

## CONFIDENTIALITY, NON-DISCLOSURE AND CONFLICT OF INTEREST AGREEMENT

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**Adopted by the SAMED Board on:  
November 2013**

Between

South African Medical Devices Industry Association (SAMED)

And

\_\_\_\_\_

(who is a Member of the Board of SAMED and/or a member of SAMED  
\_\_\_\_\_ Committee)

Hereinafter collectively “the parties”

## **1. Confidentiality Policy**

- 1.1 The purpose of this agreement is to ensure that confidential matters brought before the Members of the Board of SAMED or any of its committees, are not disclosed until disclosure is properly authorized. SAMED Board and Committee members are in positions of trust towards SAMED as a voluntary membership organization, and such trust may require that elected and appointed persons act with the highest integrity and keep certain information confidential, and avoid conflicts of interest.
- 1.2 This agreement is designed to provide clarity for each Board Member and Committee Member with regard to confidential matters that come before- or arise out of meetings and matters of the Members of the Board of SAMED or any of its committees, and provides certainty as to how situations of conflict of interest are to be handled.
- 1.3 Its objective is to address matters of confidentiality in a manner that facilitates the Board, and Committees in maintaining the highest business and ethical standards, protects the integrity of SAMED, the Board, and Committees, allows for appropriate levels of transparency and accountability in matters before the Board, and supports the maintenance of effective relationships among Board Members, SAMED and Committee Members.

## **2. Definitions**

- 2.1 "Agreement" means this Confidentiality and Non-Disclosure Agreement
- 2.2 "Board" means the Board of SAMED.
- 2.3 "Board Members" means members of the Board.
- 2.4 "Chair" means Chair of the Board.
- 2.5 "Committee" means a committee of the Board.
- 2.6 "Committee Members" means members of any Committee.
- 2.7 "Meeting" means a meeting of the Board or a Committee, as applicable.
- 2.8 "Policy" means this Confidentiality Policy
- 2.9 "SAMED" means South African Medical Devices Industry Association
- 2.10 "Vice-Chair", means Vice-Chair of the Board

## **3. The information**

- 3.1 "Information" shall for the purposes of this agreement include, without limitation, any technical, commercial, scientific information, know-how, trade secrets, processes, machinery, designs, drawings, technical specifications, clients, prospects, historical and forecast financial information, organisational and operational structure and data in whatever form, communicated to the receiving party or acquired by the receiving party from the disclosing party during the course of the parties' association with one another.

## **4. Confidentiality**

4.1 Regular Board meetings are, in the ordinary course of events, not open to the public and/or media.

a) Members of SAMED may on invitation attend Board meetings.

b) Once the Board has dealt with an issue in a board meeting and has decided on that matter, the issue is considered to be accessible to members to the extent of that decision. Matters that are so declared may be accessible to the public at large to the extent so declared by the Board.

c) All decisions that would be accessible to the general membership and/or the public at large will be recorded as such in the Board minutes.

d) If no recordal is made, the matter, discussions and all resolutions should be deemed to be confidential unless declared by the Board by resolution as not confidential.

e) When considering whether matters are confidential or not, the nature of SAMED as a membership organization, the prospects of harm to SAMED (including harm to its reputation, good processes and procedures and good governance), as well as the impact of any such decision on members or groups of members, must, amongst others, be considered.

4.2 The Board also holds in-camera meetings, All present at any in-camera meeting will be bound to keep the proceedings confidential, unless otherwise directed by the Chairperson of the Board of Directors or any committee created by it with a support of the majority. Exiting and re-entering an in camera session will be permitted with the understanding that all present are obligated to keep the proceedings confidential.

4.3 Non-members will be permitted to attend an in-camera session of the Board of Directors or any Committee created by it, only after a motion requesting attendance to an in camera session is approved by a majority vote of members present and voting. External consultants present during such in camera sessions may be required to preserve the confidentiality of discussions during such a session.

4.4 If any person in attendance at a meeting of the Board of Directors or any Committee created by it, held in-camera, shall give notice of their intention not to be bound by the provisions of this by-law of SAMED, and refuse to leave the room when requested to do so, the Chair shall, subject to a resolution of the board supported by a majority vote, adjourn the meeting, after having informed members that it will be reconvened at a time and place of which the offending person will not be notified.

4.5 Committees are advisory to the Board. Only the full Board makes formal decisions. Committee meetings are held in-camera, and their recommendations should not be discussed outside of the Committee or the Board. Discussions with others for the purpose of gathering input for committee consideration are acceptable and each Committee chair would have to exercise discretion and communication that decision to all present during a Committee meeting where an external person is present.

