



**DE BEERS GROUP**

**UNILATERAL  
CONFIDENTIALITY  
AGREEMENT**

**(DE BEERS DISCLOSING PARTY)**

**PART A – GENERAL CONDITIONS**

Now, it is hereby agreed as follows by the Parties:

1. Definitions and Interpretation

1.1 Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in this Agreement.

**'Affiliate'** means, in respect of a Person, any Person which Controls (directly or indirectly) that Person and any other person Controlled (directly or indirectly) by such first-mentioned Person, including, where a Person is a company, the ultimate holding company of such Person, any holding company of such Person and any subsidiary (direct or indirect) of such holding company, and the case of the Company includes any joint ventures (whether incorporated or unincorporated) in which the Company has a participation interest.

**'Agreement'** means:

- (a) the Agreement Particulars (including any schedules specifically incorporated therein); and
- (b) the General Conditions contained in this Part A.

**'Business Day'** means a calendar day ending at 5pm, other than a Saturday, Sunday or public holiday in the Republic of South Africa and the United Kingdom.

**'Company'** means the Party so named in the Agreement Particulars.

**'Control'** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by contract or otherwise, including without limitation the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person, and 'Controlled' shall be construed accordingly.

**'Confidential Information'**

- (a) means all information of whatever nature (including commercially sensitive information) whether oral or in tangible form, stored in computerised, electronic, disk, tape, flash drive, microfilm or other form or derived from physical inspection of assets, properties or facilities provided by the Company or its Representatives, and all analyses, compilations, data, studies or other documents or records prepared and containing or based, in whole or in part, upon any such information, and each item thereof, in each case, directly or indirectly provided or developed for the Disclosure Purpose and, subject to clause 5.1, includes all copies in any form of any of the aforesaid items;
- (b) does not include information that:

- (i) is already known to the Recipient or any of its Representatives, or is otherwise in the possession of the Recipient or any of its Representatives, from a source other than the Company or its Representatives at the date of Disclosure by the Company, where the knowledge or possession of such information by the Recipient or its Representatives is not subject to another confidentiality agreement with, or other obligations of secrecy or fiduciary responsibility to, the Company or its Representatives; or
- (ii) becomes available to the Recipient or any of its Representatives, after the date of Disclosure by the Company, on a non-confidential basis from a source other than the Company or its Representatives, which source to the knowledge of the Recipient and its Representatives is not:
  - (A) bound by a confidentiality agreement or other obligation of secrecy to the Company or its Representatives; or
  - (B) otherwise under an obligation of secrecy to the Company or its Representatives; or
- (iii) is in the public domain or is widely known to geologists, geophysicists, metallurgists, mining engineers or other relevant, knowledgeable professionals, in each case at the date of Disclosure by the Company; or
- (iv) subsequently enters the public domain or becomes widely known to geologists, geophysicists, metallurgists, mining engineers or other relevant, knowledgeable professionals, in each case after the date of Disclosure by the Company for any reason other than as a result of a breach of this Agreement by the Recipient or its Representatives; or
- (v) is developed by the Recipient or any of its Representatives independently and without the benefit of the Information of the Company without breach of this Agreement by the Recipient or its Representatives.

**'Disclose'** means in relation to any Confidential Information, the disclosure thereof in any manner whatsoever, including any direct or indirect disclosure, the provision, revealing or discussion thereof, or permitting or allowing any observation thereof, or the granting of any access thereto, or the parting with possession thereof, or the announcement or communication thereof (wherever and in whatever form, format or medium, and whether orally or in writing or by any other medium whatsoever), and **"Disclosure"** shall be construed accordingly.

**'Disclosure Purpose'** means the purpose for the Disclosure of the Confidential Information by the Company to the Recipient or its Representatives (including any potential transaction between the Parties) as described in the Agreement Particulars.

**'Party'** means either the Company or the Recipient as the context may require and **'Parties'** shall mean both the Company and the Recipient.

**'Person'** includes an individual, body corporate, partnership, joint venture, association, trust, unincorporated organisation and any other entity recognised by law.

**'Recipient(s)'** means the Party to this Agreement that is acting in the capacity of receiving or having received Confidential Information from the Company or having the Company's Confidential Information come to its knowledge and so named in the Agreement Particulars.

**'Representatives'** means:

- (a) the Affiliates of a Party;
- (b) the directors, officers and employees of a Party and its Affiliates; and
- (c) a Party's financial advisors, insurance brokers, legal advisors and other professional advisors and their respective employees.

