

Confidentiality Agreement



Confidentiality Agreement (CA)

1. Definitions

Capitalized words and phrases shall have the below meaning:

“Affiliates” means any person or entity controlling, controlled by or under common control of the relevant party.

“Confidential Information” means any proprietary information relating to the activities, business, projects, proposals, property developments and operation of FGV and/or its Affiliates which shall include, without limitation, all information, whether prior to or hereafter disclosed, relating to the assets, financial condition, strategies, research, products, software, services, development, invention, processes, drawing, layout plans, diagrams, engineering, prospects, marketing, planning, programming, technical, legal and other information, ideas, concept, designs, specifications and data, and business opportunities whether in written, oral, electronic, photographic and/or other forms, whether or not such information is expressly stated to be confidential or marked as such, relating to FGV and/or its Affiliates and also includes without limitation, memoranda, notes and reports whether in writing or otherwise prepared by the Recipient, its employees, officers, servants, agents and advisors and that of its Affiliates, based on information furnished or caused to be furnished or howsoever made available by or on behalf of FGV (including information which is owned by FGV's Affiliates) and also includes any Personal Data collected from individuals as defined under the Personal Data Protection Act 2010 [Act 709].

For the purpose of this clause, “Personal Data” has the meaning assigned to it in the Personal Data Protection Act 2010 [Act 709].

In consideration of the disclosure of the Confidential Information, the Recipient undertakes the obligations contained in this Agreement in relation to FGV's Confidential Information.

2. Non-Disclosure

The Recipient shall maintain in strict confidence any Confidential Information disclosed hereunder by FGV and/or its Affiliates.

The Recipient hereby covenants and agrees to restrict the dissemination, circulation and supply of the Confidential Information of FGV and/or its Affiliates or any part thereof only to those of its officers and employees and such permitted agents and advisors or that of its Affiliates, associate of related companies who require the whole or any part of such Confidential Information to accomplish the purpose for which the same has been disclosed. The Recipient shall ensure that it, its Affiliates, associates and related companies will not disclose any FGV's Confidential Information to its consultants, agent or advisor unless and until such advisor, agent or consultants are made aware to the terms of this Agreement and agree to be bound by the same terms and conditions and agree to sign a confidentiality agreement ("Confidentiality Agreement") in favour of FGV containing substantially the same terms as contained herein and delivered a copy of the Confidentiality Agreement to FGV.

The Recipient will also ensure and procure that none of its officers, employees, servants, agents, consultants and advisors and those of its Affiliates will do any act, matter or thing which, if done by the Recipient, would constitute a breach of the Recipient's obligations under the terms of this Agreement.

The Recipient agrees to use the same care and discretion to avoid disclosure, publication, or dissemination of FGV's Confidential Information that the Recipient uses to protect its own Confidential Information but in no case will the Recipient use less than reasonable care to protect FGV's Confidential Information.

3. Exceptions to Obligations of Confidentiality and Non-Use

The obligation of confidentiality and non-use shall not apply to Confidential Information:

- a) prior to the date hereof, is in the public domain or hereafter comes into the public domain (other than as a result of a breach of this Agreement by the Recipient); or
- b) which is released for public disclosure by FGV without any confidentiality restrictions; or
- c) is lawfully received or received without knowledge of any breach of confidentiality obligations from third party or parties; or
- d) is, at any time, developed by the Recipient independently of any Confidential Information disclosed by FGV; or
- e) is required to be disclosed under any applicable law, pursuant to an order of a court of competent jurisdiction or as required by a regulatory authority.

4. Obligation to Disclose Confidential Information

Except for the matters specifically agreed to in this Agreement, nothing herein may be construed as compelling FGV to disclose or make available the Confidential Information to the Recipient.

5. Ownership of Information and Intellectual Property

FGV retains full ownership and/or control of the Confidential Information disclosed. Matters relative to intellectual property rights resulting from the evaluation of the Confidential Information shall be handled subject to further consultation and written agreement between the Parties hereto.

6. No License or Agreement

Nothing in this agreement shall be construed as (i) granting to Recipient, by implication or otherwise, any license, title or right with respect to the Confidential Information; or (ii) representing any commitment by either party to enter into any license agreement or other agreement, whether relating to the Permitted Purpose or otherwise.

7. Duration and Confidentiality

The obligations of the Parties under this Agreement shall continue for a period of five (5) years following the termination and negotiation between the Parties. The Recipient shall promptly advise FGV in writing of any disclosure, misappropriation or misuse by any person within the Recipient's control of the Confidential Information as soon as practicable after it becomes aware of such disclosure, misappropriation or misuse.

8. Return of Confidential Information

Upon request of FGV, but not earlier than upon termination of this Agreement, Recipient shall return or destroy all materials in any form containing any part of the Confidential Information (if any). If requested, Recipient shall provide written confirmation that the above obligation has been fulfilled.

9. Remedies

Recipient accepts that FGV shall be entitled to seek injunctive relief to prevent a breach of this Agreement and to seek specific performance of this Agreement in addition to all other remedies available in equity and law, all of which are non-exclusive and cumulative. The Recipient shall indemnify and hold harmless FGV from and against all actions, claims, damage, loss, costs and expenses (including reasonable solicitor's costs) arising out of or in relation to the disclosure of the Confidential Information in breach of the provisions herein except where the Recipient establishes that such disclosure is permitted in accordance with the provisions herein.

10. Notices

All notices, demands, request or other communications given, served or sent by any party to the other party pursuant to this Agreement will be in writing and will be (i) transmitted by mail delivery, or (ii) hand delivery, or (iii) if transmitted by facsimile and/or electronic mail, the party must also simultaneously send the same by the method in (i) or (ii), in each case to the addresses as set forth in your registered/business address.

11. Publicity

The Recipient shall not disclose the Confidential Information pertaining to the Permitted Purposes to the public through the media in whatever form for whatsoever reasons which includes but not limited to publicity, press releases, interviews, or any other forms without prior written consent from FGV.

12. Miscellaneous

This agreement contains the entire understanding of the Parties on the subject matter hereof. No modification of this agreement shall be effective unless in writing and signed by both Parties. Should any article be found invalid or unenforceable, it may be severed without affecting any other part of this agreement. A waiver of any breach of this agreement by the Company shall not be deemed a waiver of any repetition of such breach or in any way affect any other terms or conditions hereof. This agreement shall not be assignable in whole or in part by the Recipient without the written consent of the Company.

13. Applicable Law

This Agreement shall be governed by and construed under the laws of Malaysia and the Parties submit to the exclusive jurisdiction of the court of Malaysia.

14. Successor Bound

This Agreement will be binding upon the successors in title of both Parties.