



# Schaenburg (PTY) Ltd trading as Schaenburg Systems:

*“We enhance safety and productivity in mining and industrial markets through innovation and excellent services for the benefit of all our stakeholders”*

## Non-Disclosure (NDA) Agreement

### CONFIDENTIALITY AGREEMENT

#### ENTERED INTO BETWEEN

**SCHAUENBURG (PTY) LTD, REGISTRATION NUMBER: 2006/035521/07**

a company duly registered and incorporated under the laws of the Republic of South Africa.

(Hereinafter referred to as the “DISCLOSING PARTY”)

#### AND

\_\_\_\_\_(PTY) LTD, REGISTRATION NUMBER: \_\_\_\_\_

a company duly registered and incorporated under the laws of the \_\_\_\_\_

(Hereinafter referred to as the “RECEIVING PARTY”)

1. Completion of this document confirms that IP (Intellectual Property) has been shared between the two companies.
2. This document must be initialled on all pages by both parties.



**IT IS AGREED AS FOLLOWS:**

**1 INTERPRETATION**

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below will bear the meanings ascribed to them and cognate words and expressions will bear corresponding meanings:

**1.1 AGREEMENT – THIS AGREEMENT TOGETHER WITH ALL ANNEXURES HERETO.**

**1.2 CONFIDENTIAL INFORMATION –**

Confidential information of the **DISCLOSING PARTY** to which the **PARTIES** may have access to or of which the **PARTIES** may have knowledge of, or which is provided or disclosed in confidence, and shall include without limiting the generality of the term:

- 1.2.1 trade secrets, know-how, methods, techniques, strategies;
- 1.2.2 technical, scientific, commercial, legal, financial or market information, including history and state of affairs of the **DISCLOSING PARTY**, financial records (including financial projections, management accounts, business plan, budgets and costing sheets), assets of, liabilities of, financing agreements;
- 1.2.3 information concerning business relationships, including contracts with clients (actual or potential), suppliers (actual or potential) and business associates (actual or potential), and lists and identity of clients (actual or potential), suppliers (actual or potential) and business associates (actual or potential), and lease agreements;
- 1.2.4 information relating to employees (actual or potential), including employee records, details of leave pay, severance pay, other entitlements, remuneration, pension/provident funds and medical aids;
- 1.2.5 any know-how (not in the public domain), invention (whether or not patented), all patents, copyright (including computer programmes, data bases and original material, whether written or readable by machine and any other works eligible for copyright), designs, trademarks, drawings, technical specifications and plans, reports and blue prints (whether or not documented), whether registered or not;
- 1.2.6 and all other information in whatever form (including discussions, observations, reports, copies of documents, notes, summaries, reproductions, computer discs and computer printouts), whether or not subject to or protected by common law or statutory law, disclosed by the **DISCLOSING PARTY** to the **RECEIVING PARTY**.

**1.3 PARTIES –**

the parties to this **AGREEMENT**, namely the **DISCLOSING PARTY** and the **RECEIVING PARTY**, and "PARTY" shall mean any of them as the context may require;

**1.4 REPRESENTATIVES –**

the employees, directors, shareholders and professional advisors of the **RECEIVING PARTY**;



## 2 INTRODUCTION

- 2.1 The **RECEIVING PARTY** is considering doing business with the **DISCLOSING PARTY** and has requested the **DISCLOSING PARTY** to disclose certain of its **CONFIDENTIAL INFORMATION** to the **RECEIVING PARTY** for the aforesaid purpose.
- 2.2 The **DISCLOSING PARTY** shall disclose to the **RECEIVING PARTY** certain **CONFIDENTIAL INFORMATION** and the **PARTIES** intend to keep the **CONFIDENTIAL INFORMATION** confidential.
- 2.3 The **PARTIES** acknowledge the great importance of the **CONFIDENTIAL INFORMATION** to the **DISCLOSING PARTY** and recognise that the **DISCLOSING PARTY** may suffer irreparable harm or loss in the event of such **CONFIDENTIAL INFORMATION** being disclosed or used otherwise than in accordance with this **AGREEMENT**.
- 2.4 In order to protect the proprietary interests of the **DISCLOSING PARTY** in the **CONFIDENTIAL INFORMATION**, the **RECEIVING PARTY** has agreed to the confidential undertakings set out in this **AGREEMENT** and undertake to maintain the **CONFIDENTIAL INFORMATION** as secret and not disclose it or use any of the **CONFIDENTIAL INFORMATION** in any competitive industry or business venture, and in regard to matters related thereto, on the terms and conditions set out herein.

