

# NON-CIRCUMVENTION, NON-DISCLOSURE AGREEMENT IFC2025-F1166

## **Project: Financial Transactions / Project Financing**

This NCND Agreement (the "Agreement") is made and entered into as of  
(the "Effective Date") by and between:

**Party One:** IFC International Finance Corporation LLC, represented by Dr Dr Michael Herzog, Chief Executive Officer, having its registered office at 848 Brickell Avenue, Penthouse 5, Miami, Florida 33131, USA.

**Party Two:**

Each is a "Party" and together the "Parties". "Affiliate" means, concerning a Party, any entity controlling, controlled by or under common control with that Party, together with its shareholders, partners, officers, employees, agents, consultants, advisers and successors in title.

## 1. RECITALS

The Parties wish to explore and, where mutually agreed, consummate one or more commercial or financial transactions of mutual benefit (each a "Proposed Transaction").

- 1.1 In the course of such dealings, the Parties may disclose or become privy to proprietary information, trade connections and other confidential material which must remain protected.
- 1.2 The Parties intend that the protections, covenants and remedies herein shall be interpreted and enforced in strict conformity with
  - 1.2.1 the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (ICC Publication No. 600), the ICC Rules on Arbitration, and
  - 1.2.2 applicable principles of Swiss substantive law, save where mandatory local statutes dictate otherwise.

NOW, THEREFORE, in consideration of the mutual covenants, warranties and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows.

## 2 DEFINITIONS

- 2.1 "Confidential Information" means any information (whether written, oral, graphic, electronic or in any other form) that is disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") and is identified as confidential or would be regarded as confidential by a reasonable business person, including but not limited to: identities of clients, suppliers and financiers; contact data; pricing; business plans; intellectual property; and any materials derived from the foregoing.
- 2.2 "Introduced Contact" means any person or entity whose identity or details are first disclosed by one Party to the other in connection with a Proposed Transaction.
- 2.3 "Banking Day" means any day on which the Trans-European Automated Real-time Gross-Settlement Express Transfer System (T2/TARGET2) is operational.

## 3 REPRESENTATIONS, WARRANTIES AND COMPLIANCE UNDERTAKINGS

- 3.1 Each Party represents and warrants to the other, on the Effective Date and continuously thereafter, that:
  - 3.1.1 It is duly organised, validly existing and in good standing under the laws of its jurisdiction of incorporation;
  - 3.1.2 It has full power, authority and legal right to enter into and perform this Agreement; the execution has been duly authorised;
  - 3.1.3 This Agreement constitutes its legal, valid and binding obligation, enforceable per its terms;
  - 3.1.4 Its entry into and performance of this Agreement does not and will not conflict with any law, regulation, charter or other agreement binding upon it;
  - 3.1.5 It is not insolvent and no insolvency or similar proceedings have been commenced or threatened against it; and
  - 3.1.6 Neither it nor any of its Affiliates, directors or senior officers is a Sanctioned Person, nor is it owned or controlled by a Sanctioned Person.

- 3.2 Each Party undertakes that it will at all times during the Term:
- 3.2.1 maintain all licences, authorisations and consents necessary to perform its obligations;
  - 3.2.2 comply with all applicable anti-money-laundering, anti-terrorism financing, anti-bribery and anti-corruption laws (including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act);
  - 3.2.3 Conduct reasonable KYC on Introduced Contacts, and promptly notify the other Party if any representation in Clause 2.1 becomes untrue

## 4 NON-DISCLOSURE

- 4.1 The Receiving Party shall (a) hold all Confidential Information in strict confidence and employ at least the same degree of care as it uses for its information of like importance (but in no event less than reasonable care); (b) use such Confidential Information solely for evaluating or effecting a Proposed Transaction; and (c) disclose Confidential Information only to those of its Affiliates and professional advisers who have a need to know and are bound by equivalent obligations of confidentiality.
- 4.2 The foregoing restrictions do not apply to information which the Receiving Party can demonstrate: (i) was lawfully in its possession before disclosure by the Disclosing Party; (ii) is or becomes public domain other than through a breach of this Agreement; (iii) is received from a third party not in breach of a duty of confidence; or (iv) is independently developed without reliance upon the Disclosing Party's Confidential Information.
- 4.3 Upon written demand, the Receiving Party shall promptly return or securely destroy all Confidential Information, including all hard-copy and electronic copies, and certify such destruction in writing.

