
NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AGREEMENT

Dated:

BETWEEN:

- (1), a company registered inwith registration number and whose registered office is at (the "....."); and
- (2), a company registered inand Wales with registration number and whose registered office is (the ".....").

In consideration of the provision of Confidential Information by the to the and by the to the for the purposes of the (the "**Project**") each of theand the agree as follows.

1. In this Confidentiality Agreement, unless otherwise specified or inconsistent with the context, the following definitions shall apply.

"Associated Company" : in relation to each party, means any subsidiary and any holding company from time to time of such party and each subsidiary of such holding company from time to time (excluding the parties in question) and the terms "holding company" and "subsidiary company" shall have the meaning given to them by Section 1159 of the Companies Act 2006;

"Confidential Information" : means all information which is marked or designated as confidential or should otherwise be considered confidential due to its nature (and includes but is not limited to electronic data or databases, drawings, films, documents, computer readable media or oral information) which is disclosed by one party or by an Associated Company (the "**Disclosing Party**") to the other (the "**Recipient**") or otherwise obtained by the Recipient in respect of the Disclosing Party and/or the Associated Companies and their business and operations. "Confidential Information" includes, but is not limited to, personal data, commercial, financial and technical information and data and information and data which concern the parties'

and/or the Associated Companies' current and future products and services, customers, employees, suppliers, licensors and marketing plans in connection with the Project;

- "Data Protection Laws"** : means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6), the Data Protection Act 2018 and the EU General Data Protection Regulation 2016/679 as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the European Union (Withdrawal) Act 2018 (each, as amended, shall be referred to as "**PECR**", the "**DPA 2018**" and the "**UK GDPR**" accordingly); and (b) any code of practice or guidance published by a supervisory authority or other relevant regulator from time to time;
- "Expiry Date"** : Means
- "Proprietary Material"** : means all material containing the Confidential Information (including, but not limited to, magnetic tapes, documents, manuals, specifications, flowcharts, program listings and data file printouts);
- "Restricted Country"** : means a country, territory or jurisdiction that is outside the UK or the European Economic Area which is not the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable);
- "Restricted Transfer"** : means the transfer, storing or processing of Personal Data in a Restricted Country, either through:

- (a) direct transfer or remotely (e.g. via outsourcing, as part of business continuity arrangements, cloud arrangements, offshore models etc.);
- (b) remotely accessing, or allowing remote access to, the party's information systems; and/or
- (c) an onward transfer of Personal Data from a receiving party under a. or b. above, to a further member of its group or any Third Party Provider;

“Right” : means the benefit of any of the following:

- (a) a right of a party under this Confidentiality Agreement;
- (b) an obligation on the other party under this Confidentiality Agreement; or
- (c) a warranty or other representation by the other party under this Confidentiality Agreement;

“Sub-Processor” : means any Data Processor engaged by the party (or by any other Sub-processor) for carrying out any processing activities in respect of the Personal Data in connection with the performance of the party's obligations or exercise of its rights under this Confidentiality Agreement; and

“Third Party Provider” : means a Sub-processor or a third-party Data Controller, as the context requires.

2. In connection with the Project, the Recipient will receive Confidential Information through the employees, officers, consultants or professional advisers of the Disclosing Party.
3. The Recipient undertakes:
 - 3.1. to treat all the Confidential Information as confidential, regardless of when it is disclosed or obtained and the form in which it is disclosed or obtained;

- 3.2. not without the Disclosing Party's prior written consent in each case to communicate or disclose any part of the Confidential Information to any person except:
 - 3.2.1. on a need-to-know basis to those employees, officers, consultants and professional advisers of the Recipient who are concerned with the Project and those employees, officers, consultants and professional advisers of the Associated Companies who are so concerned;
 - 3.2.2. to any other persons or bodies having a legal right or duty to know the Confidential Information in connection with the functions of the Recipient; and
 - 3.2.3. where the Recipient is ordered by a court of competent jurisdiction to do so or there is a statutory or other legal obligation to do so;
 - 3.3. to ensure that all persons and bodies mentioned in sub-Clauses 3.2.1 and 3.2.2 or any persons or bodies in respect of whom the Disclosing Party consents to disclosure or communication, are made aware, prior to the disclosure of the Confidential Information, of the confidential nature thereof, that they owe a duty of confidence to the Disclosing Party and agree to hold the Confidential Information in confidence in accordance with the terms of this Confidentiality Agreement and to use all reasonable endeavours to ensure that such persons and bodies comply with all such obligations;
 - 3.4. not to use the Confidential Information in any way which would be harmful to the Disclosing Party;
 - 3.5. to effect and maintain the same adequate security measures to safeguard the Confidential Information from unauthorised access, use and misappropriation as it maintains with its own similar information that it does not wish publicly to disclose, publish or disseminate provided that such security measures shall be at least as stringent as best industry practice; and
 - 3.6. to notify the Disclosing Party promptly of any unauthorised use, copying or disclosure of the Confidential Information of which the Recipient becomes aware and to provide all reasonable assistance to the Disclosing Party to terminate such unauthorised use or disclosure.
4. The obligation of confidentiality in Clause 3 above shall not apply to any part of the Confidential Information in relation to which the Recipient can satisfactorily document and demonstrate to the Disclosing Party that the Confidential Information or part concerned:
 - 4.1. is or has become publicly known through no fault of the Recipient, its employees, officers, consultants or professional advisers;
 - 4.2. is lawfully received from an independent third party without any restriction and without any obligation of confidentiality; or