## 3 COMMENCEMENT AND DURATION

This **AGREEMENT** will commence on the on the date of the **PARTY** last signing thereto and will endure for a period of 2 (two) year/years from the date of last signing.

## 4 OWNERSHIP

- 4.1 All **CONFIDENTIAL INFORMATION**, disclosed by the **DISCLOSING PARTY** to the **RECEIVING PARTY** is proprietary to the **DISCLOSING PARTY** and does not confer any rights of whatever nature in such **CONFIDENTIAL INFORMATION** to the **RECEIVING PARTY**.
- 4.2 The **DISCLOSING PARTY** may, at any time, request the **RECEIVING PARTY** to return any **CONFIDENTIAL INFORMATION** (including any material relating to such **CONFIDENTIAL INFORMATION**). The **RECEIVING PARTY** and/or its **REPRESENTATIVES** will be obliged to forthwith deliver to the **DISCLOSING PARTY** all **CONFIDENTIAL INFORMATION**.
- 4.3 The **DISCLOSING PARTY** may, at any time, request the **RECEIVING PARTY** to destroy all copies and partial copies of **CONFIDENTIAL INFORMATION** (whether in paper, electronic or other format) which the **RECEIVING PARTY** may have obtained from the **DISCLOSING PARTY** and furnish a written statement to the effect that all such **CONFIDENTIAL INFORMATION** has been destroyed or furnish such proof as is reasonably necessary to satisfy the **DISCLOSING PARTY** that such **CONFIDENTIAL INFORMATION** has been destroyed.
- 4.4 The **RECEIVING PARTY** shall comply with a request, in terms of clause 4.2 and 4.3 within 7 (seven) days of receipt of such request.
- 4.5 The **RECEIVING PARTY** agrees to protect the **CONFIDENTIAL INFORMATION** of the **DISCLOSING PARTY**.



## 5 RESTRICTIONS ON DISCLOSURE

**5.1** The **RECEIVING PARTY** may only disclose the **CONFIDENTIAL INFORMATION** to its **REPRESENTATIVES** and then only to those **REPRESENTATIVES** to whom such access is reasonably necessary, provided that such **REPRESENTATIVES** agree to be bound by the terms and conditions of this **AGREEMENT**.

**5.2 THE RECEIVING PARTY AGREES THAT:**

- 5.2.1** it will not discuss with, disclose nor divulge any **CONFIDENTIAL INFORMATION** to any third party without the prior written consent of the **DISCLOSING PARTY**;
- 5.2.2** it will not use, employ or exploit any **CONFIDENTIAL INFORMATION** disclosed to it whether directly or indirectly pursuant to this **AGREEMENT** for any purpose whatsoever, without the prior written consent of the **DISCLOSING PARTY**;
- 5.2.3** to take all such steps as may be reasonably necessary to prevent **CONFIDENTIAL INFORMATION** from falling into the hands of unauthorised third parties; and
- 5.2.4** the **RECEIVING PARTY** indemnifies and holds the **DISCLOSING PARTY** harmless against any direct loss, damage, cost or expense suffered or sustained by the **DISCLOSING PARTY** pursuant to a breach by the **RECEIVING PARTY** of this **AGREEMENT**.

