



CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT

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BETWEEN

MORILLION TRADE (PTY)Ltd T/A BEYOND CARRIERS

Reg No.2015/384622/07

AND

(Company name)

(Company number)

CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT



WHEREAS

- A. The Disclosing Party carries on the business of providing logistics solutions through cross border and local transportation.
- B. The Disclosing Party will during the course of the negotiations, involvement and discussions with the Receiving Party disclose certain Confidential Information to the Receiving Party;
- C. The Parties wish to enter into this agreement to regulate the use and disclosure of the Confidential Information.

The parties agree as set out below.

1. INTERPRETATION

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1 "the/this Agreement" means this confidentiality and non-disclosure agreement and includes its Annexures which shall form part of it;

1.1.2 "Confidential Information" means without limiting the generality of the term, any:

1.1.2.1 information about the Disclosing Party's customers, clients, suppliers, employees, associates, data concerning business relationships, documentation, demonstrations, processes, or machinery, plans, designs, drawings, functional and technical requirements and specifications;

1.1.2.2 know-how or trade secrets and data, methods, process and procedures, and other information, which comes into possession or under control of the Receiving Party in any manner whatsoever, in the course of its negotiations, involvement and discussions with and/or services rendered to the Disclosing Party;

1.1.2.3 and all other information in whatever form, whether or not subject to or protected by common law or statutory laws relating to copyright, patent, trademarks, registered or unregistered, or otherwise.

1.1.3 "the Disclosing Party" means the party disclosing the Confidential Information;

1.1.4 "Group Company" means any company in the Disclosing Party's group of companies;

1.1.5 "the Receiving Party" means the party receiving the Confidential Information;

1.1.6 "the Parties" means the Disclosing and the Receiving Party;

1.1.7 "the Project" means any discussions and formal arrangements entered into or to be entered into between the Parties in respect of any logistics, transport and related activities identified by the Parties from time to time.

2. TITLE

2.1 All Confidential Information disclosed by Disclosing Party to the Receiving Party is:

2.1.1 Proprietary to the Disclosing Party; and

2.1.2 Not a conferment of any rights of whatsoever nature in such Confidential Information to the Receiving Party.

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3. UNDERTAKING

- 3.1 The Receiving Party undertakes in favor of the Disclosing Party that it:
- 3.1.1 shall treat as confidential and shall not disclose any Confidential Information to any third party;
 - 3.1.2 shall use the Confidential information only for the purpose of discussing, negotiating, finalizing and concluding an agreement with and/or rendering services to the Disclosing Party and/or obtaining advice;
 - 3.1.3 shall not disclose nor duplicate nor use by any means, either directly or indirectly, any Confidential Information without obtaining prior written consent from the Disclosing Party;
 - 3.1.4 shall not make any use of the Confidential Information, other than in connection with this Agreement or any subsequent agreement which may be entered into between the Parties, and thereafter the Receiving Party shall make no further use, of any nature whatsoever, of the Confidential Information;
 - 3.1.5 shall use each and every reasonable effort (including without limitation at least those steps as it applies in protecting its own most sensitive confidential information) to ensure that the Confidential Information is protected against theft or unauthorized use or access and that no-one receives Confidential Information unless authorized in terms of this Agreement.

4. DURATION

This Agreement will, irrespective of the date of signature hereof, be deemed to have commenced on the date upon which any part or element of the Confidential Information was disclosed to the Receiving Party or became known to the Receiving Party and shall continue for 5 (five) years from that date or until the Confidential Information loses its confidential nature by becoming generally known in the logistics industry.

5. NON COMPETE

- 5.1 The Receiving Party undertakes not to use the Confidential Information to compete against the Disclosing Party. In particular the Receiving Party undertakes, for the duration of this Agreement, not to:
- 5.1.1 to directly or indirectly, solicit, approach, interfere with or entice or attempt to entice away from the Disclosing Party or any Group Company any customer or supplier;
 - 5.1.2 solicit otherwise approach any employee or consultant of the Disclosing Party or any Group Company with a view to encourage her/him to become employed or interested in any manner whatsoever in any other person, undertaking or concern which competes with the Disclosing Party or any Group Company, and/or to terminate her/his employment or association with the Disclosing Party or any Group Company for any reason whatsoever.
- 5.2 With respect to each Group Company, it is recorded that each Group Company has a proprietary interest which is sought to be protected in terms of the provisions of this clause. Accordingly, to the extent that the Receiving Party is in breach of its obligations in terms of this clause, then the Group Company concerned shall be entitled to exercise all remedies available to the Disclosing Party in terms of this Agreement or in law as a result of the breach and which are consistent with the Agreement remaining in force, including specific performance, as if it were a party to this Agreement. The parties agree that this clause shall, by way of a *stipulatio alteri*, constitute a contract for the benefit of any Group Company which shall be capable of acceptance at any time by such Group Company by written notice to that effect to the Receiving Party. Prior to such acceptance, the benefit of this *stipulatio alteri* may not be withdrawn without the written consent of the Disclosing Party.
- 5.3 The Receiving Party agrees that each of the restraints set out above are separate and independent restraints severable from any of the other restraints.
- 5.4 The area in which the restrictions set out above shall apply shall be South Africa and any other country that the Disclosing Party or Group Company conducts business in. Confidential Information loses its confidential nature by becoming generally known in the logistics industry.

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6. BREACH

If the Disclosing Party breaches any of the terms and conditions of this Agreement and fails to remedy that breach within 10 days of receipt of written notice for the aggrieved party calling upon the defaulting party to do so, the aggrieved party shall be entitled, at its sole discretion and without prejudice to any other rights that it may have in law, to claim specific performance and/or claim damages arising out of such breach and cancellation.

7. RESOLUTION OF DISPUTES

7.1 Mediation:

7.1.1 The parties agree that any dispute that arises from the interpretation, application, breach or termination of his Agreement shall exclusively be referred, first to private mediation, in accordance with this clause.

7.1.2 In the event of any dispute referred to above arising then, either party may refer a dispute to mediation by notifying the other party in writing of its intention to do so (the Mediation Notice) within 30 (thirty) days of the date of the dispute arising.

7.1.3 The parties shall agree on a mediator within 5 (five) business days of dispatch of the Mediation Notice to the non-receiving party. If for any reason the parties do not agree on a mediator within 5 (five) business days of the Mediation Notice or the mediator agreed upon by the parties cannot or does not accept an invitation to mediate and the parties for any reason failed to agree on another mediator within 5 (five) business days of the Mediation Notice or such longer period as may be agreed to in writing, then any party may ask the Director of TOKISO Dispute Settlement (Pty) Ltd (the Director) to appoint a mediator who shall be accredited by, or shall have accreditation acceptable to, TOKISO Dispute Settlement (Pty) Ltd.

7.1.4 The parties shall agree on the mediation procedure and failing agreement within 5 (five) business days of the Mediation Notice or such longer period of time as may be agreed to in writing, then the mediation shall take place in accordance with the TOKISO Mediation Rules in force at the time of the dispute.

7.1.5 The parties shall first endeavor to settle the dispute by mediation. If for any reason, including lack of co-operation by the parties, a dispute is not settled by mediation within forty-five (45) days of the Mediation Notice or such shorter or longer period of time as may be agreed to in writing, then the dispute shall be settled by private arbitration in accordance with clause 8.2 below.

7.1.6 Unless otherwise expressly agreed by the parties in writing:

7.1.6.1 the place of the mediation shall be Cape Town, Republic of South Africa; an

7.1.6.2 the parties shall bear the costs of the mediation and the mediation venue in equal proportions and shall otherwise be responsible for their own costs.

7.1.7 The provisions of this clause:

7.1.7.1 constitute an irrevocable consent by the parties to the mediation process provided for herein and neither of the parties shall be entitled to withdraw from the provisions of this clause or claim that it is not bound by this clause or such process;

7.1.7.2 are severable from the rest of this Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Agreement for any reason whatsoever.

7.2 ARBITRATION

7.2.1 In the event that a dispute is not settled through mediation in accordance with clause 7.1 above, either party may refer a dispute concerning the interpretation, application, breach or termination of this agreement to arbitration within 10 (ten) business days of the exhaustion of the period referred to in clause 7.1.5 or such shorter or longer period of time as may be agreed to in writing, by notifying the other party of its intention to do so (the Arbitration Notice). In such case, the arbitration shall determine the dispute in accordance with the law.

