Contract 48

**NON-DISCLOSURE AGREEMENT**

(one party disclosing)

**Short Description**

Designed to give the owner of proprietary and confidential information some protection in circumstances where disclosure of such information to another party is required. Only one party is protected by disclosure in this contract.

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**NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is made the [ ] day of [ ] 20[ ]

BETWEEN

1. [ ] a Company incorporated in [ ] and having its registered office at [ ] (the “First Party”)

AND

2. [ ] a Company incorporated in [ ] and having a place of business at [ ] (the “Second Party”, which expression shall be deemed to include those of its employees to whom any confidential information is to be disclosed).

WHEREAS

A. Party 1 requires to disclose to Party 2 confidential information (“Confidential Information”) for the purposes of [ ] and/or as more specifically described in Schedule 1 (the “Purpose”) as both terms are more fully defined in Clause 1; and

B. Party 1 wishes to ensure that Party 2 will only use the Confidential Information for the Purpose and will not further disclose or misuse the Confidentiality Information so disclosed .

THEREFORE THE PARTIES HEREBY UNDERTAKE AS FOLLOWS:

**1. Definitions**

Unless the context requires otherwise, the following words and phrases will have the following meanings:

(a) “Purpose” shall mean the purpose specified above and/or as more fully described in Schedule 1 including all and any discussions, negotiations, communications (on whatever media), and documents required to be exchanged or prepared to fully describe the Purpose and in relation thereto.

(b) “Confidential Information” shall mean any information of the nature specified in (iii) to (vi) below relating to the Purpose or the business of any party to this Agreement:

(i) which is disclosed, whether in writing, orally or electronically or by any other means by or on behalf of Party 1 or (if applicable) by any member of the group of companies of which it is a member or on its behalf by its professional advisors to Party 2; or

(ii) which is obtained by or becomes known to Party 2 or to which Party 2 has access by reason of its relationship with Party 1, whether before or after the date of this Agreement;

 and which information may include, but shall not be limited to:

(iii) all information, data, drawings, specifications, documentation, software listings, source or object code relating to Party 1’s proprietary material or (as applicable) software or which it may from time to time disclose or create in modifying, supporting or enhancing such material or software;

(iv) all other forms and types of confidential or non-public financial, business, scientific, technical, economic, marketing, engineering or system-related information, including patterns, plans, compilations, programs, devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, codes, or know-how, and information concerning Party 1’s other internal business practices and/or actual or potential customers, suppliers, distributors, providers or licensees whether any of the foregoing is in tangible or intangible form, and whether or how stored, compiled or memorialised physically, electronically, graphically, photographically, or in writing;

(v) which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and/or

(vi) information which is specifically identified by Party 1 as confidential.

PROVIDED HOWEVER any information which is specified in Clause 6 below shall be excluded from Confidential Information.

**2. Scope of Disclosure and Use**

(a) Party 1 warrants that it has the authority to disclose the Confidential Information for the Purpose.

(b) Party 2 recognises that the Confidential Information disclosed to it by Party 1 for the Purpose constitutes a valuable asset of and is proprietary to Party 1. Party 2 hereby agrees to ensure that disclosure is restricted to those of its employees, directors or professional advisors having a need to know for the Purpose and will otherwise maintain the same as confidential in accordance with (d) below. Party 2 also agrees not to use any part or the whole of such Confidential Information directly or indirectly disclosed by Party 1 or information which Party 2 has gained from such disclosure until or unless such information may be disclosed in accordance with Clause 6 below or until or unless Party 2 becomes a party to a formal binding agreement with Party 1 in which there are specific provisions as to disclosure and confidentiality which are expressly stated as superseding those herein contained.

(b) In the event that the parties do not execute such an agreement or in any case, at the end of the Purpose or upon demand by Party 1, Party 2 undertakes within fourteen (14) days to return all Confidential Information of Party 1 forthwith or, where this is not possible or if requested by Party 1, then it shall delete or destroy such Confidential Information of Party 1 including any reports, documents, correspondence (on whatever media) and retain no copies (unless required by law, regulatory or audit authority to retain one copy). Party 2 shall certify to Party 1 that the same has been done.

(c) Notwithstanding completion of the Purpose of disclosure, or return or destruction of the Confidential Information as the case may be, Party 2 shall continue to be bound by this Agreement until or unless such information becomes subject to disclosure through no fault of Party 2 as specified in (b) above and Clause 6 below.

