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# CONFIDENTIALITY AGREEMENT (Example)

THIS CONFIDENTIALITY AGREEMENT (this "Agreement"), dated this \_\_\_\_\_, 2000 is by and between

CHEMICAL FORMULATIONS Inc., at address at North Shore Drive 3600, Sarrasota, Florida 01234, USA and

Africo Company Pty Ltd. with an address at \_\_\_\_\_.

For the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1) Background.**

Each party hereto (the "Receiving Party") has requested certain confidential and proprietary information of the other party (the "Disclosing Party") for the purposes of evaluating a transaction between the parties (the "Transaction"). As a condition precedent to providing any such confidential or proprietary information and continuing to negotiate the terms of the Transaction, Disclosing Party requires Receiving Party to execute this Agreement and abide by the terms hereof.

## **2) Confidential Information.**

As used in this Agreement, "Confidential Information" shall mean all tangible and intangible non-public information in any form (including written information, oral statements, visual observations of Disclosing Party's operations at its business premises, and electronically stored data) regarding the Disclosing Party or its business operations, including (i) information concerning Disclosing Party's (a) trade secrets, systems, know-how, products, processes (including manufacturing processes), inventions, computer software programs, or marketing or sales techniques, (b) financial condition, costs, business interests, initiatives, objectives, plans, or strategies, (c) customers, clients, suppliers, lenders, underwriters, vendors, consultants, independent contractors, attorneys, accountants or employees, and (ii) all other information (a) identified by the Disclosing Party as confidential or proprietary, or (b) deemed confidential, protected, a trade secret, or proprietary under applicable law.

## **3) Confidentiality and Use**

(a) Receiving Party agrees that it:

- (i) shall not directly or indirectly disclose or make available any Confidential Information to any person, firm, corporation, agency, or other entity (collectively, a "Person"), other than to Receiving Party's attorneys and accountants or as otherwise required by law,
- (ii) shall protect and keep the Confidential Information in the strictest confidence and disclose it only to its employees who need to know such Confidential Information to evaluate the Transaction or to perform the

obligations of the Receiving Party under any transaction or transactions between the parties,

(iii) shall use the Confidential Information solely for the purpose of evaluating the Transaction and performing the obligations of the Receiving Party under any transaction or transactions between the parties, and not in any fashion that is detrimental to Disclosing Party,

(iv) shall not copy or reproduce the Confidential Information or remove any Confidential Information from Disclosing Party's business premises without Disclosing Party's prior written consent, and

(v) shall not make notes, abstracts, or any other documents or materials regarding or containing any Confidential Information without Disclosing Party's prior written consent.

(b) Notwithstanding the foregoing, it is understood and agreed that this Agreement will not prevent the Receiving Party from using or disclosing, in a manner not inconsistent with this Agreement, any Confidential Information which the Receiving Party can show:

(i) to have available to the public or trade prior to the Receiving Party having received the Confidential Information or which becomes or became available to the public or trade after the Receiving Party received the Confidential Information, in a manner not in breach of this Agreement;

(ii) to have independently developed as a result of its own efforts and not as a result of disclosure of the same information by Disclosing Party;

(iii) is at any time lawfully received by the Receiving Party from a source other than Disclosing Party, provided that such source is not thereby in breach of any obligation of confidence to Disclosing Party; or

(iv) is to be required to be disclosed by the Receiving Party by law, pursuant to subpoena or other legal process.

#### **4) Return of Confidential Information**

Receiving Party shall promptly deliver to Disclosing Party all Confidential Information (including all copies and excerpts thereof and all documents and materials containing any Confidential Information) upon the termination of negotiations or business dealings between the parties, whichever is later to occur.

#### **5) Proprietary Rights**

The Confidential Information is, and shall at all times remain, the sole and exclusive property of Disclosing Party, and no right, title, interest, or license in or to such Confidential Information is conveyed, granted, or conferred upon or to Receiving Party with respect to such Confidential Information, except the right to use such Confidential Information for the sole purpose of evaluating the Transaction in accordance with the terms hereof, and performing the obligations of the Receiving Party under any transaction or transactions between the parties. Disclosing Party is not obligated to disclose any Confidential Information to Receiving Party, and Disclosing Party makes no representations or warranties, express or implied, regarding the Confidential Information or the accuracy, completeness or timeliness thereof.

