

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

between

### **ENVIROSERV WASTE MANAGEMENT LIMITED**

Registration Number: 2008/021152/07  
(hereinafter “**EnviroServ**”)

and

.....  
Registration Number: .... / ..... / ..  
(hereinafter “**Prospective Buyer**”)

together ( with their subsidiaries, holding companies and fellow subsidiaries) shall comprise the  
Parties.

## **1. INTRODUCTION**

- 1.1 The parties are discussing certain matters which will require the disclosure to one another of information of a proprietary, secret and confidential nature relating to the purchase of EnviroServ's Tyre Plant business, subsidiary company EnviroServ Polymer Solutions and the property situated at 5 Glucose Way, Bellville, Cape Town.
- 1.2 The parties will, subject to successful conclusion of such investigation and discussions, enter into an agreement.
- 1.3 Pending investigation the parties wish to maintain confidentiality regarding the information disclosed by them respectively.
- 1.4 For the purposes of this agreement, the party disclosing, such information shall be referred to as "the disclosing party" and the party receiving such information shall be referred to as "the receiving party".
- 1.5 The parties wish to record the terms and conditions upon which they are prepared to disclose such information to one another.

## **2. THE INFORMATION**

"Information" shall for the purpose of this agreement include, without limitation, any technical, commercial, scientific information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, data in whatever form and information referred to in clause 1 (introduction) hereinabove communicated to the receiving party or acquired by the receiving party from the disclosing party during the course of the parties' association with one another.

## **3. DISCLOSURE OF INFORMATION**

- 3.1 The parties agree to disclose the information to one another.
- 3.2 The parties acknowledge that the information is a valuable, special and unique

asset proprietary to the disclosing party.

3.3 The parties agree that they will not, during the course of their association with one another or, thereafter, disclose the information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this agreement.

3.4 Notwithstanding anything to the contrary contained, in this agreement the parties agree that the information may be disclosed by the receiving party to its professional advisors, agents and consultants, for the purposes of evaluating the investigation and enter into an agreement as contemplated in clause 1 (introduction), providing that the receiving party takes whatever steps are necessary to procure that such professional advisors, agents and consultants agree to abide by the terms of this agreement to prevent the unauthorised disclosure of the information to third parties.

3.5 The receiving party agrees:

3.5.1 not to utilise, employ, exploit or in any other manner whatsoever use the information disclosed pursuant to the provisions of this agreement for any purpose without the prior express written consent of the disclosing party.

3.5.2 that the unauthorised disclosure of the information to a third party may cause irreparable loss, harm and damage to the disclosing party. Accordingly, the receiving party indemnifies and holds the disclosing party harmless against any loss, action, claim, harm or damage, of whatever nature, suffered by the disclosing party pursuant to a breach by the receiving party of the provisions of this agreement,

#### 4. **TITLE**

All information disclosed by the disclosing party to the receiving party is acknowledged by the receiving party:

4.1 to be proprietary to the disclosing party; and

- 4.2 not to confer any rights of whatever nature in such information to the receiving party.

## **5. RESTRICTIONS ON DISCLOSURE AND USE OF THE INFORMATION**

- 5.1 The receiving party may disclose the information only to its officers, employees and professional advisors and then only on a strictly need-to-know basis.

- 5.2 The receiving party undertakes not to use the information for purpose other than:

- 5.2.1 that for which it is disclosed; and

- 5.2.2 in accordance with the provisions of this agreement.

## **6. STANDARD OF CARE**

The parties agree that they shall protect the information disclosed pursuant to the provisions of this agreement using the same standard of care that each party applies to its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

## **7. RETURN OF INFORMATION**

- 7.1 The disclosing party may at any time, request the receiving party to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this agreement and may, in addition request the receiving party to furnish a written statement to the effect that, upon such return, the receiving party has not retained in possession, or under its control, either directly or indirectly, any such material.

- 7.2 As an alternative to the return of the material contemplated in 7.1 above, the receiving party shall, at the instance of the disclosing party, destroy such material and furnish the disclosing party with a written statement to the effect that all such material has been destroyed.