## 1.2 Interpretation

In this Agreement:

- (a) the singular includes the plural and *vice versa*, and a gender includes other genders;
- (b) the words *'include'*, *'included'*, *'including'* and *'in particular'*, and words of similar effect, shall not be interpreted as words of limitation;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this Agreement;
- (d) a reference to any legislation, any subordinate legislation made under it, statutory instrument, statutory provision or regulation is a reference to that legislation, instrument, provision or regulation as amended, modified, extended, consolidated, substituted or re-enacted and in force from time to time and includes all regulations promulgated in terms thereof;
- (e) a 'day' (other than a Business Day) means a period of 24 (twenty-four) consecutive hours from midnight; and
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

## 2. Recipient's obligations

### 2.1 The Recipient must:

- (a) keep the Confidential Information confidential and comply with this Agreement;
- (b) not Disclose the Confidential Information to any Person without the prior written consent of the Company, except as permitted in clause 3, clause 4 or clause 5;
- (c) not use the Confidential Information, directly or indirectly, for any purpose other than to consider, evaluate, advise on or further the Disclosure Purpose;
- (d) ensure that all copies of Confidential Information are prominently marked **'CONFIDENTIAL'**; and

- (e) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised by this Agreement.
- 2.2 The Recipient must, and must ensure that those of its Representatives to whom Confidential Information is Disclosed, at its or their respective expense:
  - (a) notify the Company immediately if it becomes aware of any suspected or actual unauthorised access to, modification, use, copying or Disclosure of, or loss of, Confidential Information;
  - (b) immediately take all reasonable steps to remedy, and mitigate the consequences of, the suspected or actual unauthorised access to, modification, use, copying or Disclosure of, or loss of, Confidential Information;
  - (c) immediately take all reasonable steps to prevent or stop the suspected or actual unauthorised access to, modification, use, copying or Disclosure of, or loss of, Confidential Information; and
  - (d) comply with any direction issued by the Company from time to time regarding enforcement of this Agreement or the obligations of confidentiality under this Agreement (including starting and conducting enforcement proceedings).
- 2.3 The Recipient acknowledges that all the undertakings given by it in terms of this Agreement are fair and reasonable and are reasonably required in order to protect the proprietary interests of the Company in the Confidential Information and that, but for the undertakings contained in this Agreement, the Company would not disclose the Confidential Information to the Recipient.
- 3. Disclosure to Representatives**
- 3.1 The Recipient may Disclose the Confidential Information to its Representatives subject to the condition that such Representatives:
  - (a) reasonably need to know the Confidential Information for the Disclosure Purpose;
  - (b) are informed by the Recipient of the confidential nature of the Confidential Information; and
  - (c) are obliged to observe and comply with the restrictions set out in this Agreement or are under an express or implied enforceable obligation to the Recipient to keep the Confidential Information confidential.
- 3.2 The Recipient is responsible and liable for any breach of the provisions of this Agreement and a breach of the confidentiality obligations hereunder by any of its Representatives.
- 4. Disclosure required by law**
- If the Recipient, or any of its Representatives to whom the Recipient Discloses the Confidential Information pursuant to this Agreement, is required by law, regulation, administrative order, decision of any court or the rules of any stock exchange on which that entity's shares are traded to Disclose any of the Confidential Information, the Recipient must provide the Company with prompt written notice. In appropriate circumstances, the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and the Recipient must consent to and

assist the Company in obtaining any protective order or other appropriate remedy that the Company or any of its Representatives may seek for the purpose of preventing Disclosure of any of the Confidential Information provided, however, that nothing in this Agreement prevents the Recipient or its Representatives from complying with their respective legal obligations or imposes liability on them for doing so. If the Recipient or any of its Representatives makes any Disclosure pursuant to this clause 4, they must Disclose only that portion of the Confidential Information which they are legally required to Disclose

## **5. Records**

- 5.1 The Recipient shall not copy any material (whether on paper, microfilm, audio or video tape, cassette or disc, laser disc, computer software, magnetic tape or any other medium of storing or recording information) or things (including tooling, patterns, moulds, dies, jigs, fixtures, and other aids to manufacture) comprising or containing any of the Confidential Information, nor reproduce the Confidential Information in any manner, except as may be strictly necessary for the Disclosure Purpose or for compliance with any applicable law, rule or regulation.
- 5.2 If no subsequent agreement is entered into between the Company and the Recipient in respect of the Recipient's supply of services and/or goods or otherwise relevant to the Disclosure Purpose, after the Confidential Information is Disclosed to the Recipient, or if the Company so requests at any time for any reason whatsoever, the Recipient must promptly and, in any event, within 5 (five) Business Days of receipt of a written request from the Company deliver to the Company or, at the option of the Company, destroy, all Confidential Information in tangible form, and so far as it is reasonably practicable to do so, delete any Confidential Information from any computer, word processor or other device, in the possession or control of the Recipient or its Representatives.
- 5.3 The Recipient and its Representatives are not required to destroy or alter back-up copies of computer files created in the ordinary course of business, save that if such copies are restored from back-up files after the Company has requested their return or destruction, they must be immediately destroyed except to the extent permitted by this clause 5.
- 5.4 The undertakings in this clause 5 to return or destroy Confidential Information shall not apply to Confidential Information which the Recipient or its Representatives must retain under any applicable law, rule or regulation, including the rules of a professional body or the rules of any relevant stock exchange. If requested to do so by the Company, the Recipient must within 5 (five) Business Days deliver to the Company a written notice confirming its compliance with this clause 5 and provide such further information relating to its compliance as may be requested by the Company.