## **6) Equitable Relief**

(a) Any breach of this Agreement by Receiving Party will cause the Disclosing Party irreparable harm for which there shall be no adequate legal remedy. In the event of any actual or threatened breach of this Agreement by Receiving Party, Disclosing Party shall be entitled to injunctive and all other appropriate equitable relief (including a decree of specific performance), without being required to:

- (i) show any actual damage or irreparable harm,
- (ii) prove the inadequacy of its legal remedies, or
- (iii) post any bond or other security.

(b) If Receiving Party breaches this Agreement, Disclosing Party shall also be entitled to an accounting and repayment of all profits, compensation, and benefits directly or indirectly realized by Receiving Party as a result of such breach. Disclosing Party's remedies in this Section 6 may be exercised without prejudice to (and are cumulative with) Disclosing Party's other available rights and remedies at law, in equity, or under this Agreement, including Disclosing Party's right to monetary damages arising from any breach of this Agreement by Receiving Party.

## **7) Indemnity**

Receiving Party shall release, defend, indemnify, and hold Disclosing Party harmless of and from all damages (direct, consequential, or otherwise), claims, losses, causes of action, liability, costs (including attorneys fees and experts fees at trial and on appeal) and expenses arising out of or relating to any breach of this Agreement by Receiving Party.

## **8) Term and Scope**

(a) This Agreement and the obligations imposed upon Receiving Party hereunder, shall:

- (i) exist and continue until (   5   ) years after the later of the date hereof and the date the parties no longer have any contract or business relationship between them,
- (ii) exist and continue, irrespective of whether Receiving Party and Disclosing Party enter into the Transaction, and
- (iii) be independent of either party's performance or failure to perform with respect to the Transaction.

(b) The existence of any claim or cause of action by Receiving Party against the Disclosing Party, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Disclosing Party of any of the provisions of this Agreement.

(c) The restrictions and remedies set forth in this Agreement are fair and reasonable and are reasonably required for the protection of the trade secrets, good will and other legitimate business interests of Disclosing Party. In the event that any court of competent jurisdiction determines that any provision of this Agreement exceeds the maximum time period or scope enforceable under applicable law, said provision shall be deemed automatically reformed to reflect the maximum enforceable time period or scope permitted under applicable law, which reformation shall be retroactive to the date of this Agreement first set forth above.

## **9) Enforcement Costs**

In the event of any action or proceeding relating to the interpretation or enforcement of this Agreement or any breach hereof, the prevailing party in such action or proceeding shall be entitled to recover from the other party all court costs, expenses and reasonable attorneys' fees (including all pre-trial, trial and appellate proceedings) incurred by the prevailing party in that action or proceeding, in addition to any other relief to which such prevailing party may be entitled.

## **10) Notices**

All notices, demands, requests, and consents given under this Agreement shall be:

- (i) in writing,
- (ii) mailed to the parties via overnight or certified mail at the addresses listed on the first page hereof, and
- (iii) effective, in the case of mailing by certified mail, three (3) business days after deposit in the U.S. mail, postage prepaid, or, in the case of overnight delivery, one (1) business day after delivery to a reputable overnight commercial delivery service for delivery on the next business day.

## **11) Miscellaneous**

(a) This Agreement represents the complete and final understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by or between such parties.

(b) This Agreement may be amended only by way of a written document making specific reference to this Agreement and signed by the party against whom enforcement is sought.

(c) This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective heirs, administrators, legal representatives, successors and assigns. No waiver of any term, provision, right, or covenant in this Agreement, nor any consent by either party to the other party's departure from the terms hereof, shall be valid or enforceable, unless such waiver is in writing and signed by the party against whom enforcement is sought, and then shall apply only to the specific term, provision, right, or covenant identified in such waiver on that particular instance. Receiving Party shall not assign or delegate its rights or obligations hereunder without the prior written consent of Disclosing Party, and any attempt to do so shall be void.

(d) This Agreement shall not be construed more strictly against one party than against the other merely because it may have been prepared by counsel for one of the parties, it being recognized that both parties have contributed substantially and materially to its preparation.

(e) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(f) Nothing contained in this Agreement shall obligate either party to enter into the Transaction or take any other action with respect thereto.

**12) Governing Law**

Any dispute arising out of or relating to this Agreement shall first be brought to the American Arbitration Association. In the event Arbitration is unsuccessful, the dispute shall be brought to the city and state of choice of the defending party within the United States.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first set forth above.

CHEMICAL FORMULATIONS Inc.,  
North Shore Drive 3600, Sarrasota,  
Florida 01234, USA

Represented by

Name:

Title:

Witness:

Print Name:

By:

Name:

Title:

Witness:

Print Name: