

TRINIDAD AND TOBAGO

CONFIDENTIALITY AND CONFLICT OF INTEREST AGREEMENT

This Confidentiality and Conflict of Interest Agreement dated the day of _____, 2013 is made between **The Chaguaramas Development Authority** (hereinafter called “the Authority”) and the party described at the foot of this Agreement (hereinafter called “the Recipient”).

RECITAL

- A. The Authority proposes to issue An Invitation to Bid (hereinafter referred to as “the ITB”) inviting proposals from interested parties for the **Rehabilitation of Chaguaramas Development Authority’s Seed Centre Building, Chaguaramas.**
- B. The Recipient is an employee or an external consultant engaged by the Authority to provide services to the Authority in relation to the preparation of the ITB.
- C. In the course of providing services to the Authority the Recipient will have access to certain information in written, oral, or other tangible or intangible form which may include, but is not limited to, ideas, concepts, know-how, techniques, marketing plans and other technical and or financial business information of the Authority and Proponents who submit proposals in response to the ITB.
- D. In the exercise of his functions the Recipient is required to act for the benefit of and in the best interest of the Authority.

IT IS AGREED as follows:

1. Definitions and Interpretation

In this Agreement the following words shall have the following meanings:

- 1.1 ‘the Authority’ means the party under this Agreement that discloses Information directly or indirectly to the Recipient under or in anticipation of this Agreement;
- 1.2 ‘Confidential Information’ means all Information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Authority or its employees, officers, representatives or advisers to the Recipient after the date of this Agreement in or in any way connected to the ITB including but not limited to:

- (a) the existence and terms of this Agreement;
 - (b) The ITB;
 - (c) the contents of any proposals received from Proponents in response to the ITB;
 - (d) any Information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Authority or any Proponent, and
 - (ii) any data contained in the proposals of Proponents;
 - (iii) the operations, processes, product information, know-how, designs, trade secrets or software of the Authority or any Proponent;
 - (e) any Information or analysis derived from the Confidential Information including Information and analysis developed by the Recipient or any other person during the evaluation of proposals and negotiations between the Authority and any Proponent;
 - (f) Information provided in documentary or by way of a model or other tangible form, Information which at the time of provision is marked or otherwise designated to show expressly or by necessary implication that is imparted with confidence;
 - (g) Information that is imparted orally, any Information that the Authority or its representatives at the time of disclosure was imparted in confidence;
 - (h) any copy of the foregoing;
 - (i) discussions taking place between the Authority, the Recipient and Proponents.
- 1.3 'Conflict of Interest' means and refers to:
- (a) a situation that has the potential to undermine the propriety of the Recipient because of the possibility of a clash between the Recipient's self interest and his duty to act in the best interest of the Authority; or
 - (b) a situation in which the Recipient's responsibility to another party limits his ability to discharge his responsibility to the Authority.

- 1.4 'Information' means, but shall not be limited to, all information, in whatever form, whether factual, interpretative or strategic, furnished by or on behalf of the Authority or any Proponent, directly or indirectly to the Recipient in relation to the ITB process, including but not limited to, all contracts, financial information, financial strategies, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer records or software, specifications, models, or other information which is or may be either applicable to or related in any way to the assets, business or affairs of the Authority or any Proponent or its shareholders, stakeholders and customers, or the Permitted Purpose, together with all analyses, compilations, data studies or other documents prepared by the Recipient or any other person involved in the ITB process or containing or based upon, in whole or in part, information acquired by the Recipient during the course of his involvement in the ITB process.
- 1.5 'Recipient' means the party to this Agreement that receives Information directly or indirectly from the Authority or any Proponent.
- 1.6 'Permitted Purpose' shall mean that the Confidential Information may only be used by the Recipient for the purpose of the preparation and/or review of the ITB and/or evaluation of proposals submitted by Proponents.
- 1.7 'Proponent' means a person who submits a proposal to the Authority in response to the ITB.
- 1.8 In this Agreement clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.9 In this Agreement words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.
- 1.10 In this Agreement a person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

2. Undertaking

Subject to this Agreement the Recipient undertakes:

- (a) to keep the Confidential Information confidential;
- (b) not to disclose the any person any Confidential Information without the prior written consent of the Authority;
- (c) to use the Confidential Information only for the Permitted Purpose;
- (d) not to use the Confidential Information in any way directly or indirectly detrimental to the Authority.

3. Exceptions

The obligations of confidentiality in relation to the Confidential Information set out in this Agreement shall not apply in the following circumstances:

- (a) Where the Recipient shall be obligated to make any disclosure required by law or by any governmental or other regulatory authority of the Confidential Information provided that it gives the Authority not less than two business days' notice of such disclosure; or
- (b) Where the Authority agrees in writing with the Recipient that such Confidential Information may be disclosed.

4. Disclosure to employees

If the Recipient is an external consultant he undertakes to permit access to the Confidential Information only to those of his employees who reasonably need access to such Confidential Information for the Permitted Purpose, and on the conditions that such employees shall have:

- (a) entered into legally binding confidentiality obligations to the Recipient on terms equivalent to those set out in this Agreement (and such obligations extend to the Confidential Information),
- (b) been informed of the terms of this Agreement; and
- (c) been instructed to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement. The Recipient shall be responsible for ensuring that its employees comply with the provisions of this Agreement.

5. Return of Information and property

The Recipient acknowledges and agrees that the property and copyright in the Confidential Information, including any documents, files, data and other items containing any Confidential Information, belongs to the Authority. At the Authority's written request, the Recipient will return immediately to the Authority all Confidential Information which the Recipient has received under this Agreement and which may still be in the Recipient's possession, including any copies made, and make no further use or disclosure of any of it and will delete all files, data and other items containing Confidential Information received by the Recipient under this Agreement in electronic form which may still be in the Recipient's possession. The obligations on the Recipient under this Agreement shall continue in force without limit in time.

6. No implied rights

This Agreement shall not be construed (a) to grant the Recipient any license or rights other than as expressly set out herein in respect of the Confidential Information, nor (b) to require the Authority to disclose any Confidential Information to the Recipient. No warranty or representation, express or implied, is given as to the accuracy, efficacy, completeness, capabilities or safety of any materials or information provided under this Agreement.

7. Conflict of Interest

The Recipient acknowledges that in the exercise of his functions to the Authority in relation to the ITB he has a duty to act in the best interest of the Authority and warrants that there is no Conflict of Interest in his acting as such. In the event the Recipient becomes aware of the existence of any Conflict of Interest after the date hereof he shall immediately notify the Authority of this in writing and shall forthwith cease all participation in the ITB process unless directed otherwise by the Authority.

8. Law and jurisdiction

This Agreement shall be governed by and construed in accordance with the Laws of the Republic of Trinidad and Tobago.

9. Enurement

This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF each of the Parties has executed this Agreement as of the _____ day of _____, 2013.

/FOR/ The Chaguaramas Development Authority

Recipient