(d) Party 2 shall exercise no lesser security and (if applicable) data protection measures and degree of care than those measures which Party 2 applies to its own Confidential Information which Party 2 warrants is best industry standard against unauthorised disclosure, copying, distribution or misuse and (if applicable) that such measures comply with all relevant current data protection and other applicable legislation.

**3. Exclusion of Implied Terms**

(a) Nothing in this Agreement including entering into it, shall imply any obligation on the parties to engage in any further business relationship or restrict either party from continuing to engage in its own business activities or entering into any business relationship with a third party otherwise than in breach of this Agreement.

(b) Nothing in this Agreement including entering into it, shall directly or indirectly imply the grant of any license, patent, copyright or other intellectual or industrial property right to any invention, discovery or other exploitable outcome from the disclosures made hereunder or otherwise derived from the Confidential Information of Party 1.

(c) Disclosure of Confidential Information by Party 1 does not imply that that Confidential Information is free from errors or omissions, but Party 1 shall not knowingly provide such information with errors or omissions. Party 2 must rely on such information at its own risk.

**4. Employee Undertakings**

 Party 2 shall, before any permitted disclosures are made, obtain from those of its employees to whom any Confidential Information is to be disclosed or who may in any way obtain access to any Confidential Information, enforceable undertakings in terms at least as binding upon the said employees as Party 2 is bound to Party 1 hereunder.

 A list of such employees is attached hereto as Schedule 2. Party 2 undertakes to amend such list by immediate notification to Party 1, when more of its employees become privy to or otherwise have access to the Confidential Information of Party 1.

**5. Third-Party Disclosure**

(a) Party 2 undertakes that its professional advisors will be made aware of and will comply with this Agreement and will, if so required by Party 1, have such advisor execute such appropriate confidentiality undertaking as Party 1 may reasonably require.

(b) In the event that Party 2 requires the assistance of any other third party other than employees of Party 2 as provided for above, to whom disclosure of any Confidential Information is necessary, Party 2 shall first seek Party 1’s approval of such third party and thereafter obtain from that party a duly binding agreement on terms at least as binding upon that third party as Party 2 is bound to Party 1 hereunder which terms will be agreed with Party 1.

**6. Information Not Protected**

 The protection to be accorded to the Confidential Information to be disclosed hereunder does not and shall not extend to any information which it can be proved by credible documentary evidence produced by Party 2 upon the written request of Party 1 which:

(a) is already known to Party 2 or in its possession before the disclosure hereunder free of any obligation to keep it confidential;

(b) is or becomes publicly known through no wrongful act or default of Party 2;

(c) is received from a third party without similar obligations of confidence and without breach of this Agreement;

(d) is already possessed or independently developed by Party 2;

(e) is disclosed to a third party by Party 1 without similar restrictions on that third-party’s rights of disclosure; or

(f) is approved for release by written authorisation of Party 1.

(g) is required to be disclosed by a court of competent jurisdiction or by any other statutory, fiscal or other authority.

7.  **Notices**

 All notices to or by the respective parties to this Agreement will be in writing in the [English][[1]](#footnote-1) language and addressed as follows:

|  |  |
| --- | --- |
| Party 1:[address] | Contact:Email:Fax: |
| Party 2:[address] | Contact:Email:Fax: |

or to such other Contact, address, email address or facsimile number as the respective parties hereto may hereafter specify to the other in writing.

Notices will be deemed to have been duly given in the following circumstances: (i) if delivered by hand to the above recipient Contact, on the day of delivery, (ii) if posted/mailed by recorded delivery post/mail (or air mail if appropriate to the location of the parties), it will be deemed received on the [ ][[2]](#footnote-2) working day following posting/mailing, (iii) if sent by email to the above recipient Contact then a valid confirmed email from that Contact party or email acknowledgement that the email has been opened/received or (iv) if sent by facsimile it will be deemed received on the first working day following such sending, provable by a successful transmission report.

**8. Assignment**

 Party 2 may not assign or otherwise transfer in whole or in part, this Agreement to any other party without the express prior written consent of Party 1.

