

# Mutual Confidentiality Agreement

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THIS AGREEMENT is made on [date]

## PARTIES

- (1) [insert name of party] [of [insert details ] OR a company incorporated in [insert name of the country] under number [insert registered number] whose registered office is at] [insert address] (**Party A**);
- (2) [insert name of party][ of [insert details ] OR a company incorporated in [insert name of the country] under number [insert registered number] whose registered office is at] [insert address] (**Party B**); and

each of **Party A** and **Party B** being a **party** and together they are the **parties**.

## BACKGROUND

- A Party A is [insert details] and Party B is [insert details].
- B The parties wish to disclose Confidential Information to each other for use strictly for the Purpose.
- C The parties wish to regulate the use and preserve the confidentiality of the Confidential Information.

## 1 Definitions and interpretation

### 1.1 Definitions

In this Agreement:

**[Affiliate]** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, another entity;]

**[Authorised Persons]** means, in relation to a Recipient, [any of the officers, directors, members, partners, employees, consultants, agents, representatives or professional advisers of that Recipient [and of its Affiliates] and any other persons whom a Discloser has previously designated in writing as

authorised OR the individuals listed in Schedule 2];]

**Business Day**

means a day other than a Saturday, Sunday or public holiday in England and Wales;

**Confidential Information**

means all information of a confidential nature (in whatever form) which relates to the Purpose and is disclosed directly or indirectly by a Discloser[, its Representatives][ or its Affiliates] to a Recipient[, a Recipient's Authorised Persons][ or a Recipient's Affiliates] including:

- (a) any know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind;
- (b) all information produced, developed or derived from information disclosed pursuant to this Agreement;
- (c) all information agreed to be, or marked as, confidential;
- (d) the information specified in Schedule 1;
- (e) any information a Recipient[, its Affiliates][ or [its OR their ]Authorised Persons] knows, or could reasonably be expected to know, is confidential; and
- (f) **[[the terms and existence of this Agreement.]]**

but excluding any information which:

- (a) is, or was already known or available to a Recipient, otherwise than pursuant to or through breach of any confidentiality obligation owed to a Discloser;

- (b) is, or becomes, in the public domain other than through any breach of this Agreement (save that any publicly available information shall be classified as Confidential Information where it is compiled in a form that is not in the public domain);
- (c) is disclosed to a Recipient without any obligation of confidence to a Discloser by a third party who is not itself under or in breach of any obligation of confidentiality;
- (d) is developed by or on behalf of a Recipient in circumstances where the developing party has not had direct or indirect access to the information disclosed, provided that a Recipient provides satisfactory evidence of the same to a Discloser;
- (e) a Discloser agrees in writing does not constitute Confidential Information.

**Control**

means [the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company OR has the meaning given in section 1124 of the Corporation Tax Act 2010] and **Controls, Controlled and under common Control** shall be interpreted accordingly;

**Discloser**

means a party who discloses its Confidential Information to a Recipient[ and to a Recipient's Authorised Persons];

**Intellectual Property Rights**

means copyright, rights related to copyright such as moral rights and performers rights, patents, rights in inventions, rights in Confidential Information, know-how, trade secrets, trade marks, geographical indications, service marks, trade names,

design rights, rights in get-up, database rights, databases, [ data exclusivity rights,] approvals, [ utility models,] domain names, business names, rights in computer software, [ mask works,] topography rights, the right to sue for infringement, unfair competition and passing off, and all similar rights of whatever nature wherever in the world arising and, in each case:

- (a) whether registered or not,
- (b) including any applications to protect or register such rights,
- (c) including all renewals and extensions of such rights or applications,
- (d) whether vested, contingent or future, and
- (e) wherever existing;

[including but not limited to those rights specified in Schedule [*insert number and name of schedule*];]

**Losses**

means all damages, liabilities, demands, costs, expenses, claims, actions and proceedings (including all consequential, direct, indirect, special or incidental loss or punitive damages or loss, legal and other professional fees, cost and expenses, fines, penalties, interest and loss of profit or any other form of economic loss (including loss of reputation));

**Purpose**

means the evaluation, negotiation and completion of the [*state the purpose or project*] in a proper manner, including [ the carrying out of legal and financial due diligence, assessment of risks and the negotiation of a legally binding agreement to implement] [*state the purpose or project*];

<b>Recipient</b>	means a party who receives[ (and whose Authorised Persons receive)] Confidential Information belonging to a Discloser; and
<b>[Representatives</b>	means a Discloser's[ and its Affiliates'] employees, officers, advisers, agents or other representatives.]

