

Annex 18 - Non-Disclosure Agreement

THIS AGREEMENT is made on []

BETWEEN:

- (1) **NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.**, a company limited by shares incorporated in The Netherlands having its registered office at Anna van Saksenlaan 71, 2593 HW The Hague, The Netherlands, fax number +31 70 3149866 ("**FMO**");
- (2) [**INSERT COMPANY NAME**], a [*insert legal entity*] company incorporated in [*place of incorporation*] having its registered office at [*address and fax number*] (the "**Company**").

INTRODUCTION:

- (a) FMO and the Company are respectively the owners of Confidential Information which they have agreed to disclose to each other specifically for the Purpose and on the terms and conditions set out in this Agreement.

FMO, and the Company will identify ways to cooperate, exchange knowledge and information and/or identify suitable projects to develop within common focus areas in various countries (the "**Projects**"). **THE PARTIES AGREE** as follows:

1. INTERPRETATION

1.1 In this Agreement:

"**Confidential Information**" means any information of a confidential nature relating to the Disclosing Party or a member of its Group disclosed (whether before or after the date of this Agreement and whether in writing, verbally or by any other means and whether directly or indirectly) by the Disclosing Party or by another person on behalf of the Disclosing Party to the Receiving Party or to another person on behalf of the Receiving Party including, without limitation, any information relating to the Purpose or to the Disclosing Party's products, operations, processes, plans or intentions, product information, know how, design rights, trade secrets, market opportunities and business affairs;

"**Disclosing Party**" means the party to this Agreement disclosing the Confidential Information;

"**Group**" means a party and all of its subsidiary undertakings for the time being;

"**Purpose**" means discussions and negotiations between the parties with respect to the [DESCRIPTION OF PURPOSE];

"**Receiving Party**" means the party to this Agreement to whom the Confidential Information is disclosed.

1.2 In this Agreement a reference to:

- 1.2.1 a person includes a reference to a corporation, body corporate, association or partnership;

1.2.2 a person includes a reference to that person's legal personal representatives, successors and permitted assigns;

1.2.3 a clause or schedule, unless the context otherwise requires, is a reference to a clause of or schedule to this Agreement.

1.3 The headings in this Agreement do not affect its interpretation.

2. UNDERTAKINGS CONCERNING CONFIDENTIAL INFORMATION

In consideration of each party supplying its Confidential Information to the other party and subject to the exceptions described in Clause 5, the parties undertake as follows:

2.1 to keep the other party's Confidential Information confidential including, without limitation, taking the measures set out in Clause 3;

2.2 not to use the other party's Confidential Information except for the Purpose;

2.3 not to disclose the other party's Confidential Information to another person and to use all reasonable efforts to prevent any such disclosure except as permitted under Clause 4 and Clause 7.

3. KEEPING CONFIDENTIAL INFORMATION CONFIDENTIAL

Each party shall in relation to the Confidential Information of the other party exercise no lesser security measures and degree of care than those which it applies to its own confidential information and which it warrants as providing adequate protection against any unauthorised disclosure, copying or use.

4. DISCLOSURE OF THE CONFIDENTIAL INFORMATION

4.1 Each party may disclose the Confidential Information of the other party:

4.1.1 with the prior written consent of the other party;

4.1.2 to its employees, professional advisors, authorised representatives, potential underwriters or sub contractors to the extent that disclosure is necessary or desirable for the Purpose;

4.1.3 where disclosure is required by law, by a court of competent jurisdiction or by another appropriate regulatory body provided that the Receiving Party shall give to the Disclosing Party not less than two business days' notice of such disclosure; or

4.2 FMO may disclose the Confidential Information to any person that:

4.2.1 considers taking, or is taking, a Transaction Interest and/or;

4.2.2 considers making, or is making, any other contribution to the financing of the Project,

if the person to whom the Confidential Information is to be given pursuant to this Clause 4.2 is subject to confidentiality obligations deriving from statute, professional regulations, codes of ethics or of conduct or from contractual undertakings, substantially equivalent to those set forth under this Agreement

4.3 Prior to disclosure of the Confidential Information to a Recipient, the Receiving Party shall, except in case of disclosure under Clause 4.1.3 of this Agreement, ensure that the Recipient reads and understands this Agreement and shall ensure that the Recipient complies with the terms of this Agreement as if the Recipient were a party to this Agreement.

- 4.4 "**Recipient**" means a person to whom any Confidential Information is disclosed, for the purposes of Clause 4.
- 4.5 "**Transaction Interest**" means a legal, beneficial or economic interest acquired or to be acquired expressly and specifically in or in relation to the financing of the Project, whether as initial lender/investor/participant or any other party with an interest in the Project by way of assignment, transfer, novation or any other similar method.