## 5 NON-CIRCUMVENTION

- 5.1 Neither Party nor its Affiliates shall, without the prior written consent of the introducing Party: (a) enter into any transaction with an Introduced Contact, or (b) solicit, divert, deal with, or otherwise exploit an Introduced Contact, whether directly or indirectly, in a manner that deprives the introducing Party of its rightful commercial or financial benefit.
- 5.2 The Parties expressly acknowledge that breach of this clause would cause the introducing Party irreparable harm not readily calculable in monetary terms; accordingly, injunctive relief shall be available in addition to any other remedy.
- 5.3 Audit Right: Where either Party reasonably suspects a breach of this Clause 4, it may by five (5) Banking Days 'notice require the other Party to afford access (on a confidential basis) to relevant books, records and e-mail traffic for the sole purpose of verifying compliance; such access shall be during normal business hours and at the requesting Party's expense.

## 6 CONSIDERATION & PARTICIPATION

- 6.1 Where the Parties jointly participate in a Proposed Transaction, the economic interests (commissions, fees, profit-share or other remuneration) shall be allocated under a separate written instrument referencing this Agreement or, failing such specification, on a pro-rata basis reflecting the relative value contributed by each Party, such value to be determined in good faith or, absent agreement, by an independent expert nominated by the ICC Secretariat.
- 6.2 Escrow: Unless otherwise agreed in writing, all success fees and other remuneration payable to the Parties under any Proposed Transaction shall be deposited, upon receipt, into an escrow account with a first-class international bank; release instructions shall mirror the agreed split of economic interests.

## 7 TERM

- 7.1 This Agreement shall remain in full force and effect for ten (10) years from the Effective Date (the "Initial Term"). Thereafter, it shall automatically renew for successive one-year periods unless either Party delivers written notice of non-renewal at least ninety (90) days before the expiry of the then-current term.

## 8 REMEDIES, SECURITY AND LIQUIDATED DAMAGES

### 8.1 Liquidated Damages and Acknowledgement of Debt

- 8.1.1 Each Party irrevocably acknowledges that, upon any breach of Clauses 3 or 4, it shall ipso facto owe to the non-breaching Party the sum of EUR 10,000,000 (twenty-five per cent of which is designated a genuine pre-estimate of investigative loss and seventy-five per cent a bona fide pre-estimate of lost profit) (the "Liquidated Damages Amount").
- 8.1.2 The Liquidated Damages Amount shall fall due and payable in full within three (3) Banking Days of the breaching Party's receipt of a written Demand Notice identifying the breach in reasonable detail.
- 8.1.3 The breaching Party waives (i) any right of set-off, counterclaim, deduction or abatement, and (ii) any requirement that the non-breaching Party first prove actual loss or mitigate damages.

### 8.2 First-Demand Security Instrument

- 8.2.1 Within five (5) Banking Days of the Effective Date, each Party shall procure in favour of the other Party an irrevocable, unconditional, transferable standby letter of credit (SBLC) or bank guarantee issued or confirmed by a top-50 bank (by Tier 1 capital) in the OECD, in the face amount of EUR 10,000,000, \*\*expressly payable at first written demand without proof or conditions by ICC URDG 758\*\*, and with an expiry date no earlier than thirty (30) calendar days after the expiry of this Agreement. Failure to maintain such instrument constitutes a material breach.

### 8.3 Interest

- 8.3.1 If the Liquidated Damages Amount (or any part thereof) is not paid when due, it shall accrue default interest at the higher of (i) EURIBOR + 800 basis points or (ii) 10 % per annum, compounded quarterly, from (and including) the due date until actual receipt of cleared funds.

### 8.4 Debt Certificate

- 8.4.1 A certificate signed by a director or chief financial officer of the non-breaching Party stating the amount then outstanding under this Agreement shall, absent manifest error, be conclusive and binding evidence of such amount to obtain summary judgment or an arbitral award.



## 8.5 Summary Judgment / Confession of Judgment

8.5.1 For the sole purpose of enforcing this Clause 7, each Party confesses judgment for the Liquidated Damages Amount (plus interest and costs) and irrevocably consents to the entry of summary judgment or its functional equivalent in any court of competent jurisdiction. The Parties further renounce all defences to such judgment other than documented payment in full.

## 8.6 Emergency and Ex-Parte Relief

8.6.1 Nothing in this Agreement shall preclude the non-breaching Party from seeking (i) emergency relief under the ICC Emergency Arbitrator Provisions, and/or (ii) ex-parte interim measures or worldwide freezing orders (Mareva/Anton Piller) from any court of competent jurisdiction, \*\*without the requirement to post any bond or other security\*\*; the breaching Party irrevocably submits to such jurisdiction for that limited purpose.