## 1.2 Interpretation

In this Agreement:

- 1.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 1.2.2 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form [including OR excluding] email;
- 1.2.10 a reference to legislation is a reference to that legislation as [in force at the date of this Agreement OR amended, extended, re-enacted or consolidated from time to time[ except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement]];];
- 1.2.11 a reference to legislation includes all subordinate legislation [as at the date of this Agreement OR from time to time] under that legislation; and

1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## **2 Provision and use of confidential information**

2.1 Any party may disclose Confidential Information to another party for it to be used strictly for the Purpose.

2.2 In consideration of any disclosures of Confidential Information pursuant to clause 2.1 [ and the payment by each party of £1 (one pound) to each of the other parties, (the receipt of which is acknowledged by each of the parties)], and subject to clause 3, each Recipient undertakes to the Discloser that it shall, [and shall procure that its Authorised Persons shall]:

2.2.1 keep the Confidential Information confidential at all times;

2.2.2 not disclose (whether directly or indirectly) the Confidential Information or allow it to be disclosed in whole or in part to any third party [without the Discloser's prior written consent];

2.2.3 take and maintain proper and reasonable measures to ensure the confidentiality of the Confidential Information, including any security measures requested in writing from time to time by the Discloser of the Confidential Information;

2.2.4 not use, seek to derive benefit or commercial advantage from the Confidential Information in whole or in part other than strictly for the Purpose;

2.2.5 not copy or reproduce in any form the Confidential Information except to the extent strictly necessary for the Purpose (and the Recipient acknowledges that any such copies or reproductions are the property of the Discloser);

2.2.6 [keep the Confidential Information at the Recipient's premises at [insert address] at all times and not remove or permit its removal from there;

2.2.7 keep a list of any Confidential Information which is disclosed in a tangible form, along with any copies made of any Confidential Information;

2.2.8 permit the Discloser to access its premises on reasonable notice in order to audit a Recipient's compliance with this Agreement where there are reasonable grounds to suspect a breach or where a Discloser is required by law or any regulatory body to retrieve any Confidential Information which has been disclosed.]

- 2.3 [At a Discloser's discretion, an Affiliate of that Discloser may enforce the Discloser's rights under this Agreement in respect of any Confidential Information which belongs to that Affiliate.]
- 2.4 The Discloser[ and its Affiliates] make no representation and give no warranty concerning the accuracy, efficacy, or completeness of the Confidential Information.
- 2.5 The parties agree that nothing contained in this Agreement and no Confidential Information supplied by a Discloser to a Recipient shall oblige any party to enter into any further agreement or negotiation with the other or to refrain from entering into an agreement with any third party.
- 2.6 A Recipient's obligations under this Agreement shall continue in full force and effect during the term of the Agreement and [for a period of [specify eg ten] years from the date of termination of this Agreement OR until such time as the Confidential Information shall cease to be confidential in nature].

### **3 Authorised disclosures**

- 3.1 [A Recipient may disclose Confidential Information to those of its Authorised Persons[ who need to know it for the Purpose,] provided that the Recipient:
  - 3.1.1 informs the Authorised Persons beforehand of the duties of confidence under this Agreement;
  - 3.1.2 [uses reasonable endeavours to ensure that OR ensures that] the Authorised Persons undertake to comply with clause 2 of this Agreement as if they were a party.
  - 3.1.3 [agrees that it will be liable for any breach, actions or omissions of its Authorised Persons;]
  - 3.1.4 if required by a Discloser, procures that any Authorised Person enters into a confidentiality agreement directly with a Discloser [(and any of the Discloser's Affiliates)] in similar terms to those set out in this Agreement;
  - 3.1.5 keeps a written account of each disclosure;
  - 3.1.6 advises a Discloser immediately upon becoming aware of any potential or actual breach by an Authorised Person; and
  - 3.1.7 upon any request by a Discloser, provides satisfactory evidence of compliance with this clause 3.1.]
- 3.2 A Recipient may disclose any Confidential Information which:

- 3.2.1 it is required to disclose by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction; or
  - 3.2.2 a Discloser expressly agrees in writing may be disclosed, provided that such permission is provided in advance of any disclosure by a Recipient.
- 3.3 In the event that a Recipient becomes legally compelled to disclose any of the Confidential Information pursuant to clause 3.2.1 then to the extent permitted by law:
- 3.3.1 a Recipient shall give the Discloser prompt written notice of the fact so that the Discloser may take such steps to prevent such disclosure as it deems appropriate; and
  - 3.3.2 the Recipient shall co-operate with the Discloser in such manner as the Discloser may reasonably require for this purpose[, provided that the Discloser reimburses the Recipient for its reasonable costs and expenses incurred in such co-operation].