5. EXCEPTIONS

This Agreement does not apply to Confidential Information:

- 5.1 to the extent that the Confidential Information is or comes into the public domain other than by breach of this Agreement;
- 5.2 which the Receiving Party can show by its written or other records was in its possession prior to receipt from the Disclosing Party and which had not previously been obtained from the Disclosing Party or another person under an obligation of confidentiality;
- 5.3 which the Receiving Party obtains or has available from a source other than the Disclosing Party without breaching any obligation of confidentiality;
- 5.4 which has been disclosed by the Disclosing Party to another person without an obligation of confidentiality.

6. FURTHER UNDERTAKINGS

- 6.1 No right or licence is granted to either party in relation to the other party's Confidential Information except as expressly set out in this Agreement.
- 6.2 Neither party accepts responsibility for or makes a representation or warranty, express or implied, with respect to the truth, accuracy, completeness or reasonableness of the Confidential Information. Neither party is liable to the other party or another person in respect of the Confidential Information or its use.

7. PUBLICATION OF INFORMATION

FMO may be obliged to disclose through publication on its website, and other (social) media, certain details of the Project and FMO's participation in a potential financing (no commercially sensitive or Confidential Information), for a period of at least 30 days, in advance of contracting. FMO and the Company will enter into separate and more detailed arrangement on disclosure prior to contracting of such financing.

8. TERM AND TERMINATION

- 8.1 This Agreement shall come into effect (i) until parties sign the underlying documentation in relation to the Project, or (ii) in the event parties do not sign any such documentation, on the date of this Agreement and shall continue to be in full force and effect for a period of 2 years.
- 8.2 Each party undertakes within 14 days of receipt of a written request of the other party:
- 8.2.1 subject to Clause 8.3, to return to the other party all documents and other material in its possession, custody or control that contain any part of the other party's Confidential Information; or
- 8.2.2 subject to Clause 8.3, to destroy by shredding or incineration all documents and other material in its possession, custody or control which reflect or have

been generated from any part of the other party's Confidential Information and to certify to the other party that this has been done.

- 8.3 Without prejudice to the generality of Clause 8.2, each party may retain:
- (a) any minutes of meetings of their Board which reflect or have been generated from any part of the other party's Confidential Information; and
 - (b) a document to the extent a party is required to do so by law or a competent judicial governmental, supervisory or regulatory body; and
 - (c) a copy of any document to the extent that this is required for the purpose of the relevant party's own internal records,

but the obligations in Clauses 3 and 4 of this Agreement shall continue to apply.

9. ANNOUNCEMENTS

- 9.1 Neither party shall disclose or announce the Purpose to another person without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except to the extent that such disclosure or announcement is required as specified in Clause 9.2
- 9.2 To the extent that a disclosure or announcement of the type referred to in Clause 9.1 is required by law, by a rule of a stock exchange on which the party's shares are listed or traded or by a governmental authority or other authority with relevant powers, the disclosure or announcement shall so far as is practicable be made after consultation with the other party and after taking into account the other party's reasonable requirements as to its timing, content and manner of making or despatch.
- 9.3 If Clause 9.2 applies and the party making the disclosure or announcement is unable to consult the other before the disclosure or announcement is made, that party shall to the extent permitted by law inform the other party of the circumstances, timing, content and manner of making or despatch of the disclosure or announcement immediately after such disclosure or announcement is made.

10. GENERAL

- 10.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents a further exercise of the right or remedy or the exercise of another right or remedy.
- 10.2 The rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.
- 10.3 A person who is not a party to this Agreement has no right under section 6:253 of the Dutch Civil Code to enforce or to enjoy the benefit of any term of this Agreement.
- 10.4 This Agreement may be executed in counterpart, each of which together shall constitute one and the same instrument and the parties may execute this Agreement by signing in counterpart. A facsimile or pdf signature of any party shall be deemed to be an original.

11. NOTICES

Any notice or demand to be made by one person to another in respect of this Agreement may be served by leaving it at the address specified above (or such other address as such other person may previously have specified) or by letter posted by prepaid first-class post to such address (which shall be deemed to have been served on the fifth day following the date of posting), or by fax to the fax number specified above (or such other number as such person may previously have specified) (which shall be deemed to have been received when transmission has been completed) **provided that** any notice to be served on a party shall be effective only when actually received by the other party, marked for the attention of the department or officer specified by the other party for such purpose.

Any communication to be made under or in connection with this Agreement shall be made in writing and unless otherwise stated, may be made by e-mail or letter.

11. GOVERNING LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of The Netherlands and the competent court in The Hague, The Netherlands shall have exclusive jurisdiction to settle any dispute which may arise from or in connection with it.

EXECUTED by the parties on the date first above written.

NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ
VOOR ONTWIKKELINGSLANDEN N.V.

Authorised Representative

[INSERT COMPANY NAME]

Name:

Title:

Name:

Title: