

APPENDIX 8.10 CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and non-disclosure agreement [CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT] (in brief this Agreement) is made and entered into as of [REDACTED] between the Employer and the Contractor of the primary Contract.

1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1 "CONFIDENTIAL INFORMATION" shall mean all the Employer data (including, without limitation, all Developed data), all financial information relating to the Employer or its business, all information from time to time relating to the Employer's plans to expand its business, both geographically and as to the scope and nature of such business, and any other information disclosed by the Employer to the Contractor, whether directly or indirectly, that is identified by the Employer as being confidential. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure to the Contractor by the Employer; (ii) becomes publicly known and made generally available after disclosure to the Contractor by the Employer through no action or inaction of the Contractor or any of its Sub-contractors or Sub-consultants (as defined in the Contract); or (iii) was independently developed by the Contractor or by third parties without reliance upon any information or Data that would otherwise constitute Confidential information hereunder.

1.2. "CONTRACT" shall mean that primary Contract for Design and Build Construction and Related Services dated [REDACTED] by the Employer and the Contractor.

1.3. "DATA" shall mean all designs, plans, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, disks, databases, software, works of art, inventions, discoveries, components, and any Contract documents (as defined in the Contract), or similar items.

1.4 "DEVELOPED DATA" shall mean all Data prepared or developed by or for the Contractor or any of its Sub-contractors or Sub-consultants pursuant to the Contract, including, without limitation, all Contract Documents (as defined in the Contract).

1.5 "IP RIGHTS" shall mean all intellectual property rights, copyrights, design rights, patents, and other similar invention rights, trademarks, trade names, service marks, trade secrets, and all applications for and rights in or to any of the foregoing.

1.6 "EMPLOYER DATA" shall mean all information and all Data now or hereafter owned or prepared by or for the Employer, including, without limitation, all Developed data, relating to Operating equipment (as defined in the Contract) systems and designs, material handling, integration, measurement and control systems, food

production and processing systems and designs, information technology systems and software, and/or general arrangement drawings for the Employer's facilities, and all inventions, discoveries and improvements relating to the Employer's business (including, without limitation, any information relating to the manufacturing techniques, processes, formulas, designs, "look and feel", logos, developments and experimental work or work-in-progress), and all formulas, devices and compilations of information (including customer lists), which are used in or related to the Employer's business. Without limiting the generality of the foregoing, Employer data shall include all information and Data now or hereafter owned or prepared by or for the Employer relating to the Employer's local area networks, conveyor software and associated server systems, radio frequency scanners, "Fill-To-Order" computing systems and software, and "Order Fulfilment System" server and software.

2. Limited Use The Contractor shall not use any Confidential Information for any purpose except as expressly authorized in the Contract. The Contractor shall not disclose any Confidential Information to third parties or to employees of the Contractor, except to

(i) those employees, Sub-contractors, or Sub-consultants who are required to have the Confidential Information to perform services expressly authorized under the Contract and then only to the extent reasonably necessary to permit such employees, Sub-contractors, and Sub-consultants to perform such services, and

(ii) those government officials, Employer landlords and tenderers for Sub-contracts to whom the Contractor is required to disclose such Confidential information to enable the Contractor to perform such services and then only to the extent reasonably necessary to enable the Contractor to perform such services.

The Contractor shall not reverse engineer, disassemble or decompile any prototypes, software, data or other tangible objects which embody any Confidential information and which are provided to the Contractor under the Contract.

3. Maintenance of Confidentiality. The Contractor shall hold and keep all Confidential information strictly confidential. The Contractor shall take all reasonable measures to protect the secrecy, and avoid disclosure and unauthorized use, of all Confidential information. Without limiting the foregoing, the Contractor shall develop and strictly adhere to secrecy and security protocols and procedures reasonably acceptable to the Employer. The Contractor shall use its best efforts to ensure that all employees having access to Confidential information comply with the terms of this Agreement; the Contractor shall cause all such employees, Sub-contractors, and Sub-consultants to sign a non-disclosure agreement reasonably acceptable to the Employer prior to any disclosure of Confidential information to such employees, Sub-contractors, or Sub-consultants. The Contractor shall reproduce the Employer's proprietary rights notices on any copies of Confidential Information, in the same manner in which such notices were set forth in or on the original. The Contractor shall immediately notify the Employer in the event of any unauthorized use or disclosure of any Confidential information of which the Contractor becomes aware. In the event the Contractor is compelled to disclose Confidential information pursuant to the order or requirement of a court, administrative agency, or other governmental body, the Contractor shall provide prompt notice thereof to the Employer and shall use best efforts to obtain a protective order or otherwise prevent public disclosure of such information, and in any event shall disclose only that portion of the Confidential information that is required to be disclosed pursuant to such order or requirement.

4. Notification of Disclosure. The Contractor shall immediately notify the Employer of any unauthorized disclosure of Confidential information of which the Contractor

becomes aware. The Contractor shall, at the Contractor's sole cost and expense, take all reasonable steps necessary to recover any Confidential Information improperly disclosed by the Contractor or its employees, and the Contractor shall use its best efforts to minimize any further dissemination of such Confidential Information and any damages to the Employer resulting from such improper disclosure.

5. Return of Materials. All documents, Data, and other tangible objects containing or representing Confidential information and all copies thereof shall be and remain at all times the property of the Employer and shall promptly be returned to the Employer or destroyed by the Contractor upon termination or expiration of the Contract or upon the Employer's request. The Contractor shall, however, have the right to maintain one copy of the foregoing solely for the Contractor's archive files, subject to the terms, restrictions and conditions of this Agreement.

6. No License. Nothing in this Agreement is intended to grant any rights to the Contractor or any Sub-contractor or Sub-consultant under any Intellectual property rights of the Employer, nor shall this Agreement grant the Contractor any rights in or to Confidential information except as expressly set forth herein.

7. Equitable Relief. The Contractor acknowledges that the damages that the Employer will incur as a consequence of any breach by the Contractor or any of its employees, Sub-contractors, or Sub-consultants of this Agreement will be irreparable and may not readily be capable of calculation. Accordingly, to the fullest extent permissible by law and without limiting any other rights or remedies that may be available to the Employer, the Employer shall be entitled, as a matter of right, to equitable relief to protect the Employer's interests, including, but not limited to, preliminary and permanent injunctive relief. The Contractor hereby consents to, and shall require that its Sub-contractors and Sub-consultants consent to, the issuance by any court of competent jurisdiction of both temporary and permanent injunctions in the event of such breach or threatened breach restraining and prohibiting the Contractor and its Sub-contractors and Sub-consultants, and their respective agents and representatives, from violating any of the provisions of this Agreement.

8. Miscellaneous. This Agreement shall survive the expiration or earlier termination of the Contract until the later of
(i) the seventh (7th) anniversary of the date of this Agreement, or
(ii) the fifth (5th) anniversary of the date the Contract is terminated in its entirety.
This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of Botswana, without reference to conflict of laws principles. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any term or condition hereof waived, except by a writing signed by both parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one agreement. In any action arising under or in connection with this Agreement, the prevailing party in such action shall be awarded, in addition to other legal or equitable relief, its reasonable costs and expenses and reasonable attorneys' fees. If all or any portion of any provision of this Agreement as applied to any party or any circumstance shall be ruled by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) that provision or the remaining portions of that provision as applied to any parties or circumstances or any other provision of this Agreement or the validity or enforceability of this Agreement as a whole, all of which

shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the Effective Date provided in Clause 8.12.

[Redacted signature line]

the Contractor

By:

Name: [Redacted]

Title: [Redacted]

Date: [Redacted]

[Redacted signature line]

the Employer

By:

Name: [Redacted]

Title: [Redacted]

Date: [Redacted]