## **5. Conflict of Interest**

- 5.1 A conflict of interest arises when there is a relationship which exists which could result in the Board or Committee member being perceived as being biased either for or against the topic of discussion.
- 5.2 Any Member of the SAMED Board, Executive, and/or Staff who has a personal interest, directly or indirectly, in any contract, transaction, proposed contract, or proposed transaction, under consideration of the Board of Directors or of a Committee created by it shall be deemed as being in a conflict of interest, where:
- a) Contract is defined as any written or verbal agreement between two or more parties for the doing or not doing of something specified which is related to the matter at hand.
  - b) Transaction is defined as an exchange of money, services, goods, position, or favours are exchanged for money, services, goods, position or favours.
  - c) Interest is defined as any instance where any contract or transaction, proposed contract or proposed transaction could be to the benefit or detriment of themselves, family, partners, roommates/housemates, other organizations to which they are currently affiliated, that do not pertain to their job description or mandate.
- 5.3 Conflicts of interest may also arise in matters that may lead to a direct benefit to a particular Board member and/or his/her company, which position may conflict with either the law and/or codes of good practice and/or SAMED policy on a particular matter or the approach that should be taken to specific types of matters.
- 5.4 Where the Board of Directors or a Committee created by it is of the opinion that a conflict of interest exists that has not been declared, the Board of Directors or Committee may declare, by a resolution carried by two-thirds of the members present and voting at the meeting, that a conflict of interest exists and that the member found in conflict shall follow the procedure below.
- 5.5 In the event of a conflict of interest, the interested party shall:
- a) Prior to any vote on the issue, declare the conflict of interest to the Chair or Board as a whole.
  - b) Refrain from voting in relation to the matter.
  - c) Withdraw from the meeting when the matter is discussed if requested to do so by a simple majority of the members present and voting at the meeting.

## **6. Breaches**

- 6.1 A breach of this Confidentiality and Conflict of Interest Agreement may result in action being taken against the member (up to and including removal from the Board and/or SAMED Committee).

6.2 In the case of a breach by a Board or Committee Member, the Board will determine what steps should be taken under the circumstances (provided that consideration of the removal of a Board member shall be on thirty (30) days notice to the Board Member. After thirty (30) days notice to the Board Member, the Board, may remove the person from the Board through the applicable provisions and procedures created by the SAMED Constitution.

## **7. Terms**

7.1 This agreement shall commence upon the date of signature by both parties ("the effective date") to this agreement and shall continue to bind the parties for the duration of one year. A new agreement must be signed should a person be re-elected or re-appointed as a Board- and/or Committee member.

## **8. Additional action**

8.1 Each party to this agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to give effect to the terms and provisions of this agreement. This may include the return and/or distraction of documents, information, files, emails and the like that came to be in his/her possession during his/her tenure as a Board- and/or Committee member, upon resignation or removal from such a position.

## **9. Amendments**

9.1 No amendment, interpretation or waiver of any of the provisions of this agreement shall be effective unless reduced to writing and signed by both the parties.

## **10. Entire agreement**

10.1 This agreement contains the entire agreement of the parties with respect to the subject matter of this agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this agreement.

## **11. Governing law**

11.1 This agreement and the relationship of the parties in connection with the subject matter of this agreement shall be governed and determined in accordance with the laws of South Africa.

## **12. Severability**

12.1 In the event of any one or more of the provisions of this agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, and this agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

**13. Undertaking Respecting Confidentiality and Conflicts of Interest**

Whereas, and based on the above rules, from time to time, arising out of the relationship between the undersigned and the Board and/or any Committee of SAMED, the undersigned shall come into possession or have knowledge of certain matters, information and things which are confidential, i.e. "confidential information and s/he may be in situations of conflict as outlined in the aforementioned provisions, therefore the person declares as follows:

*I have read the above undertakings and certify that I fully understand the nature and effect of these undertakings, and acknowledge receipt of a copy thereof.*

*I further agree to be bound by the rules of confidentiality and conflict of interest as set out above. I also understand the need for these requirements and I believe I can meet the requirements as set out above.*

Signed at \_\_\_\_\_ on \_\_\_\_\_

**For Board / Committee Member:**

\_\_\_\_\_

Full names and surname of

\_\_\_\_\_

Signature

**For SAMED:**

\_\_\_\_\_

Full names and surname

\_\_\_\_\_

Signature