

• BULLION •

Gold Buyers

**CONFIDENTIALITY AND NON-DISCLOSURE
AGREEMENT**

PARTIES:

1. **BULLION GOLD BUYERS (PTY) LTD**

2. _____

1. DEFINITIONS

1.1 "Agreement" means this confidentiality and non-disclosure agreement;

1.2 "Business" means:

1.2.1 the purchase and sale of gold and gold products;

1.2.2 the modification, research and development of BULLION, including the name, operations, sales strategy and any associated activity relating to BULLION; and

1.2.3 all other business activities undertaken by BULLION from time to time, notwithstanding that they might not be detailed herein or be included in the above list.

1.3 "Business Day" means any day other than Saturday, Sunday or public holiday in the Republic of South Africa;

1.4 "CLIENT" means _____ (Registration Number _____);

1.5 "Confidential Information" means any and all information, of whatever form pertaining to the affairs of BULLION and / or the Business of BULLION as previously, presently or intended to be conducted in the future, whether in written, graphic, video, audio, oral and electronic information, original or copy format, presently existing or to be created in the future, including but not limited to financial data, turnover figures, pricing structures, discount structures, profit margins, market shares, details of supply arrangements, details of manufacturing arrangements, details of arrangements with customers, customer information, manufacturing information, technical information, process specifications, methods of conducting business, know-how, trade secrets, business plans, product development information, service

development information, computer software, brand strategy, marketing strategy, formulations, designs, product and service applications, material specifications, financial structures, operating results, business strategies, trademarks, copyrights and the like, regardless of its utility and commercial value, belonging or relevant to BULLION or belonging or relevant to a third party, which BULLION has access to and is entitled to use but which BULLION is obliged to keep confidential; whether disclosed by BULLION, any authorised third party and / or any unauthorised third party, whether accessed with or without authority or permission of BULLION, and whether accessed from or via BULLION or any authorised third party and / or any unauthorised third party;

1.6 "Effective Date" means the date on which the last party to sign this Agreement does so;

1.7 "BULLION" means BULLION GOLD BUYERS (PTY) LTD (Registration Number: 2018/569310/07), a company duly incorporated in the Republic of South Africa;

1.8 "Parties" / "Party" means the parties to this Agreement or any one of them as the context may indicate.

2. INTERPRETATION

2.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

2.1.1 words importing:

2.1.1.1 any one gender includes the other genders;

2.1.1.2 the singular includes the plural and *vice versa*; and

2.1.1.3 natural persons include created entities (incorporated or unincorporated) and vice versa;

- 2.2. If any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- 2.3. When any number of days is prescribed in this Agreement, same shall be calculated exclusively of the first and inclusively of the last day unless the last day is not a Business Day in which case the last day shall be the following Business Day.
- 2.4. Expressions defined in this Agreement shall bear the same meanings in any schedules or annexures to this Agreement (if any) which do not themselves contain their own conflicting definitions.
- 2.5. If a term is defined within the context of any particular clause in this Agreement, that definition, unless it is clear from the clause in question that the definition has limited application to the relevant clause, shall have the same meaning throughout this Agreement.
- 2.6. The rule that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract (the Contra Pro Ferentem Rule), shall not apply to the interpretation of this Agreement.
- 2.7. The words "include", "including" and "in particular" shall not be construed as limiting the generality of any preceding word/s or introducing an exhaustive list.
- 2.8. Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 2.9. When, in this Agreement, a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
 - 2.9.1 excluding the day on which the first such event occurs;
 - 2.9.2 including the day on or by which the Client event is to occur; and

2.9.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated above, respectively.

3 BACKGROUND

3.1 BULLION has a business involving the research, development, purchase and selling of gold and gold products. During the course of their dealings with each other, BULLION will have to disclose to CLIENT Confidential Information. The purpose of this agreement is to stress the importance of maintaining the Confidential Information in the strictest of confidence in order to protect the proprietary or other interests of BULLION therein and to ensure that CLIENT is bound to do so. This agreement is also intended to protect any additional Confidential Information that may be disclosed to CLIENT in any and all future dealings between the parties.

3.2 Without derogating from the generality of clause 3.1, it is recorded that this agreement shall be of application regardless of the nature of the dealings between the parties, whether they be formal or informal, including for reward or gratuitous, as employer and consultant, as principal and contractor, principal and agent, customer and supplier or host and visitor.

4 RESTRICTION OF DISCLOSURE

4.1 CLIENT acknowledges that the Confidential Information is proprietary and / or confidential to BULLION or to a third party, which BULLION has access to and is entitled to use but which BULLION is obliged to keep confidential.

4.2 CLIENT shall not at any time disclose, use or exploit the Confidential Information for any reason or purpose whatsoever without the prior written

consent of BULLION, which includes opening a competitive business to BULLION.