## 6 PERMITTED DISCLOSURES

The obligations of the **RECEIVING PARTY** pursuant to the provisions of this **AGREEMENT** will not apply to any information that:

- 6.1** is or was known to, or in possession of, the **RECEIVING PARTY** prior to the date of disclosure thereof by the **DISCLOSING PARTY**;
- 6.2** is in the public domain otherwise than pursuant to a breach of this **AGREEMENT** by the **RECEIVING PARTY**;
- 6.3** is lawfully obtained from third parties independently of the **DISCLOSING PARTY** in circumstances that do not amount to a breach of this **AGREEMENT** by the **RECEIVING PARTY**;
- 6.4** is disclosed by the **RECEIVING PARTY** in order to comply with any order of a court of competent jurisdiction or the provisions of any law or regulation in force from time to time;
- 6.5** is disclosed to a third party pursuant to the prior written consent of the **DISCLOSING PARTY**.
- 6.6** Notwithstanding the provisions of clause 6.1, 6.2, 6.3, 6.4 and 6.5:



- 6.6.1 the onus shall at all times rest on the **RECEIVING PARTY** to establish that such information falls within such exclusions;
- 6.6.2 the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a **PARTY'S** possession; and
- 6.6.3 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a **PARTY'S** possession, but only if the combination itself is in the public domain or in a **PARTY'S** possession.

## **7 No WARRANTY**

Unless expressly stated in writing, the **DISCLOSING PARTY** does not make any representation or warranty as to the accuracy or completeness of any of the **CONFIDENTIAL INFORMATION**.

## **8 BREACH**

- 8.1 Should either **PARTY** commit a breach of this **AGREEMENT** and fail to remedy that breach within 14 (fourteen) days after receipt of a written notice calling upon it to do so, then the other **PARTY** calling for such remedy shall be entitled, in addition to and without prejudice to any right or remedy it or they may have under the circumstances, either to-
  - 8.1.1 enforce the performance of the terms hereof; or
  - 8.1.2 in the case of a material breach, cancel this **AGREEMENT** and recover such damages from the defaulting **PARTY** as it or they may have sustained.

## **9 ARBITRATION**

### **9.1 SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES IN REGARD TO –**

- 9.1.1 the interpretation of;
- 9.1.2 the effect of;
- 9.1.3 the **PARTIES'** respective rights or obligations under;
- 9.1.4 a breach of;
- 9.1.5 the termination of;
- 9.1.6 any matter arising out of the termination of;
- 9.1.7 the rectification of,

this **AGREEMENT**, that dispute shall be decided by arbitration before a single arbitrator in the manner set out in this clause 9.



- 9.2** The arbitrator shall be appointed by the **PARTIES**, and failing agreement, shall be appointed by the President of the Arbitration Foundation of Southern Africa ("AFSA"). Should AFSA not be in existence at the time, the nominations shall be by the Chairman for the time being of the Johannesburg Bar Council.
- 9.3** The arbitration shall be held at Johannesburg. Such arbitration proceeding shall be conducted in English language.
- 9.4** The arbitration shall be held in accordance with the Rules of AFSA, or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and otherwise subject as aforesaid of The Arbitration Act, 1965 of the RSA and any statutory modification or re-enactment thereof.
- 9.5 THE ARBITRATOR SHALL BE ENTITLED TO –**
- 9.5.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision; and
- 9.5.2 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.
- 9.6** The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 9.7** The arbitration shall be held in camera and the **PARTIES** shall maintain the utmost confidentiality with regard to all matters in issue in the arbitration.
- 9.8** This clause is severable from the rest of the **AGREEMENT** and shall therefore remain in effect even if this **AGREEMENT** is terminated.
- 9.9** The law governing this **AGREEMENT** shall be South African law, and the Court having jurisdiction to enforce any award made under this clause shall be the appropriate division of the High Court of South Africa, which has jurisdiction over the **PARTY** against whom the award is being enforced.
- 9.10** Notwithstanding anything to the contrary contained in this clause 9, a **PARTY** shall be entitled to apply for any interlocutory or final interdict from any competent court having jurisdiction.

