

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
("Agreement")

between

HERNIC FERROCHROME PROPRIETARY LIMITED (IN BUSINESS RESCUE)
("Disclosing Party")

and

THE RECEIVING PARTY IDENTIFIED IN ANNEXURE A
("Receiving Party")

(collectively, "**Parties**" and a reference to "**Party**" shall be a reference to either of them as the context requires)

1 INTERPRETATION

- 1.1 Unless inconsistent with the context, in this Agreement any expression which denotes any one gender includes the other gender, a natural person includes an artificial person and vice versa and the singular includes the plural and vice versa.
- 1.2 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement.
- 1.3 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.
- 1.4 The records form an integral part of this Agreement and shall be taken into account in the interpretation of this Agreement.

2 RECORDAL

- 2.1 The Parties intend to enter into discussions regarding the proposed disposal by the Disclosing Party of its business as a going concern, or such other interest as may be provided for in the process documentation which may, subject to 2.4 and 2.5, be provided to the Receiving Party, ("**Transaction**" or "**Purpose**").
- 2.2 During the course of the proposed discussions, the Parties anticipate that the Disclosing Party will disclose Confidential Information to the Receiving Party, which the Parties agree shall be used solely for the purpose of evaluating the Transaction.
- 2.3 For purposes of this Agreement, "**Confidential Information**" shall include, without limitation, any information or other data relating to the Disclosing Party or any of its Affiliates, which is disclosed to the Receiving Party, whether prior to the conclusion of this Agreement, in terms of this Agreement or otherwise in connection with this Agreement or the Transaction (including but not limited to the Transaction itself and any negotiations in relation to the Transaction), including this Agreement, its contents and the negotiations leading up to the conclusion of this Agreement -
 - 2.3.1 in whatever format whether written, oral or graphic, recorded or not (and if recorded, whether recorded in writing, on any electronic medium or

otherwise howsoever) which is intended or by its nature could reasonably be expected to be confidential, which is disclosed or communicated to the Receiving Party by the Disclosing Party, its Affiliates or any of their respective employees, representatives, officers, directors and advisers, or which otherwise comes to the knowledge of the Receiving Party, by whatever means, before or after the date on which this Agreement is signed by the last Party signing it ("**Signature Date**"); and

- 2.3.2 which includes, without derogating from the foregoing, all financial information, marketing information, products, product information, drawings, plans and specifications, operational and risk methodologies, production and operating procedures, computer data, programs and source codes, pricing, price lists and purchasing policies, information relating to costs, sources of materials, business relationships, services, customers and customer lists (whether actual or potential); technical information, techniques, know-how, trade secrets, operating methods and procedures, electronic and manual systems; all intellectual property; contractual arrangements; training schemes and programs; information relating to the Disclosing Party's strategic objectives and planning for both its existing and future business needs; the contractual business and financial arrangements between the Disclosing Party and other third Parties with whom they have business arrangements of whatever nature; all information specifically related to the business of the Disclosing Party which is not readily available to a competitor of the Disclosing Party in the ordinary course of business; the existence and contents of any process related documentation and all information or data relating thereto disclosed to the Receiving Party by the Disclosing Party, its Affiliates or any of their respective employees, representatives, officers, directors and advisers.
- 2.4 The Receiving Party acknowledges that the Disclosing Party is under no obligation to disclose any Confidential Information or any other information or documentation relating to the Transaction to the Receiving Party, notwithstanding the conclusion of this Agreement. The Receiving Party further acknowledges that, as a condition to receiving any documentation and/or information relating to the Transaction, the Receiving Party is required to conclude this Agreement and bind itself to the undertakings herein.
- 2.5 The Receiving Party acknowledges and agrees that, to the extent that it intends to participate in the Transaction as part of a joint venture or consortium, each member of such joint venture or consortium will be required to submit a signed confidentiality and non-disclosure agreement, on the same terms and conditions as those set out in this Agreement, before any information or documentation relating to the Transaction will be distributed to any of its members, including the Receiving Party.
- 2.6 The Parties accordingly agree as set out herein.

3 **TERM OF AGREEMENT**

This Agreement will commence on the Signature Date and shall remain binding and in force for a period of five years thereafter or such longer period as the Parties may agree to in writing ("**Term**").

4 **RECEIVING PARTY'S UNDERTAKINGS**

- 4.1 For purposes of this Agreement, the term "**Affiliate**" shall mean any person which either directly or indirectly controls, is directly or indirectly controlled by,

or is under common control with a Party and, for purposes of this definition, a person shall be deemed to "control" an entity if it owns or has the ability to vote, directly or indirectly, more than 50% of the voting securities or equivalent interest of that entity and a reference to an Affiliate shall include a reference to such Affiliate's employees, officers, directors, representatives and advisers.