## **6. No warranties, indemnities or license**

- 6.1 The Recipient will be responsible for reaching its own decision in respect of the Confidential Information and, save as may otherwise be agreed in any definitive agreement relevant to the Disclosure Purpose, neither the Company, its Representatives nor any other person makes any representation, warranty or undertaking, express or implied, as to the accuracy, completeness or reasonableness of the Confidential

Information or any oral communication in relation to the Confidential Information.

- 6.2 Neither the Company nor its Representatives undertake to provide any additional Confidential Information, update any Confidential Information provided or to correct any inaccuracies therein.
- 6.3 Neither the Confidential Information nor anything else in this Agreement will constitute an offer or an agreement to enter into any discussions or to negotiate with the Recipient or any of its Representatives by or on behalf of the Company or its Representatives, and the Company will be under no obligation to enter into any subsequent agreement or accept any offer or proposal which may be made by the Recipient or on the Recipient's behalf.
- 6.4 This Agreement and the act of making any Disclosures under this Agreement does not constitute an offer by the Company to license or grant rights to or in its Confidential Information (including any intellectual property forming part of the Confidential Information) to the Recipient or its Representatives and ownership in the Confidential Information (including intellectual property) shall remain vested in the Company until an agreement is entered into by the Parties (if any) providing the contrary.

## **7. Damages not an adequate remedy**

- 7.1 The Recipient acknowledges that a breach of any of the obligations or provisions contained herein may cause the Company or its Affiliates to suffer loss which may not be adequately compensated for by damages and that the Company or its Affiliates may in such event, in addition to any other remedy or relief, enforce the performance of this Agreement by interdict or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and the Recipient must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.
- 7.2 The Parties acknowledge that any unauthorised Disclosure or use of the Confidential Information or any unauthorised public announcement by the Recipient or its Representatives may cause irreparable harm to the Company and/or its shareholders. That being so, the Recipient indemnifies and holds harmless the Company and its Affiliates against all losses, damages, expenses and legal costs that the Company or its Affiliates reasonably sustain or incur as a result of any breach of this Agreement by the Recipient or its Representatives. This clause 7.2 shall survive termination or expiration of this Agreement.

## **8. Entire Agreement**

This Agreement sets out the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written between the Parties in relation to the matters dealt with in this Agreement.

## **9. Amendment**

The Agreement may be altered only in writing signed by both Parties. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002 are expressly excluded from this clause 9.

## **10. Non-waiver**

10.1 No failure by a Party to enforce any provision of this Agreement will constitute a waiver of such provision or affect in any way a Party's right to require the performance of such provision at any time in the future.

10.2 No waiver of or consent to depart from the requirements of any provision of this Agreement is binding against either Party unless it is in writing and is signed by the Party giving it. Such waiver or consent is effective only in the specific instance and for the specific purpose for which it has been given.

## **11. Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed and enforced in accordance with the laws of the Republic of South Africa. The courts of the Republic of South Africa shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum.

## **12. Invalidity**

If any provision contained in the Agreement is void, illegal or unenforceable, that provision is severable from the Agreement and the remainder of the Agreement has full force and effect.

## **13. Notices**

13.1 The Parties choose as their *domicilium citandi et executandi* for court process and notices the addresses specified in the Agreement Particulars.

13.2 A notice under this Agreement must be in writing, in English and addressed to the receiving Party, and will be deemed to have been received:

- (a) if posted by registered post, on the 10<sup>th</sup> (tenth) day after posting;
- (b) if delivered personally, upon delivery; or
- (c) if sent by email, on the next Business Day,

unless proved otherwise.

13.3 A Party may specify another address for the purposes of this clause 13 by notice to the other Party.

13.4 A notice actually received by a Party is adequate service of such notice even if the notice is received at an address different to the address specified in the Agreement Particulars or a later notice.

## **14. Successors and Assigns**

This Agreement inures to the benefit of and is binding upon each Party and its respective successors and permitted assigns.

## **15. Execution authorised**

Each Party represents and warrants to the other Party that the execution and delivery of this Agreement has been duly authorised by all necessary corporate action of that Party and that the Person(s) signing



this Agreement on behalf of that Party are duly authorised to do so.

**16. Counterparts**

This Agreement may be executed by the Parties in any number of counterparts, each of which so executed will be deemed to be an original and taken together constitute one and the same instrument.

**17. Period of Confidentiality**

This Agreement shall take effect from the date specified in table item 1 of the Agreement Particulars. The obligations of the Recipient and its Representatives under this Agreement continue to apply until the date and/or time specified in the Agreement Particulars.

**18. Accrued rights and remedies**

Termination of this Agreement does not affect any accrued rights or remedies that the Company may have against the Recipient.