7.2.2 The parties shall endeavor to agree on the person to be appointed as arbitrator. Should the parties fail to agree to an arbitrator within 10 (ten) working days of the date of dispatch of the Arbitration Notice to the non-referring party the arbitrator shall be appointed, at the written request of either party (which request shall be copied to the other party), by the Director subject to the proviso that the arbitrator so appointed by the said Director shall be practicing attorney or advocate of not less than 10 (ten) years' standing.

7.2.3 The parties may agree on the arbitration procedure and, failing agreement within 10 (ten) working days of the appointment of the arbitrator, then the arbitration shall take place in accordance with the TOKISO Arbitration Rules in force at the time of the dispute.

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- 7.2.4 Unless otherwise expressly agreed by the parties in writing, the place of the arbitration shall be Cape Town, Republic of South Africa. The parties agree that, notwithstanding the venue of the arbitration proceedings and hearing, the seat of the arbitration shall be South Africa and the *lex arbitri* shall be South African.
- 7.2.5 Unless otherwise ordered by the arbitrator, the parties shall bear the costs of the arbitrator, the arbitration venue and the recording of the proceedings in equal proportions and shall otherwise be responsible for their own costs.
- 7.2.6 The provisions of this clause:
 - 7.2.6.1 constitute an irrevocable consent by the parties to the arbitration proceedings provided herein and neither of the parties shall be entitled to withdraw from the provisions of this clause or claim that it is not bound by this clause or such proceedings;
 - 7.2.6.2 are severable from the rest of this Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Agreement for any reason whatsoever.
 - 7.2.6.3 Nothing in this clause shall prevent any party from obtaining urgent relief from any court of competent jurisdiction.

8. NOTICES AND DOMICILIA

8.1 The parties choose as their *domicilia citandi et executandi* the following addresses and telefax numbers for all purposes arising out of in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the parties:

- 8.1.1 Morillion Trade (Pty)Ltd t/a BEYOND CARRIERS
 - Unit 7 Monaco Square
 - 14 Church Street
 - Durbanville
 - 7550
 - Fax: 021 976 6337

8.1.2 (Insert name / address)

- 8.2 Any notice given in terms of this Agreement shall be in writing and shall:
 - 8.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 8.2.2 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) day after dispatch;
 - 8.2.3 if sent by prepaid registered post, in which event it shall be deemed to have been delivered and received on the 5th business day after posting, including the day of posting.
- 8.3 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 telex or facsimile transmission shall be adequate written notice or communication to such party.

9. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the parties as the subject-matter hereof and no agreements, representations or warranties between the parties other than those set out herein are binding on the parties. The parties specifically make no representation or warranties as to the accuracy and completeness of the confidential information disclosed by them.

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9. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the parties as the subject-matter hereof and no agreements, representations or warranties between the parties other than those set out herein are binding on the parties. The parties specifically make no representation or warranties as to the accuracy and completeness of the confidential information disclosed by them.

10. **VARIATION**

No addition to or variation, consensual cancelation or ovation of this Agreement shall be of any force or effect unless reduced to writing and signed by both parties, or by their duly authorized representatives and no waiver of any right of either party arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the party waiving its right.

11. **RELAXATION**

No latitude, extension of time or time or other indulgence which may be given or allowed by either party to the other in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by either party shall under any circumstances be construed to be an implied consent by such party or operate as waiver or an ovation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or stop such party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

12. **APPLICATION OF SOUTH AFRICA LAW**

The construction, validity and performance of this Agreement shall be governed in all respects by the Law of the Republic of South Africa, irrespective of current residential/operating area/status.

Please sign and date each page

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SIGNED ON BEHALF OF SUBCONTRACTOR

The Signatory and or the undersigned hereto warrant that he is duly authorised to sign, on behalf of the company, he represents in this Confidentiality and Non Disclosure Agreement. The signatory further more agrees that their dealings with Morillion Trade Pty (Ltd) t/a **BEYOND CARRIERS**, or any associate companies thereof, shall be governed by and subject to their Standard Conditions of Carriage by Road.

1 SIGNED BY OWNER/PARTNER/MEMBER/DIRECTOR	2 SIGNED BY OWNER/PARTNER/MEMBER/DIRECTOR
FULL NAME:	FULL NAME:
SIGNATURE:	SIGNATURE:

ON BEHALF OF BEYOND CARRIERS	
NAME:	
DATE:	
SIGNATURE:	