



Document number: \_\_\_\_\_

## CONFIDENTIALITY AGREEMENT

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entered into by and between:

**South African Nuclear Energy Corporation Limited  
(Registration No. 2000/ 003735/06)  
(hereinafter referred to as "Necsa")**

and

Registration No. \_\_\_\_\_  
(hereinafter referred to as \_\_\_\_\_)

**Hereinafter individually referred to as a "Party" and jointly as the "Parties"**

Relating to: .....  
(hereinafter referred to as "the Project")

## WHEREAS

- A. The Parties hereto possess valuable information, technical knowledge, experience and data of a secret and confidential nature relating to the Project, all of which are regarded by them as commercial assets of significant value; and
- B. The Parties are willing to disclose such information to each other on condition that the recipient of the information does not disclose same to any third party nor make use thereof in any manner except as set out below.

## NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

### 1. CONFIDENTIALITY

- 1.1 The Parties recognize that in their dealings with one another, governed by the terms of this agreement, they may each receive proprietary information of the other Party or a third party, including without limitation:-
  - a) information to which access is restricted by statute;
  - b) information that is marked in a manner that conveys its confidentiality;
  - c) information that is confidential or a trade secret;
  - d) information that contains confidential information relating to customers;

- e) financial information;
- f) information relating to contractual arrangements or dealings;
- g) any sources of information including but not limited to documents, drawings, manuscripts, text, artwork, photographs, motion pictures, video recordings, computer software, sound recordings, and similar property and works.  
**("hereinafter referred to as "Classified Information").**

- 1.2 Each Party agrees that it shall take all commercially reasonable steps to protect Classified Information against any unauthorized or improper access or use.
- 1.3 Neither Party shall grant access to any Classified Information received from the other Party to any of its personnel save to the extent that access to such Classified Information is required for the performance of a Party's obligations in terms of this agreement.
- 1.4 Necsa requires that members of staff, consultants, advisors or contractors of the other Party enter into personal confidentiality agreements prior to access being granted to Necsa's Classified Information.
- 1.5 Neither Party shall grant access to any Classified Information received from the other Party to any third party without the prior written consent of the other Party, unless the disclosing Party is legally obliged to make disclosure of such Classified Information without obtaining the prior written consent of the other Party. The other Party will nevertheless be notified of such disclosures.
- 1.6 The Parties acknowledge the provisions of sections 65 and 71 of the Promotion of Access to Information Act 2000 (Act 2 of 2000) ("the PAIAAct"), and Section 4 (prohibition of disclosure of certain information) of the Protection of Information Act, 1982 (Act 84 of 1982) ("the PAIAAct").  
  
 If a third party requests access to any information or record which is subject to any one of the provisions of this agreement, regard shall be had to the obligation of the Party of whom the request is made in terms of the PAIAAct, to:-
  - a) promptly notify the owner of the information or record of the request; and to
  - b) exercise the mandatory right of refusal to grant access to the information or record, the disclosure of which would constitute a breach of the duty of confidence owed by the Parties to one another in terms of this agreement or in terms of the PAIAAct.
- 1.7 In the event of one Party visiting any of the establishments of the other Party, the visiting Party undertakes that any further information relating to the Project which may come to the visiting Party's knowledge as a result of any such visit, inclusive of the form, materials and design of the various elements of any product, item, plant and equipment which may be seen at such establishments as well as all the plant as a whole, the methods of operation thereof and the various applications thereof, shall be kept strictly confidential and that any such information will not be divulged to any third party and will not be made use of in any way by the visiting Party without the other Party's prior written consent.
- 1.8 In the event of one Party receiving information or knowledge obtained by inspection of samples relating to the Project, the receiving Party shall not analyse such samples nor sell, show or give the same or products made from such samples to any third party without the other Party's prior written consent.
- 1.9 The above undertakings shall not apply to information which:
  - a) can be established by documentation was, at the time of disclosure, published or otherwise generally available to the public, otherwise than through any act or omission on the part of the receiving Party.
  - b) after disclosure by the disclosing Party is published or becomes generally available to the public, otherwise than through any act or omission on the part of the receiving Party.
  - c) the receiving Party can establish by documentation was in its possession at the time of disclosure and which was not acquired directly or indirectly from the disclosing Party.
  - d) has been rightfully acquired from others who did not obtain it under pledge of secrecy to the disclosing Party.
  - e) has been independently developed by the receiving Party without the use of information from the disclosing Party.
  - f) has been approved for release by a written authorisation of the disclosing Party.
- 1.10 The terms of this agreement shall be deemed to apply also to the servants and agents of the receiving Party who shall require its said servants and agents to observe the foregoing obligations.