## 8.7 Costs of Recovery

8.7.1 All reasonable costs and expenses (including but not limited to arbitration fees, court fees, tracing agents' fees, and full indemnity legal costs) incurred in securing or enforcing payment of any sum due under this Clause 7 shall be reimbursed by the breaching Party on a solicitor-and-own-client basis.

## 8.8 Severability of Penalty Provision

8.8.1 If a competent tribunal were nevertheless to deem any component of this Clause 7 unenforceable, the offending provision shall be severed pro tanto and replaced automatically with the closest permissible analogue that most fully protects the economic intent of the Parties; all remaining provisions shall continue in full force and effect.

# 9 NOTICES AND SERVICE OF PROCESS

9.1 Any notice or other communication under this Agreement shall be in English, in writing and deemed duly given when transmitted: (a) by e-mail with system-generated delivery receipt; (b) by facsimile with answer-back confirmation; or (c) by internationally recognised courier service, signature required, on the date shown as delivered.

9.2 Each Party will appoint its agent to receive on its behalf service of any process in Switzerland relating to any dispute arising out of or in connection with this Agreement. Service on such an agent shall be deemed valid service whether or not the document is forwarded to the relevant Party.

## 10 GOVERNING LAW & DISPUTE RESOLUTION

- 10.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed following the substantive laws of Switzerland, excluding its conflict-of-laws rules.
- 10.2 Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed following the said Rules. The seat of arbitration shall be Zurich, Switzerland; the language shall be English. The arbitral award shall be final, binding and enforceable in any court of competent jurisdiction under the New York Convention of 1958.

## 11 MISCELLANEOUS

- 11.1 Entire Agreement. This document constitutes the entire agreement between the Parties on its subject matter and supersedes all prior understandings, whether oral or written.
- 11.2 Amendment. No variation is effective unless outlined in a written instrument signed by authorised representatives of both Parties.
- 11.3 Waiver. A waiver of any right is effective only if given in writing and shall not be deemed a waiver of any subsequent breach.
- 11.4 Severability. Should any provision be held invalid or unenforceable, the remaining provisions shall remain in full force; the invalid provision shall be deemed replaced by a valid provision that most closely reflects the Parties' original intent.
- 11.5 No Partnership. Nothing herein shall be construed as creating any partnership, joint venture or other fiduciary relationship; each Party is an independent contractor.
- 11.6 Assignment. Neither Party may assign or transfer its rights or obligations without the prior written consent of the other Party, such consent not to be unreasonably withheld.
- 11.7 Force Majeure. Neither Party shall be liable for delay or failure to perform any obligation (other than payment) due to an event beyond its reasonable control, provided it promptly notifies the other Party and uses commercially reasonable efforts to mitigate the effect.



- 11.8 Limitation-of-Liability Carve-Out. Nothing in this Agreement shall limit or exclude any liability arising from a Party's wilful misconduct, fraud or fraudulent misrepresentation.
- 11.9 Survival. Clauses 4 (Non-Disclosure), 5 (Non-Circumvention), 8 (Remedies), 10 (Governing Law & Dispute Resolution) and this Clause 11, together with any other provision which by its nature is intended to survive, shall continue in full force notwithstanding the termination or expiry of this Agreement. Confidentiality obligations shall subsist in perpetuity; non-circumvention covenants shall subsist until the second anniversary of the later of (i) the end of the Term or (ii) completion of the last Proposed Transaction.
- 11.10 Parent Guarantee. Each Party shall procure that its ultimate parent company executes the guarantee set out in Schedule 1 on or before the Effective Date, unconditionally guaranteeing all obligations of that Party under this Agreement.
- 11.11 Electronic Signatures. The Parties consent to the use of advanced electronic signatures compliant with Regulation (EU) No 910/2014 ("eIDAS") and acknowledge that such signatures shall have the same legal effect as wet-ink signatures.
- 11.12 10.12 Business Day. Any reference to "day" in cure-period calculations that is not expressly qualified shall be construed as a Banking Day.

## 12 EXECUTION

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorised representatives as of the Effective Date.

### ACCEPTED AND SIGNED WITHOUT CHANGE:

#### 12.1 PARTY One

Company Name: IFC International Finance Corporation LLC  
Signatory's Full Name: Dr. Michael Herzog  
Title: CEO

Address: 848 BRICKELL AVE., PENTHOUSE 5  
MIAMI, FL 33131  
USA

Email: info@intfico.com Internet: www.intficorp.com

Signed on:

**Signature:**

#### 12.2 PARTY Two

Company Name:

Signatory's Full Name:

Title:

Address:

Email:

Internet:

Passport No:

Date

Signature