- 4.2 The Receiving Party acknowledges that the unauthorised use or disclosure of any Confidential Information disclosed by the Disclosing Party may give rise to substantial damage to the Disclosing Party. Accordingly, the Receiving Party hereby undertakes to the Disclosing Party that, for as long as this Agreement remains in force, it will (and it will procure that its employees, officers, directors, representatives, advisers and any Affiliate to which it discloses the Confidential Information will) –
- 4.2.1 treat as confidential all Confidential Information;
 - 4.2.2 protect the confidentiality of the Confidential Information in the same manner and with the same degree of care that a reasonable man would use to protect his own confidential information;
 - 4.2.3 not use, exploit or in any other manner whatsoever apply or reproduce the Confidential Information except to the extent required to achieve the Purpose;
 - 4.2.4 not divulge or permit access to the Confidential Information to any person except to those of its employees, officers, directors, representatives, advisers and Affiliates who have a specific need to know such information in relation to the Transaction. Before revealing any Confidential Information to its employees, officers, directors, representatives, advisers and/or Affiliates, the Receiving Party shall be obliged to notify such employees, officers, directors, representatives, advisers and/or Affiliates of the confidential nature of the disclosure and ensure that such employees, officers, directors, representatives, advisers and/or Affiliates are obliged not to disclose the Confidential Information to any unauthorised third party and not use the Confidential Information except as may be strictly required in relation to the Transaction. The Receiving Party shall be liable for any damages incurred by the Disclosing Party as a result of any unauthorised disclosure of the Confidential Information made by the Receiving Party, its employees, officers, directors, representatives and/or Affiliates; and
 - 4.2.5 immediately notify the Disclosing Party in writing if it becomes aware that there has been an unauthorised disclosure or use of any Confidential Information and take all necessary steps to recover such Confidential Information and to prevent any further disclosure of such Confidential Information.
- 4.3 All information furnished or disclosed by the Disclosing Party to the Receiving Party shall be deemed to be Confidential Information unless the Receiving Party can demonstrate the contrary.
- 4.4 The Receiving Party agrees that monetary damages may not be a sufficient remedy for a breach of the undertakings given by it in this 4 and accordingly, without prejudice to any other rights and remedies available to the Disclosing Party, agrees that the Disclosing Party shall, in the event of a breach of any of the provisions of this Agreement, be entitled to seek relief by way of interdict, specific performance or otherwise.

- 4.5 Should the Receiving Party or any of its employees, officers, directors, representatives, advisers or Affiliates be obliged by any law, or a valid order of any court of competent jurisdiction or government authority acting with the powers granted to it in law, to disclose any Confidential Information of the Disclosing Party to any third party, the Receiving Party shall, prior to making any such disclosure –
- 4.5.1 immediately notify the Disclosing Party in writing of the existence, terms and circumstances surrounding such request, so that the Disclosing Party may seek an interdict or other appropriate remedy to limit the scope of any such disclosure;
- 4.5.2 consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow such request and co-operate with the Disclosing Party in taking such steps as the Disclosing Party may reasonably require to resist or narrow any such request; and
- 4.5.3 if disclosure of any Confidential Information is legally required, exercise all reasonable endeavours to obtain an order or other reliable assurance that confidential treatment will be afforded to such portion of the Confidential Information as the Disclosing Party may designate.
- 4.6 The Receiving Party shall take all reasonable steps to ensure that –
- 4.6.1 no unauthorised third party gains access to the Confidential Information of the Disclosing Party which is in the possession or under the control of the Receiving Party, its employees, officers, directors, representatives, advisers or Affiliates; and
- 4.6.2 the Confidential Information of the Disclosing Party does not fall into the hands of an unauthorised third party.
- 4.7 The Receiving Party shall ensure that its employees, officers, directors, representatives, advisers and Affiliates which may gain access to the Confidential Information of the Disclosing Party are bound not to –
- 4.7.1 disclose the Confidential Information to any third party; and
- 4.7.2 use the Confidential Information otherwise than as may be strictly necessary in relation to the Transaction.

