally resolved in accordance of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator or arbitrators appointed by the Foundation. The arbitration will be held in Sandton, Johannesburg, in accordance with the formalities of AFSA rules and procedure settled by the arbitrator and may be held in informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings or the strict rules if the evidence.
10. Any Proprietary Information (and copies thereof) disclosed by a Party to the other Party shall remain the property of the Disclosing Party and shall be returned by the Receiving Party immediately upon request.
11. Any Proprietary Information disclosed by the Parties under this Agreement, shall be identified by the Disclosing Party as Proprietary Information at the time of disclosure, and the disclosure, protection, use and handling of such information shall be in accordance with the security procedures prescribed by the South African government.
12. In the event of one Party visiting any of the facilities of the other Party, the visiting party undertakes that any further Proprietary Information relating to the Party being visited which may come to the visiting Party's knowledge as a result of any such visit, including without limitation, any information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly confidential and be subject to the same protection as is provided for in clause 2 above.
13. The execution, existence and performance of the Agreement shall be kept confidential by the Parties and shall not be disclosed by a Party without the prior consents of the other Party.
14. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understanding and agreements between the Parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.

15. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of the Republic of South Africa.
16. With respect to any exchange of Proprietary Information which may occur as a result of the Agreement, it is expressly understood and agrees that the below listed employees shall, on behalf of the respective Parties be the exclusive individuals authorized to receive and or transmit Proprietary Information under the Agreement:

TNPA

17. As regard the individuals identified in Paragraph 16 above here above, each Party shall have the right and power to redesignate such persons within their organisation as are authorized to receive/transmit Proprietary Information, which are made by a Party, shall be effected by rendering written notice of such change to the other Party.

18. The Parties agree that this Agreement shall be drafted in the English language.

IN WITNESS WHEREOF, the Parties hereto have to set their hands as of the date first above written.

TNPA

Date:

Place:

Witness 1: (Name, Address, Signature,
Date).....

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Witness 2: (Name, Address, Signature, Date)

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Quay Operator

Date:

Place:

Witness 1: (Name, Address, Signature,
Date).....

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Witness 2: (Name, Address, Signature,
Date).....

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