- 4.3 The obligation of CLIENT to not disclose Confidential Information shall apply also to any Confidential Information that was known to or came into the possession of CLIENT prior to disclosure thereof by BULLION or which was not acquired directly or indirectly from BULLION.
- 4.4 CLIENT agrees that the unauthorised disclosure of Confidential Information to a third party may cause irreparable loss, loss of profit, harm and damage to BULLION for which a damages claim would be an inadequate remedy and therefore, in the event of such breach, in addition to its rights and remedies otherwise available in law, BULLION shall be entitled to equitable relief, including an interdict.
- 4.5 CLIENT shall not make copies of, or extracts from, the Confidential Information, save for the purposes for which such Confidential Information is divulged to CLIENT;
- 4.6 CLIENT shall not retain in its own possession any written notes, memoranda or records containing any Confidential Information longer than such is reasonably required by CLIENT for the purposes of relevant work undertaken at the instance of BULLION, save with the express approval of BULLION;
- 4.7 CLIENT shall, promptly upon the reasonable request therefore by BULLION deliver back to BULLION any document, tape, disc or the like containing Confidential Information and shall, in any event, not retain any such documents, tapes, discs and the like if and when the purpose for CLIENT having access to the Confidential Information has terminated or the dealings between the parties have terminated.

5 STANDARD OF CARE

- 5.1 CLIENT shall protect the Confidential Information in its possession or under its care or control, either directly or indirectly, using the same standard of care that a reasonable man would apply to safeguard its own proprietary, secret or confidential information; and it shall store and handle the Confidential Information in such a way as to prevent any unauthorised disclosure or use thereof.

6 RETURN OF CONFIDENTIAL INFORMATION

- 6.1 BULLION may, at any time, on 1 Business Days' notice, request CLIENT to return any or all Confidential Information or any material containing Confidential Information in its possession or under its care or control, either directly or indirectly.
- 6.2 BULLION may, in addition, request CLIENT to furnish a sworn or affirmed written statement to the effect that, upon such return, CLIENT has not retained in its possession, or under its care or control, either directly or indirectly, any Confidential Information.

7 EXCLUDED INFORMATION

- 7.1 The obligation of CLIENT not to disclose Confidential Information shall not apply to any Confidential Information that:
- 7.1.2 is or become published by BULLION and publicly known, otherwise than pursuant to a breach of this Agreement by CLIENT;

7.1.3 is disclosed by CLIENT to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances:

7.1.3.1 CLIENT shall advise BULLION to take whatever steps it deems necessary to protect its interests in this regard;

7.1.3.2 CLIENT will disclose only that portion of the Confidential Information which he is legally required to disclose; and

7.1.3.3 CLIENT will use reasonable endeavours to protect the confidentiality of such Confidential Information to the widest extent possible in the circumstances;

7.1.4 is disclosed by CLIENT to a third party pursuant to the prior written authorisation of BULLION.

8 TERM

8.1 The obligations contained in this Agreement:

8.1.1 shall commence on the Effective Date and continue for a period of 5 years.

8.1.2 shall survive the cancellation or termination of this Agreement for any reason.

9 CONFLICT WITH OTHER AGREEMENTS

9.1 It is contemplated that the Parties might conclude different, other or fuller agreements relating to Confidential Information. However, until those agreements are reduced to writing and signed by the Parties this Agreement shall prevail.

9.2 Where the Parties do indeed conclude the agreements referred to above after the conclusion of this Agreement, this Agreement shall prevail over those agreements to the extent that there is conflict between the provisions of this Agreement and those agreements:

9.2.1 if preferring this Agreement will advance the protection of Confidential Information;

9.2.2 notwithstanding that those agreements might have been concluded after this Agreement and concern similar subject matter;

unless this Agreement is expressly identified in those agreements by its name and date and is expressly partially or wholly novated.

9.3 Where those agreements are silent on a subject matter which is provided for in this Agreement, this Agreement shall supplement those agreements and shall remain in force and effect between the Parties.

10. ASSIGNMENT

10.1 CLIENT's obligations in terms of this Agreement may not be ceded or assigned.

11. DOMICILIUM

11.1 CLIENT chooses as its domicilium citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following physical address:

Physical address:
Postal address:
Email:

11.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

11.3 CLIENT shall be entitled to change its domicilium address from time to time, by way of written notice to BULLION specifying its new domicilium address provided always, however, that the new address is within the Republic of South Africa and is not a post office or post restante address.

11.4 Any notice to CLIENT:

11.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium address shall be deemed to have been received on the 7th (seventh) Business Day after posting (unless the contrary is proved);

11.4.2 delivered by hand to a responsible person during ordinary business hours at its domicilium address shall be deemed to have been received on the day of delivery;

11.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by CLIENT shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium address.

12. GENERAL

- 12.1 This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of South Africa;
- 12.2 All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The place of arbitration is Durban. The language of the arbitral proceedings is English.
- 12.3 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes all other discussions, agreements and/or understandings regarding the subject matter hereof.
- 12.4 No amendment or consensual cancellation of this Agreement or any provision hereof, and no settlement of any disputes arising out of this Agreement, and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provision of this Agreement, shall be binding unless first recorded in writing and signed by the Parties
- 12.5 To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 12.6 Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be regarded as pro non scripto (as if not written) and severed from the Agreement, without invalidating the remaining provisions of this Agreement.

BULLION	
Name of Representative	
Signature of Representative	
Date	
Place	

CLIENT	
Name of Representative	
Signature of Representative	
Date	
Place	