**9. Enforcement**

 Party 2 agrees that any breach of this Agreement will result in irreparable injury and harm to Party 1 for which remedies at law would be inadequate, accordingly Party 1 shall be entitled to immediate equitable relief including (but without limitation) injunction in the event of any such breach.

**10. Entire Agreement and Amendments**

This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to this Agreement, and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to, or modification of, this Agreement shall be effective unless it is in writing and signed by, and on behalf, of both parties.

*Optional additional sentence:*

*NOTE: Even the words “in writing and signed” may still leave it open to the probability that, no matter how long this Agreement has taken to negotiate, or its apparent length, it is still susceptible to being varied by an exchange of emails, perhaps between two fairly junior employees.*

*In order to avoid this occurring, amend the last sentence above as follows:*

“… in writing on paper and signed with the manuscript signature of a director of each party.”

*If the Agreement is to be signed by some form of electronic signature and the above unintentional amendment avoided, add the following to the end of the above clause:*

“Notwithstanding that the parties to this Agreement may have signed this Agreement by a form of electronic signature, this Agreement shall not be altered unless done so in writing on paper and signed with the manuscript signature of a director each party.”

**11. Law**

 The construction, validity and performance of this Agreement shall be governed in all respects by [ ] Law and the Parties hereto submit to the jurisdiction of the [ ] Courts.

**12. Dispute Resolution**

***Optional additional clause, please select ODR or ADR[[3]](#footnote-3):***

**Online Dispute Resolution**

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by online mediation [*or alternatively, insert another consensual method of Online Dispute Resolution (ODR)*] administered by [*Insert forum—for examples see Appendix A at end*]. If the parties do not reach a voluntary settlement through such ODR procedure within a period of [30] days or the period (if any) laid down by the ODR forum, then the parties shall have no further obligation under this clause and upon notice by either party to the other, such dispute may then be referred to any adjudicative method of dispute resolution including but not limited to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties choose litigation, the dispute will be resolved by the court of […] under the law of this Agreement. [*For ODR providers, see Appendix A.*]

*or*

**Alternative Dispute Resolution**

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation [*or alternatively, insert another consensual method of Dispute Resolution*] administered by [*Insert forum—for examples see Appendix A at end*]. If the parties do not reach a voluntary settlement through such mediation procedure within a period of [30] days or the period (if any) laid down by the mediation forum, then the parties shall have no further obligation under this clause and upon notice by either party to the other, such dispute may then be referred to any adjudicative method of dispute resolution including but not limited to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties choose litigation, the dispute will be resolved by the court of […] under the law of this Agreement. [*For ADR providers, see Appendix A.*]

**Signing Provisions[[4]](#footnote-4)**

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***A. Electronic signatures***
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The parties to this Agreement agree to sign this Agreement by electronic signature and agree that such method of signature shall be equally conclusive of their intention to be bound by the terms and conditions of this Agreement as if signed with the manuscript signature of both parties.

**[Note:** *The parties may agree in advance the precise form the electronic signature should take. In such a case, the actual form agreed between the parties should be noted clearly in the agreement. Alternatively, the parties may decide not to require a precise form of electronic signature to sign the document, in which case the above clause remains as it is.*]

**SIGNED** for and on behalf of

Party 2 by: [print name and designation of Authorised digital signatory]

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***B. Traditional manuscript signatures*** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED for and on behalf of Party 2 by:

in the presence of:

Date:

**13. Schedules**

**SCHEDULE 1**

The Purpose for which disclosure of Confidential Information is required

**SCHEDULE 2**

*Party 2’s Employees*

**14. Appendix A**

[*Delete Appendix A and/or B if ODR and/or ADR clause is not inserted*]

**Some examples of online dispute resolution[[5]](#footnote-5) providers:**

[ *Not listed in “sample”* ]

1. Where the contracting parties speak different languages, it is important to specify a language for notices. [↑](#footnote-ref-1)
2. The number of days for postal/mailed delivery will depend on location of the parties. [↑](#footnote-ref-2)
3. For some specific ADR service provider’s own clauses, see Appendix B. [↑](#footnote-ref-3)
4. If there are any schedules, appendices or attachments to this agreement then the signature section can go at the end so that only one signature of each party is required, rather than signing or initialling each schedule, appendix or attachment. [↑](#footnote-ref-4)
5. Note that some of these ODR service providers also supply face to face ADR services. [↑](#footnote-ref-5)