## **10 DOMICILIA AND NOTICES**

- 10.1** The **PARTIES** choose as its domicilia citandi et executandi the addresses mentioned below, but such domicilium of any **PARTY** may be changed by written notice from such **PARTY** to the other **PARTIES** with effect from the date of receipt by the latter of such notice.

### **RECEIVING PARTY:**

Physical: E-mail:

Attention:



**DISCLOSING PARTY:**

Physical: 24/26 Spartan Road, Spartan, Kempton Park  
E-mail: brigitte@schauenburg.co.za

Attention: Brigitte Pretorius

**10.2** Any notice, order, acceptance, demand or other communication addressed by either **PARTY** to this **AGREEMENT** to the other **PARTY** at its domicilium in terms hereof for the time being and –

10.2.1 sent by telefax shall be deemed to be received by the addressee on the date appearing on the transmission sheet;

10.2.2 delivered by hand shall be deemed to be received by the addressee on the date of delivery.

**10.3** The provisions of this clause 10 shall not preclude the utilisation of other methods or delivery of notices, orders, acceptances, demands and other communications.

**11 STANDARD OF CARE**

**11.1** The **RECEIVING PARTY** shall protect the confidential information of the **DISCLOSING PARTY** in the manner, and with the endeavour, of a reasonable person protecting their own **CONFIDENTIAL INFORMATION**.

**11.2** In no event shall the **RECEIVING PARTY** use less than reasonable efforts to protect the confidentiality of the **CONFIDENTIAL INFORMATION**.

**11.3** The **RECEIVING PARTY** agrees to store and handle the **CONFIDENTIAL INFORMATION** in such a way as to prevent unauthorised disclosure.

**11.4** Without prejudice to the other rights of the **DISCLOSING PARTY**, in the event of unauthorised disclosure or use of the **CONFIDENTIAL INFORMATION** occurring through a disclosure made to the **RECEIVING PARTY**, the **RECEIVING PARTY** shall use all reasonable endeavours to assist the **DISCLOSING PARTY** in recovering and preventing the use, dissemination, sale or other disposal of such **CONFIDENTIAL INFORMATION**.



## 12 GENERAL PROVISIONS

- 12.1** This **AGREEMENT** will be governed by the laws of the Republic of South Africa and all matters or things arising out of or in respect of this **AGREEMENT** will be decided in terms of the laws of the Republic of South Africa.
- 12.2** This document constitutes the whole agreement between the **PARTIES** in regard to the matters regulated by this **AGREEMENT**. No **PARTY** will be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 12.3** No addition to, variation of, or agreed cancellation of this **AGREEMENT** will be of any force or effect unless in writing and signed by or on behalf of the **PARTIES**.
- 12.4** No relaxation or indulgence which any **PARTY** may grant to the other will constitute a waiver of the rights of that **PARTY** and will not preclude that **PARTY** from exercising any rights which may have arisen in the past or which might arise in the future.
- 12.5** Each provision of this **AGREEMENT** is severable, the one from the other and, if at any time any provision is, or becomes, or is found to be invalid, illegal or otherwise unenforceable for any reason, by a court of competent jurisdiction, the remaining provisions of this **AGREEMENT** will continue to be of full force and effect.
- 12.6** This **AGREEMENT** may be signed in as many counterparts as may be needed, each of which together will constitute one and the same **AGREEMENT**.
- 12.7** The **PARTIES** consent to the non-exclusive jurisdiction of the High Court of South Africa for any proceedings arising out of or in connection with this **AGREEMENT**.





Date

Place

Signatory

\_\_\_\_\_

\_\_\_\_\_

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For the **DISCLOSING PARTY**, the signatory  
warranting that he is duly authorised thereto.

Date

Place

Signatory

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Witness

Date

Place

Signatory

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For the **RECEIVING PARTY**, the signatory  
warranting that he is duly authorised thereto.

Date

Place

Signatory

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Witness