- 4.3. is independently developed by the Recipient without access to or knowledge or use of the Confidential Information.
5. The Proprietary Materials shall be and shall remain the property of the Disclosing Party and shall not be reproduced in whole or part without the Disclosing Party's express written consent. Any copies of the Proprietary Materials shall become the Disclosing Party's property
6. Nothing contained in this Confidentiality Agreement shall be construed as granting to or conferring on the Recipient any rights by licence or otherwise, expressly or impliedly, for any invention, discovery or improvement made, conceived or acquired prior to or after the date of this Confidentiality Agreement relating to the Confidential Information.
7. Upon material breach of any of the terms of this Confidentiality Agreement and the written demand of the Disclosing Party or, if sooner in time, the Expiry Date and the written demand of the Disclosing Party the Recipient shall promptly deliver up to the Disclosing Party all Proprietary Materials and all copies thereof and destroy or erase any Confidential Information contained in any Proprietary Materials prepared by or on behalf of the Recipient or recorded in any electronic memory or data storage device, subject to clause 5 above. Within fourteen (14) days of a written request from the Disclosing Party, the Recipient shall certify in writing to the Disclosing Party that it has fully complied with its obligations under this Clause 7.
8. Neither party shall make or permit others to make any reference to this Confidentiality Agreement or the Project or use the name of the other party in any public announcements, promotional, marketing or sales materials or efforts except in accordance with the terms of any written consent provided by the other party.
9. Each party (the "**First Party**") shall indemnify and keep the other party indemnified against all claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements) losses and damages arising from or incurred by reason of any breach of this Confidentiality Agreement by the First Party.
10. If any part of this Confidentiality Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Confidentiality Agreement shall not be affected.
11. This Confidentiality Agreement has effect as of the date first stated on page 1 above. The termination or expiration of this Confidentiality Agreement for any reason or the completion of a party's involvement in the Project shall not affect its obligations of confidentiality under this Confidentiality Agreement.
12. This Confidentiality Agreement shall be considered as a contract made in England and according to English law and shall be subject to the exclusive jurisdiction of the English courts, to which jurisdiction the parties hereby irrevocably submit.

13. This Confidentiality Agreement shall confer those Rights specified in Clause 14 on all Associated Companies. Subject to the prior written consent of either Party, an Associated Company shall be entitled to enforce in its own capacity such Rights pursuant to this Confidentiality Agreement.
14. An Associated Company shall have conferred on it the Rights granted to the parties under the following provisions of this Confidentiality Agreement, as if the Associated Company were a party to this Confidentiality Agreement, but only insofar as the Rights relate to Confidential Information of that Associated Company which has been disclosed under this Confidentiality Agreement: Clause 3, Clause 5, Clause 7, Clause 8, Clause 9;
15. Notwithstanding Section 2(1) of the Contracts (Rights of Third Parties) Act 1999, the parties may in accordance with this Confidentiality Agreement, vary, rescind or terminate this Confidentiality Agreement (whatever the nature of such variation, rescission or termination) without seeking the consent of any third party on whom Clauses 13 and 14 confer Rights.
16. Subject to Clauses 13 and 14, this Confidentiality Agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to it.
17. In this Clause 17, the terms "**Data Subject**", "**Personal Data**", "**supervisory authority**" and "**processing**" (and "**process**", "**processes**" and "**processed**" shall be construed accordingly) shall have the same meanings given to them in the Data Protection Laws. "**Data Processor**" and "**Data Controller**" shall have the same meanings given to "**processor**" and "**controller**" respectively in the Data Protection Laws.
 - 17.1. The parties recognise that they shall each be processing Personal Data in connection with the performance of their obligations and/or exercise of their rights under this Confidentiality Agreement and that the factual arrangement between them shall dictate the role of each party (as to Data Controller or Data Processor) in respect of the Data Protection Laws. Notwithstanding the foregoing, the parties agree that where either party processes Personal Data pursuant to or in relation to this Confidentiality Agreement, that party will be carrying out the processing for its own purposes, and as such will be a Data Controller under the Data Protection Laws.
 - 17.2. Each party shall at all times comply with its respective obligations under the Data Protection Laws to the extent such Data Protection Laws applies to it in connection with the performance of its obligations or exercise of its rights under this Confidentiality Agreement.
 - 17.3. Each Party shall not (and shall ensure that a Third Party shall not) make a Restricted Transfer without ensuring appropriate safeguards are in place and that enforceable Data Subject rights and effective legal remedies are available for Data Subjects in accordance with the Data Protection Laws.

18. This Confidentiality Agreement may be executed in any number of counterparts, each of which is an original and all of which evidence the same agreement between the parties.

AGREED by the parties through their authorised signatories:

Signed for and on behalf of

Signed for and on behalf of.....

Print Name:

Print Name:

eMail Address:

eMail Address:

Title:

Title:

Date

Date:

Signature:

Signature: