

# CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Between

**Zululand Energy Terminal (Pty) Ltd**  
**Registration number 2024/157162/07**  
(hereinafter referred to as ZET)

And

**Company Name**  
**Registration number xxxxxxx**  
(hereinafter referred to as the Contractor)

(collectively the "Parties" and where the context requires, individually a "Party")

## 1. INTRODUCTION

- 1.1 ZET proposes to construct, develop and operate, in the Port of Richards Bay, South Africa, terminal infrastructure and terminal equipment, required for the handling of liquid natural gas in South Africa, as well as the associated infrastructure (the "**Facility**").
- 1.2 ZET has engaged with the Contractor with the view to the Parties entering into discussions regarding the intended specifications of the proposed Facility and potential opportunities to collaborate (the "**Purpose**").
- 1.3 Confidential and proprietary information relating to or in connection with the Purpose (the "**Confidential Information**") may be disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") for the purposes of enabling the Receiving Party to assess and/or evaluate and/or perform its obligations regarding, or in connection with, the Purpose (the "**Permitted Purpose**").
- 1.4 The Parties acknowledge that any Confidential Information exchanged between them should be kept confidential and have therefore agreed to enter into this Confidentiality and Non-Disclosure Agreement (this/the "**Agreement**").
- 1.5 The Confidential Information, without limiting the ordinary meaning thereof, includes any information specifically designated by a Party as constituting Confidential Information, this Agreement and its contents, information disclosed by ZET in connection with the proposed Facility, the discussions between the Parties (or, in each case, the Parties' respective agents) in connection with the Purpose and the Disclosing Party's willingness to enter into such discussions and negotiations with the Receiving Party or any other party, as well as all oral, written, printed, photographically and electronically recorded information of all types, documents, data, letters, agreements, undertakings, structures, products, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing methods, customer lists, supplier lists, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, direction, manner, timing and implementation of any projects to be undertaken, any information obtained in connection with any assessment conducted in respect of the proposed Facility, including, but not limited to, price sensitive information, and any other information to be disclosed in the course of any due diligence exercise.
- 1.6 The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential

Information with regard to any matter related to the Purpose, unless written authorisation to do so has first been obtained from the Party first disclosing such information.

## **2. UNDERTAKING**

### **2.1 The Receiving Party undertakes:**

2.1.1 not to disclose the Confidential Information to any third parties, except where the Confidential Information is disclosed -

2.1.1.1 by the Receiving Party to its members, directors, other division, officers, employees, professional advisors, to the extent necessary in connection with the Permitted Purpose; or

2.1.1.2 by the Receiving Party with the Disclosing Party's prior written approval; or

2.1.1.3 necessarily by the Receiving Party in carrying out any obligations contained in any agreement between, inter alia, the Disclosing Party and the Receiving Party; or

2.1.1.4 by the Receiving Party after being requested or required to disclose such information in terms of any law or regulations or by any judicial, governmental, supervisory or regulatory body, court of law or legal process;

2.1.2 that it will not under any circumstances (other than those referred to in clause 2.1.1.1 to and including clause 2.1.1.4), use the Confidential Information or any part thereof for a purpose other than the Permitted Purpose; and

2.1.3 to act in good faith at all times in performing its obligations under this Agreement, such efforts to be at least equal to the Receiving Party's effort employed to protect its own confidential, secret and proprietary data and information.

2.2 The Receiving Party shall, prior to making any disclosure in terms of this clause 2, inform every person to whom disclosure of any of the Confidential Information is

disclosed of the confidential nature of the information and of the terms imposed by this Agreement and shall require them to abide by same.

- 2.3 Each Party shall be responsible for any unauthorised use or disclosure of Confidential Information by any of its employees, consultants, directors or affiliates and their employees, consultants and directors.
- 2.4 The Receiving Party agrees not to utilize either directly or indirectly, any Confidential Information in order to facilitate or create direct or indirect business relationship with competitors of Disclosing Party.

### **3. EXCLUSIONS**

Confidential Information shall exclude information or any portion of information that:

- 3.1 is or becomes, before or after receipt thereof, published or generally available to the public, other than as a result of any unlawful act or omission on the part of the Receiving Party; or
- 3.2 is or was lawfully acquired from a third party who did not, to the Receiving Party's knowledge, obtain it in contravention of a confidentiality agreement with the Disclosing Party. The contents of this clause shall not be construed as placing an onus on the Receiving Party to ascertain or attempt to ascertain whether the information received was subject to a confidentiality agreement; or
- 3.3 is known to, or in the possession of, the Receiving Party prior to the disclosure thereof by the Disclosing Party; or
- 3.4 is independently developed by the Receiving Party.

### **4. FINANCIAL MARKETS ACT, 2012**

- 4.1 The Receiving Party may in the course of the disclosure of Confidential Information receive price sensitive information from the Disclosing Party.
- 4.2 The Receiving Party acknowledges and understands that in terms of the Financial Markets Act, 2012 ("the Act") –

- 4.2.1 receipt of price sensitive information makes the Receiving Party, its directors, officers, managers, employees, agents and any third parties to whom the price sensitive information may be disclosed in terms of this Agreement, “insiders”;
  - 4.2.2 any insider who knows that he or she has inside information and who deals, directly or indirectly, for themselves or any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence in terms of the Act;
  - 4.2.3 it is the responsibility of a Receiving Party to communicate the provisions of this clause 4.2 to all of the Receiving Party’s directors, officers, managers, employees, agents and third parties who are or may be placed in a position to have or gain access to, whether authorised or unauthorised, to a Disclosing Party’s price sensitive information.
- 4.3 Any failure or breach by a Receiving Party, its directors, officers, managers, employees, agents or third parties of clause 4.2 may expose the Receiving Party to liability for damages, whether direct or consequential.

## **5. RETURN OF MATERIAL CONTAINING OR PERTAINING TO THE CONFIDENTIAL INFORMATION**

- 5.1 The Disclosing Party may at any time or after a breach of this Agreement by the Receiving Party or the finalisation of, or the termination of, the discussions relating to the Permitted Purpose require that the Receiving Party return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement.
- 5.2 As an alternative to the return of the material as contemplated in clause 5.1 above, the Receiving Party may use reasonable endeavours to destroy such material and furnish the Disclosing Party with a written warranty to the effect that all such material has been destroyed.
- 5.3 The Receiving Party shall comply with a request in terms of this clause within 14 (fourteen) days of receipt of such request (compliance shall mean the execution of reasonable measures to return or destroy all copies including electronic data).
- 5.4 This clause 5 shall not apply to:

- 5.4.1 copies of Confidential Information created by automated processes (such as for backup purposes), provided these copies will be deleted in accordance with the regular ongoing records retention process of the Receiving Party and shall not be used prior to deletion;
- 5.4.2 Confidential Information that is required to be retained for legal or management decision archival purposes only; and
- 5.4.3 to the extent that the Receiving Party is obliged to retain any Confidential Information in terms of any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with reasonable internal policy, nor shall it apply to Confidential Information which was disclosed under clause 2.1.1.4.

## 6. ADDRESSES FOR NOTICES AND SERVICE OF LEGAL PROCESSES

6.1 The Parties choose their respective addresses set out in this clause 6, as their *domicilium citandi et executandi* ("**Domicilium**") for the purposes of giving of any notice, the serving of any process and for any purpose arising from this Agreement.

6.2 For the purpose of this Agreement the Parties' respective addresses are -

6.2.1 Zululand Energy Terminal **(Pty) Ltd**

105 Taiwan Road, Island View, Bluff,

Durban, 4036, South Africa

Attention: Director

Email:

6.2.2 **Contractor**

Full Company Name:

Address:

Attention:

Email:

- 6.3 Each of the Parties shall be entitled, by written notice to the other, to vary its Domicilium from time to time to any other address which is not a post office box or *poste restante*, or to vary the e-mail address forming an element of such Domicilium.
- 6.4 Any notice given by one Party to the other (the "**Addressee**") which:
- 6.4.1 is delivered by hand during the normal business hours of the Addressee at the Addressee's Domicilium for the time being shall be deemed (unless the contrary is proved by the Addressee), to have been received by the Addressee at the time of delivery;
- 6.4.2 if transmitted by email to the email address forming a part of the Addressee's Domicilium, shall be deemed to have been received by the Addressee (unless the contrary is proved by the Addressee) one Business Day after the date of dispatch.
- 6.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another, including by way of email transmission will be adequate written notice or communication to such Party.

## **7. DURATION**

- 7.1 This Agreement will be effective from the date of signature by the Party last signing it and shall endure for a period of 48 (forty-eight) months, alternatively, for such period that the Parties remains in discussions and negotiations in connection with the Purpose (whichever is longer). The Parties may extend the duration of this Agreement in writing.
- 7.2 All obligations created by this Agreement shall survive amendment or termination of this Agreement for a period of five (5) years after the termination of this Agreement.