- 7.3 The receiving party shall comply with a request, in terms of this clause 7, within 7 days of receipt of such a request,

## **8. EXCLUDED INFORMATION**

The obligations of the parties pursuant to the provisions of this agreement shall not apply to any information that:

- 8.1 is known to or in possession of the receiving party prior to disclosure thereof by the disclosing party;
- 8.2 is or becomes publicly known, otherwise than pursuant to a breach of this agreement;
- 8.3 is developed independently of the disclosing party by the receiving party;
- 8.4 is disclosed by the receiving party to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the receiving party shall advise the disclosing party in writing prior to such disclosure to enable the disclosing party to take whatever steps it deems necessary to protect its interests in this regard, provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 8.5 is disclosed to a third party pursuant to the prior written authorization from the disclosing party;
- 8.6 is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

## **9. TERM**

- 9.1 This agreement shall be deemed to have commenced upon the date of last

signing hereof and it shall continue to bind the parties for 3 (three) years after its termination.

9.2 This agreement shall be deemed to have become terminated in the event of the following (whichever happens the sooner):

9.2.1 the discussions between the parties being unsuccessful and accordingly breaking down; or

9.2.2 an agreement between the parties being concluded regarding their future relationship; or

9.2.3 in any event not later than one year after signing hereof unless extended by mutual agreement.

9.3 This clause will survive the cancellation of this agreement for whatever reason.

## 10. **ARBITRATION**

Any dispute arising out of or in connection with the provisions of this agreement shall be referred to arbitration and determined in accordance with the Arbitration Act 42 of 1965, as amended from time to time,

## 11. **REPRESENTATIONS AND WARRANTIES**

11.1 Each party represents and warrants that it has the authority necessary to enter into this agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this agreement.

11.2 The disclosing party warrants that:

11.2.1 disclosure of the information to the receiving party will not result in a breach of any other agreement to which it is a party;

11.2.2 will, to the best of its knowledge and belief, not infringe the rights of any third party and the disclosing party hereby indemnifies and holds the

receiving party harmless against any liability for third party claims on such a basis.

12. **ADDITIONAL ACTION**

Each party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement.

13. **AMENDMENTS**

No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced writing and signed by both the parties.

14. **ENFORCEMENT**

The failure 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 any party to enforce the provisions of this agreement.

15. **HEADINGS**

The headings of the clauses in this agreement are used for convenience only and shall not affect the meaning or construction of the contents of this agreement.

16. **ENTIRE AGREEMENT**

This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral with respect to the subject matter of this agreement.

17. **GOVERNING LAW**

This agreement and the relationship of the parties in connection with the subject matter of this agreement shall be governed and determined in accordance with the laws of

South Africa.

## 18. **POSTAL ADDRESSES**

18.1 Any written notice in connection with this agreement may be addressed:

18.1.1 In the case of EnviroServ

address	P.O. Box 1547, Bedfordview 2008
telefax no	(011) 454 6015
attention	The financial director

18.1.2 In the case of PROSPECTIVE BUYER

address
telefax no
attention

18.2 The notice shall be deemed to have been duly given:

18.2.1 7 days after posting, if posted by registered post to the party's address in terms of this sub-clause;

18.2.2 on delivery, if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents;

18.2.3 on despatch, if sent to the party's then telefax number and confirmed by registered letter posted no later than the next business day, unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

18.3 A party may change that party's address for this purpose, by notice in writing to the other party. No notice shall be necessary in respect of a new or changed telefax number.



**19. ADDRESS FOR SERVICE OF LEGAL DOCUMENTS**

19.1 The parties choose the following physical addresses at which documents in legal proceedings in connection with this agreement may be served (ie their domicilium citandi executandi)

19.1.1 EnviroServ :  
EnviroServ Holdings Limited  
Brickfield Road  
Meadowdale  
Germiston

19.1.2 PROSPECTIVE BUYER :

19.2 A party may change that party's address for this purpose to another physical address in the Republic of South Africa, by notice in writing, to the other party.

**20. COSTS**

20.1 Each party shall bear that party's own legal costs of and incidental to the negotiation, preparation, setting, signing and implementation of this agreement.

20.2 Any costs, including attorney and own client cost, incurred by either party arising out of the breach by the other party of any of the provisions of this agreement shall be borne by the party in breach,

**21. SEVERABILITY**

In the event at any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement and this