5 EXCEPTIONS

The undertakings set out in 4 shall not apply to Confidential Information which the Receiving Party is able to prove –

- 5.1 was in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party; or
- 5.2 is as at the Signature Date in, or thereafter comes into, the public domain other than by any breach of this Agreement by the Receiving Party; or
- 5.3 was lawfully received by the Receiving Party from a third party acting in good faith, having a right of further disclosure and who did not derive the same directly or indirectly from the Disclosing Party; or

- 5.4 is independently developed by the Receiving Party without the benefit of the Confidential Information,

provided that the onus shall at all times rest on the Receiving Party to establish that such information falls within the exemptions contained in this 5.

6 RETURN OF CONFIDENTIAL INFORMATION

- 6.1 The Disclosing Party may, at any time, request the Receiving Party to return any material containing, pertaining to or relating to Confidential Information disclosed by the Disclosing Party, its Affiliates or any of their respective employees, representatives, officers, directors or advisers, in relation to the Transaction and may, in addition, request the Receiving Party to furnish a written statement sworn under oath to the effect that, upon such return, neither the Receiving Party nor any of its Affiliates have retained in their possession, or under their control, either directly or indirectly, any such material or any copies thereof or extracts therefrom.
- 6.2 As an alternative to the return of the material contemplated in 6.1 above, the Receiving Party shall, at the written request of the Disclosing Party, destroy all such material and furnish the Disclosing Party with a written statement sworn under oath to the effect that all such material has been destroyed.
- 6.3 The Receiving Party shall comply with any requests in terms of 6.1 and/or 6.2 above within five "Business Days" (being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa) of the date of such a request.

7 NON-SOLICITATION OF EMPLOYEES

The Receiving Party agrees that, save as contemplated in any definitive transaction agreement concluded between the Parties for purposes of the Transaction, it will not, for a period of 24 months after the Signature Date, directly or indirectly, and on its own behalf or on behalf of any other person, encourage, entice, induce or persuade any person -

- 7.1 who is, as at the Signature Date or during the course of the Parties discussions relating to the Purpose, in the employ of the Disclosing Party or its Affiliates; and
- 7.2 with whom the Receiving Party has had or may have had any contact in relation to the Confidential Information or whose name and/or any other details are included in the Confidential Information,

to terminate such employment, nor shall it encourage or support any of its Affiliates to do so. This 7 shall not preclude the Receiving Party or its Affiliates from employing any such employee (a) who seeks employment by contacting the Receiving Party on his or her own initiative or in response to any general advertisement or (b) who is identified as a prospective employee by an independent third party such as an employment agency in the normal course of such agency's business and not at the Receiving Party's direction.

8 SCOPE OF DISCLOSURE

The Parties acknowledge and agree that -

- 8.1 this Agreement does not create or record any legal obligation of any kind whatsoever to disclose any information or conclude or negotiate towards the

implementation of the Transaction and such obligations shall only come into existence if the Parties agree thereto in writing in a separate document; and

- 8.2 the Disclosing Party makes no express, tacit or implied representations or warranties as to the accuracy or completeness of any Confidential Information, and they shall have no liability to the Receiving Party relating to or arising from the use by the Receiving Party of the Confidential Information or for any errors therein or omissions therefrom.

9 BREACH

- 9.1 Subject to 9.3, in the event of the Receiving Party committing any breach of the terms of this Agreement, the Disclosing Party shall be entitled, by giving a written notice to this effect to the Receiving Party, to forthwith cancel this Agreement or claim specific performance of the Receiving Party's obligations, without prejudice to its rights to claim damages or such other remedy as the law may allow.
- 9.2 Neither Party shall be liable to the other Party for any indirect or consequential damages, including loss of profits, business or anticipated savings or for any incidental damages arising from the breach of any of the provisions of this Agreement.
- 9.3 Notwithstanding the termination or cancellation of this Agreement for any reason whatsoever, the confidentiality undertakings set out in this Agreement (and in particular 4) shall survive any such termination or cancellation.

10 INDEMNITY

The Receiving Party acknowledges that the unauthorised disclosure of Confidential Information or any portion thereof to a third party may cause irreparable loss, harm and damage and the Receiving Party accordingly, hereby indemnifies and holds the Disclosing Party harmless against any loss, action, expense, claim, harm or damage of whatever nature, suffered or sustained pursuant to a breach by the Receiving Party of the provisions of this Agreement.

11 DISCLOSING PARTY'S UNDERTAKING

The Disclosing Party confirms that it will –

- 11.1 use the information and documentation received from the Receiving Party in relation to the Transaction (including the Parties' negotiations and discussions) ("**Receiving Party's Information**") only for the Purpose, which shall include but not be limited to evaluating any bids received from the Receiving Party, progressing any discussions with the Receiving Party, implementing the Transaction, etc.; and
- 11.2 only disclose the Receiving Party's Information to its employees, officers, directors, shareholders, representatives, advisers and Affiliates who has a need to know such information.

12 PRINCIPAL ADDRESS(ES) AND NOTICES

12.1 The Parties choose as their principal address(es) ("**Address(es)**") for all purposes arising from or pursuant to this Agreement, as follows -

12.1.1.1	Disclosing Party	<p>physical - R/E of portion 103 De Kroon 444JQ Brits 0250 Republic of South Africa</p> <p>facsimile - +27 12 381 1111</p> <p>email - businessrescue@hernic.co.za</p> <p>attention - Peter van der Steen (joint business rescue practitioner) and Trevor Murgatroyd (joint business rescue practitioner)</p>
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12.1.1.2	Receiving Party	physical	- physical address stipulated in Annexure A
		facsimile	- facsimile number stipulated in Annexure A
		email	- email address stipulated in Annexure A
		attention	- representative stipulated in Annexure A

12.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical Address to any other physical address (not being a post office box or poste restante) and to vary its email Address to any other email address, as the case may be.

12.3 Any notice given by either Party to the other ("**Addressee**") which is -

12.3.1 delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical Address shall be deemed to have been received by the Addressee at the time of delivery;

12.3.2 successfully transmitted by facsimile to the Addressee's facsimile Address shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the day immediately succeeding the date of successful transmission thereof; and

12.3.3 sent to the chosen email address of the Addressee shall be deemed, failing any administrator or mail server errors, to have been received by the Addressee on the Business Day immediately following the date of sending, unless the Addressee proves that the email was not delivered to their email system or that the email was incapable of being retrieved, read or otherwise processed by the Addressee's system.

12.4 This 12 shall not operate so as to invalidate the giving or receipt of any notice which is actually received by the Addressee other than by a method referred to in this 12.

- 12.5 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

13 GENERAL

- 13.1 This Agreement constitutes the sole record of the Agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 13.2 No addition to, variation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 13.3 This Agreement shall in all respects be governed by the laws of the Republic of South Africa.
- 13.4 In the event of any dispute or difference arising between the Parties relating to or arising out of this Agreement, including the implementation, execution, interpretation, rectification or cancellation of this Agreement, the dispute shall be referred for arbitration to the Arbitration Foundation of Southern Africa (or its successor-in-title) ("**AFSA**") in terms of AFSA's Rules of Arbitration for the time being in force. The seat, or legal place, of the arbitration shall be Johannesburg, Republic of South Africa and the language to be used in the arbitral proceedings shall be English.
- 13.5 The Receiving Party shall not be entitled to cede, assign, transfer or otherwise make over any of its rights or delegate any of its obligations under this Agreement to any other person, firm or corporation without the prior written consent of the Disclosing Party.
- 13.6 No indulgence or extension of time which the Disclosing Party may grant to the Receiving Party shall constitute a waiver of, whether by estoppel or otherwise, or limit any of the existing or future rights of the Disclosing Party in terms hereof, save in the event and to the extent that the Disclosing Party has signed a written document expressly waiving or limiting such right.
- 13.7 Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, judicial manager, curator or trustee, of either Party shall be bound by this Agreement.
- 13.8 The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Party.
- 13.9 Each Party shall be liable for its own costs, including but not limited to its legal costs, incurred in the preparation, drafting, negotiation and implementation of this Agreement.

Signed at

on

2017

for **HERNIC FERROCHROME
PROPRIETARY LIMITED (IN
BUSINESS RESCUE)**

who warrants that he/she is duly
authorised hereto

Signed at

on

2017

for **THE RECEIVING PARTY IDENTIFIED
IN ANNEXURE A**

who warrants that he/she is duly
authorised hereto

ANNEXURE A – RECEIVING PARTY'S DETAILS

Details	Receiving Party's information
To be completed if the Receiving Party is a juristic person	
Full (registered) name	
Trading name (if applicable)	
Registration number (if applicable)	
To be completed if the Receiving Party is an individual	
Full names	
Identity number (if a South African resident) or passport number (if not a South African resident)	
To be completed by <u>all</u> Receiving Parties	
Income tax number	
VAT number (if applicable)	
Physical address	
Registered address (if different from physical address)	
Usual place of business	
Facsimile number	
Email address	
Contact telephone number	
Contact person	
Will the Receiving Party participate in the Transaction as part of a joint venture or consortium? If so, please provide the full names and registration numbers of all other joint venture and/or consortium members.	