## **8. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with laws of the Republic of South Africa.

## **9. DISPUTE RESOLUTION**

- 9.1 Each Party agrees that the other Party shall be entitled to remedies, including injunction and specific performance, in the event of any breach or threatened breach of this Agreement and no Party shall oppose the granting of such remedies on the grounds that damages are an adequate remedy.
- 9.2 In the event of any dispute arising out of or in connection with this Agreement, the senior executives of each Party shall first meet to attempt to resolve the dispute amicably. Should the Parties fail to resolve the dispute within 7 (seven) calendar days after the dispute was raised by the aggrieved Party, then the dispute, including any question regarding the existence, validity or termination of this Agreement shall be referred to arbitration and finally be resolved in accordance with the Rules of Arbitration Foundation of Southern Africa (“AFSA”), which Rules are deemed to be incorporated by reference into this clause. The arbitration shall be held in Durban, and conducted in the English language before 1 (one) arbitrator appointed by agreement between the Parties in writing or, failing such agreement, such person as may be appointed at the request of any Party by the Arbitration Foundation of Southern Africa. A written notice by a Party to the other Parties that a dispute be submitted to arbitration will be deemed to be a legal process for the purposes of interrupting prescription.
- 9.3 Nothing in this clause 9 will prevent a Party from obtaining urgent relief in any court of competent jurisdiction and to this end the Parties consent and submit to the non-exclusive jurisdiction of the High Court of South Africa.

## **10. ANTI-BRIBERY AND ANTI-CORRUPTION**

- 10.1 The Parties agree that they will procure that their respective officers, directors, employees or agents only use legitimate and ethical practices in the conduct of their respective businesses. As such, the Parties will ensure that their officers, directors, employees and agents will not pay, promise or authorise the payment or receipt, directly or indirectly, of any monies or gratification to or from any private or public body, trust or person (natural or juristic) for the purpose of unduly influencing any act or decision or to secure an improper advantage as contemplated in the applicable anti-bribery and anti-corruption legislation.

10.2 Each Party undertakes to comply with, and observe, the provisions of all anti-bribery and anti-corruption legislation applicable to it at all relevant times.

## **11. OWNERSHIP**

11.1 All Confidential Information and derivations thereof shall remain the sole and exclusive property of the Disclosing Party and no licence or other right to such Confidential Information or any Party's intellectual property is granted or implied by the provisions of this Agreement.

11.2 During and after the term of this Agreement and in order to protect the trade secrets and other proprietary information of the Disclosing Party, the Receiving Party warrants that, except as expressly permitted under applicable law or written agreement between the Parties, it shall not, directly or indirectly, copy, modify, analyze, measure, disassemble, deconstruct, decompile or reverse engineer or create derivative works out of any of the Disclosing Party's products, materials, documents, presentations, data, technical information, and/or knowledge received under this Agreement, nor will the Receiving Party permit any third party to do so. The Disclosing Party shall not be responsible for revising or updating any Confidential Information provided to the Receiving Party.

## **12. NO OBLIGATION TO DISCLOSE OR CONTRACT**

12.1 Nothing in this Agreement shall oblige a Party to disclose any Confidential Information.

12.2 Nothing in this Agreement shall oblige the Parties to enter into any other contract or to pursue the Purpose.

12.3 Each Party agrees that no contract or agreement providing for any transaction (including, without limitation, in relation to the Purpose) shall be deemed to exist between the Parties (or any of their respective affiliates or related companies) unless and until such parties execute and deliver a separate agreement specifically relating thereto (a "Transaction Agreement"). Each Party agrees that unless and until the Parties (or any of their respective affiliates) shall have executed and delivered a Transaction Agreement, if any, neither Party nor its affiliates or related companies will be under any legal obligation of any kind whatsoever with respect to a

transaction by virtue of this Agreement except for the matters specifically agreed to herein.

### **13. PROTECTION OF PERSONAL INFORMATION**

Each Party shall treat any “personal information” (which shall have the meaning ascribed to it in terms of section 1 of the Protection of Personal Information Act, 4 of 2013 (“POPIA”)), which is disclosed to it as confidential and will only use or process such information in compliance with all applicable laws, including without limitation POPIA, and any Regulations promulgated thereunder. Each Party shall ensure that its employees, consultants, directors or Affiliates and their employees, consultants and directors observe the structures contained in this clause in relation to any such personal information which comes into their possession.

### **14. MISCELLANEOUS**

14.1 This Agreement constitutes the entire Agreement and understanding of the Parties relating to the subject matter hereof, and no variation of this Agreement shall be effective unless reduced to writing and signed by the Parties.

14.2 A failure to enforce or to require the performance at any time of any of the provisions of this Agreement (including the provisions of this clause) 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 any Party to enforce the provisions of this Agreement.

14.3 This Agreement may be signed by any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ .

\_\_\_\_\_

For and on behalf of \_\_\_\_\_ duly authorised

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

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SIGNED at \_\_\_\_\_ on \_\_\_\_\_ .

\_\_\_\_\_

For and on behalf of **Zululand Energy Terminal (Pty) Ltd**, duly authorised

Name: Oliver Naidu

Designation: Project Owner & Director