

**NON-DISCLOSURE AGREEMENT  
MUTUAL**

<b>RIO TINTO</b>	Rio Tinto Aluminium Limited ABN 51 009 679 127, 155 Charlotte Street, Brisbane QLD 4000 Australia
<b>COUNTERPARTY</b>	
<b>PURPOSE</b>	-
<b>TERM</b>	10 years
<b>COMMENCEMENT DATE</b>	Click here to enter a date.
<b>SPECIAL CONDITION/S</b>	Click here to enter text.

Rio Tinto and the Counterparty agree to the disclosure of Information for the Purpose on the terms and conditions of the NDA Rules.

**Executed as an agreement****SIGNED** by RIO TINTO**SIGNED** by COUNTERPARTY

.....

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Date: .....

Date: .....

Name: .....

Name: .....

Title:.....

Title:.....

## NDA RULES

### 1. Commencement and Term

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- 1.1 The rights and obligations under this agreement begin on the Commencement Date and end, subject to clause 6.5, at the end of the Term, unless terminated earlier in accordance with this agreement.

### 2. Confidentiality obligations

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- 2.1 Subject to this agreement, Discloser may disclose certain Information to Recipient for the Purpose. The parties have no obligation to disclose to the other party any Information it elects to withhold.
- 2.2 In consideration of the Discloser disclosing the Information, the Recipient undertakes to:
- (a) keep the Information confidential in accordance with the terms of this agreement;
  - (b) not access, use, reproduce (in any form), or disclose any Information except as necessary for the Purpose and as permitted by this agreement;
  - (c) notify the Discloser promptly upon becoming aware of any breach of this agreement;
  - (d) co-operate and provide all reasonable assistance to the Discloser in any action which the Discloser may take to protect the confidentiality of the Information; and
  - (e) establish and maintain security measures (including any reasonable security measures proposed by the Discloser) to protect the Information from unauthorised disclosure, access, reproduction (in any form), or use.

### 3. Permitted disclosure

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- 3.1 The Recipient may disclose the Information to its Affiliates only if they need to know the Information for the Purpose.
- 3.2 If the Recipient discloses the Information to its Affiliates pursuant to clause 3.1, the Recipient must ensure that the Affiliates keep the Information confidential and only access, use, reproduce (in any form), and disclose the Information for the Purpose, in accordance with clause 2.2.
- 3.3 The Recipient agrees to be responsible for all actions of, and omissions by, its Affiliates in relation to the Information.
- 3.4 Nothing in this agreement gives the Recipient any right, title or interest in or to any Information. All Information remains the property of the Discloser or its Affiliates.

### 4. Mandatory disclosure

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- 4.1 A party may disclose Information to the minimum extent required by:
- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
  - (b) the rules of any applicable listing authority or stock exchange; or
  - (c) any applicable laws or regulations.
- 4.2 The Recipient must give the Discloser as much notice as possible in writing in advance of any disclosure under clause 4.1, with full particulars of the proposed disclosure, to enable Discloser to seek a protective order, or if prevented from doing so by law, as soon as possible after such disclosure.

## **5. Return or destruction of Information**

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- 5.1 When the Purpose is finished or at the request of the Discloser, the Recipient must promptly:
- (a) cease (and ensure its Affiliates cease) use of and/or access to the Information;
  - (b) if requested by the Discloser:
    - (i) permanently delete, destroy or return (and ensure its Affiliates permanently delete, destroy or return) all Information to the Discloser; and
    - (ii) provide to Discloser a declaration from a duly authorised senior officer of Recipient that, to his or her personal knowledge, having made reasonable inquiries, it and its Affiliates have complied with clauses 5.1(a) and 5.1(b)(i).
- 5.2 The obligations in clause 5.1 do not apply to Information that has been automatically stored electronically for the purposes of a data back-up and/or archiving system, provided such Information is kept secure, confidential and encrypted, or will otherwise be purged and fully deleted pursuant to Recipient's normal records retention and destruction protocols.
- 5.3 Despite clause 5.1 above, the Recipient may retain one copy of any document (in any form) containing Information if the document:
- (a) must be retained to comply with the Recipient's insurance, corporate governance or professional standards obligations; and
  - (b) is kept confidential and secure in accordance with the terms of this agreement.

## **6. Enforcement, Remedies and Termination**

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- 6.1 Each party indemnifies the other and the other's Affiliates for damage suffered as a result of the indemnifying party's breach of this agreement.
- 6.2 The Recipient acknowledges that monetary damages or compensation may not be a sufficient remedy for any breach of the terms of this agreement and that the Discloser shall have the right to seek specific performance of this agreement and/or other injunctive or equitable relief as a remedy for a breach, in addition to any other remedy.
- 6.3 Each party has the right to enforce the terms of this agreement on behalf of its Affiliates whose Information has been disclosed as if such Affiliates had been a party to this agreement in the place of the Discloser.
- 6.4 If either party decides not to continue with the Purpose, it must immediately:
- (a) notify the other party in writing; and
  - (b) comply with the obligations under clause 5.
- 6.5 The Recipient's obligations under clause 2.2, 3.3, 4, 5, 6.1, 6.2, 6.3 and 6.5 survive expiry of the Term or termination of the agreement under clause 6.6.
- 6.6 Any party may, at any time, without cause or prejudice to its rights, terminate this agreement, upon 30 days written notice to the other party. Upon receipt of the notice, each party must comply with the obligations under clause 5.

## **7. Assignment**

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- 7.1 Neither party shall assign this agreement nor any rights or obligations under it without the prior written consent of the other party.

## **8. Governing Law and Jurisdiction**

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- 8.1 This agreement is governed by the laws applicable at the address of Rio Tinto identified in this agreement, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts exercising jurisdiction there.

## **9. Miscellaneous**

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### **9.1 Special Conditions**

Any Special Condition(s) agreed in writing between the parties prevails over the terms of this agreement to the extent of any conflict or inconsistency between them.

### **9.2 Benefit of Affiliates of Discloser**

Disclosure of Information by the Discloser in accordance with the terms of this agreement is made on its own behalf and on behalf of any of its Affiliates that have any interest in the Information and, as such, the Recipient acknowledges that the undertakings given in this agreement by it are for the benefit of not only the Discloser, but also any Affiliate of the Discloser that may have an interest in the Information.

### **9.3 Waiver**

Failure by a party to exercise or delay in exercising a right under this agreement or under the law does not prevent its exercise.

### **9.4 Entire agreement**

This agreement contains the entire agreement between the parties relating to their mutual obligations regarding disclosure of the Information for the Purpose, and supersedes any prior agreement between the parties in relation to use, access, reproduction or disclosure of the Information for the Purpose.

### **9.5 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together will constitute one agreement.

### **9.6 Amendment**

No amendment or variation of this agreement is valid or binding on a party unless made in writing and signed by both parties.

### **9.7 No Representation or Warranties**

The Recipient uses the Information disclosed by the Discloser at its own risk and the Discloser and its Affiliates shall have no liability to the Recipient or any of its Affiliates resulting from any use, access, reproduction or disclosure of the Information. The Recipient acknowledges that neither the Discloser nor its Affiliates nor any person purporting to act on behalf of the Discloser or its Affiliates have made any representation or warranty, whether express or implied, as to:

- (a) the accuracy, completeness, validity or quality of the Information; or
- (b) whether the Information is fit for any, or a particular purpose.

### **9.8 Costs**

Each party is responsible for its own fees and costs incurred pursuant to this agreement.

### **9.9 Other obligations**

The parties acknowledge that the obligations under this agreement apply in addition to any obligation that may arise at law or under statute with respect to the Information.

### **9.10 Construction**

Each Party has requested that this agreement be drafted in English. Cette entente et tous les documents s'y rapportant sont rédigés en anglais à la demande expresse des parties.

## 10. Interpretation

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10.1 In this agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) the word "person" includes a firm, a body corporate, an unincorporated association or an authority.

## 11. Definitions

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11.1 The following terms used in this agreement have the following meanings:

**Affiliate** means any company, partnership, joint venture or other corporate entity that, whether directly or indirectly, controls, is controlled by, or which is under the same management or control of, a party to this agreement, and their respective Representatives. In the case of Rio Tinto as Recipient or Discloser, an Affiliate shall include any company, partnership, joint venture or other corporate entity that, whether directly or indirectly, controls, is controlled by, or which is under the same management or control of either Rio Tinto Limited (ABN 96 004 458 404) or Rio Tinto plc (Company No. 719885), and their respective Representatives.

**Discloser** means the party disclosing Information to the other party and its Representatives.

**Information** means all information (in any form) relating to or provided in connection with the Purpose which:

- (a) the Discloser (or its Affiliates or Representatives) discloses, or makes available, to the Recipient; or
- (b) is acquired or obtained by the Recipient as a result of its dealings with the Discloser (or its Affiliates or Representatives),

before, on or after the Commencement Date of this agreement, and without limitation, includes:

- (c) the fact that discussions have taken place or will or may take place concerning the Purpose and the status of those discussions;
- (d) the terms or existence of this agreement;
- (e) any information that is notified, marked or identified as "confidential", or under the circumstances of its disclosure, should reasonably be considered as confidential;
- (f) any information or matters of a technical, non-technical, financial or business nature, such as know-how, formulas, secret processes or machines, trade secrets, equipment, tooling, inventions, studies, research projects, development plans, information about operations, future plans and methods or systems of doing business, strategies, pricing, costs, profits, sales, markets, lists of actual or potential customers, customer requirements, models, articles, notes, books, correspondence, drawings, forms, photographs, unpublished applications for patent(s), trademark(s), or design(s), copyright(s), papers, notebooks, reports, records, research, operational, industrial or development data, blueprints, sample models, photographs, financial and marketing data, business plans, computer programs, software or code, files and disks, owned by, or licensed to, the Discloser or its Affiliate; and
- (g) any document or other material (in any form) that refers to, records, or is produced on the basis of, or is derived from, the Information,

but excludes information:

- (h) that is or becomes publicly available otherwise than as a result of a breach of this agreement or in breach of an obligation of confidence;
- (i) the parties agree in writing is not confidential;
- (j) the Recipient receives from a third party, provided it was not disclosed by or acquired from that third party unlawfully or in breach of an obligation of confidence; or

- (k) that was previously known to the Recipient (or independently created or developed by it), without access to the Information as Recipient can prove, by documented and probative evidence,

and does not cease to be Information merely because individual features of the Information may be found separately or within a general disclosure in the public domain or otherwise.

**Recipient** means the party receiving Information from the other party and its Representatives.

**Representative** means a party's or its Affiliates':

- (a) directors, officers and employees;
- (b) professional advisers and consultants;
- (c) contractors (including sub-contractors) and agents; or
- (d) any other person to whom the other party agrees in writing that Information may be disclosed.