- 1.11 The Parties' obligation of confidentiality or that of any person acting under the direction or control of the respective parties shall endure indefinitely after the termination or expiry of this agreement (also see Clause 4).

## **2. PRIVACY**

- 2.1 Both Parties acknowledge that in the course of the Project, it or its personnel may have access to and sight of personal information relating to persons whose personal information has been gathered by the other Party.
- 2.2 Both Parties further acknowledge that it is aware that this information is regarded as strictly private to Necsa and the particular person to whom it relates, that the information is, or may become subject, to the protection of privacy or data control legislation within South Africa or any other competent jurisdiction and that the improper disclosure of such information may render Necsa liable to criminal or civil proceedings.
- 2.3 Both Parties undertake to ensure that only its personnel, representatives or agents who, in the course of the Project need to have access to personal information recorded by Necsa, are given such access and that they are aware of the obligation not to disclose such information to any third party.
- 2.4 Each Party acknowledges the provisions of section 63 of the Promotion of Access to Information Act 2000 (Act 2 of 2000). This section provides that the parties must refuse a request for personal information relating to a third party who is a natural person, the disclosure of which is unreasonable.
- 2.5 Both Parties agree that in the event of a breach of the obligations established in this clause 2 due to their willful default or negligence or that of their personnel, agents or representatives, it shall indemnify against all direct damages suffered by the other Party as a result of such breach.

## **3. INFORMATION SECURITY**

- 3.1 The other Party acknowledges that it and all of its personnel that are granted access to Necsa's premises, information or information systems shall be subject to the Information Security policies, practices and procedures governing Information Security within Necsa.
- 3.2 The other Party shall ensure that all of its personnel who are given access to Necsa's premises, information or information systems are aware of their obligations in terms of Necsa's Information Security controls.
- 3.3 Where necessary, in the sole discretion of an authorized representative of Necsa, the other Party personnel shall sign agreements governing their adherence to the Information Security controls required by Necsa.
- 3.4 If the other Party is granted remote access to Necsa's information system, whether for reasons of development or support, an agreement governing the provision of remote access shall be entered into (which shall incorporate the Parties' right to audit the Information Security controls implemented by the other Party) prior to the provision of remote access.
- 3.5 The Parties acknowledge and agree that the Classified Information furnished hereunder is and shall remain the property of the disclosing Party.

## **4. Duration**

This agreement shall commence on the date of signature by the Party signing last and shall remain in force indefinitely.

## **5. Governing Law and Jurisdiction**

This agreement shall be governed by and construed in terms of the laws of the Republic of South Africa and the Parties agree to submit to the jurisdiction of the South African courts.

If following such mutual consultation the dispute still remains outstanding, then, the dispute shall by written notice by any of the Parties, be referred to arbitration for final resolution in accordance with the rules of expedited arbitration of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. There shall be a right of appeal as provided for under the AFSA rules.

**6. Breach**

Notwithstanding any other rights or remedies that Necsa may have in terms of this agreement or at law, if the other Party or any of its personnel, contractors or agents is in any manner in breach of clauses 1, 2 or 3, Necsa may require the other Party or any its personnel, contractors or agents, as the case may be to immediately:

- a) remedy the breach;
- b) refrain from access to Necsa's information or information systems;
- c) remove themselves from any physical location under the control of Necsa;
- d) return any information or property belonging to or under the control of Necsa to Necsa.

**7. Notices and Addresses**

The Parties choose the following addresses as their domicilium citandi executandi;

**(a) Necsa**

Physical Address: Church Street West Extension  
Pelindaba, District of Madibeng

Postal Address: P.O Box 582  
Pretoria  
0001

Fax No: 012 305 4524

Email: \_\_\_\_\_

**(b) \_\_\_\_\_**

Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Postal Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax No: \_\_\_\_\_  
Email: \_\_\_\_\_

**8. Whole Agreement**

This agreement contains the entire agreement between the Parties and no amendment or waiver of the provisions of this agreement shall be effective unless reduced in writing and signed by all Parties.

**9. Non-Waiver**

The failure by Necsa to enforce or to require the performance at any time of any of the provisions of this agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this agreement or any part hereof or the right of Necsa to enforce the provisions of this agreement.

SIGNED at ..... on this ..... day of ..... 20.....

WITNESSES:

For: Necsa

1. ....

.....

2. ....

SIGNED at ..... on this ..... day of ..... 20.....

WITNESSES:

For: \_\_\_\_\_

1. ....

.....

2. ....