#### **4 Ownership and intellectual property rights**

- 4.1 Except for a Recipient's right to use the Confidential Information in accordance with this Agreement, a Recipient shall not acquire, in any way, any title, rights of ownership, or interest in any Intellectual Property Rights of whatever nature which may exist or come into existence in or relate to the Confidential Information and no Intellectual Property Rights of any party are transferred or licensed as a result of this Agreement.
- 4.2 Each Recipient acknowledges and understands that the Confidential Information contains confidential and proprietary information and it shall not conceal, modify, remove, destroy or alter in any way any proprietary markings of a Discloser on or in the Confidential Information.

#### **5 [Indemnity**

- 5.1 Each Recipient shall indemnify and keep indemnified[ on demand][ and hold harmless] a Discloser[ and its Affiliates] from and against all Losses suffered or incurred by the Discloser[ and its Affiliates] arising out of or in connection with any act or omission by the Recipient[ or any of its Authorised Persons] in connection with this Agreement.
- 5.2 Where a Recipient is liable to make a payment under clause 5.1 and the payment is itself liable to taxation in the hands of the Discloser,[ or its Affiliates,] then the amount of the indemnity payment shall be deemed to be increased so as to ensure that the Discloser receives[ (and any Affiliates receive)] (after any applicable taxes have been paid) the same amount as it would have received had no such taxes been levied.]



## **6 Equitable relief**

Each Recipient recognises that any breach or threatened breach of this Agreement may cause a Discloser[ (or its Affiliates)] irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages each Recipient agrees that a Discloser [is OR [ and its Affiliates] are] entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **7 Termination**

7.1 This Agreement shall expire or terminate on the earliest of:

7.1.1 [the date on which the parties have agreed that the Purpose has been fulfilled;]

7.1.2 [the parties' entry into a contract providing for the completion of the Purpose;]

7.1.3 the date specified in a written notice of termination served by one party on the other parties, being a date not less than [*one month*] following the date of service of such a notice;

7.1.4 immediately upon service of a written notice served by one party on the other parties following a material breach of this Agreement by any of the other parties; and

7.1.5 immediately upon service of a written notice of termination served by a Discloser on a Recipient and a written copy of such notice on the other parties if a Recipient contests the secret or substantial nature of the Confidential Information.

## **8 Return and destruction of information**

8.1 Upon the expiry or termination of this Agreement (howsoever caused) or upon receipt by a Recipient of an earlier written demand from a Discloser, and without prejudice to clause 2.6 of this Agreement:

8.1.1 a Recipient must return or procure the return to the Discloser or, as the Discloser may require, destroy or procure the destruction of any and all materials containing the Confidential Information together with all copies;

8.1.2 if a Discloser requires, the Recipient must provide the Discloser with a certificate or such other evidence as the Discloser may reasonably require duly signed or executed by an officer of the Recipient confirming that the Recipient has complied with all of its obligations under this Agreement including about return, destruction and deletion of Confidential Information and media;

- 8.1.3 the Recipient must delete or procure the deletion of all electronic copies of Confidential Information; and
- 8.1.4 the Recipient must make, and procure that the Authorised Persons shall make, no further use of the Confidential Information.

## 9 Notices

9.1 Any notice[ or other communication] given by a party under this Agreement shall be:

9.1.1 in writing and in English;

9.1.2 signed by, or on behalf of, the party giving it; and

9.1.3 sent to the relevant party at the address set out in clause 9.3, [ or email] in accordance with clause 9.2.4.

9.2 Notices may be given, and are deemed received:

9.2.1 by hand: on receipt of a signature at the time of delivery;

9.2.2 by first-class[ Royal Mail Signed For] post: [at 9.00 am OR on the [second] Business Day after posting;]

9.2.3 when sent internationally by:

(a) [Party A], by [Royal Mail International Tracked & Signed OR Royal Mail International Signed] post: [at 9.00 am OR [insert other time] on the [fourth OR [insert other] [Business Day OR day after posting;

[Party B], by [details of international postal service from Party B's country of location] post: at 9.00 am OR [insert other time]] on the fourth OR [insert other]] Business Day OR day] after posting;

9.2.4 [by email[ provided confirmation is sent by first class post]: on receipt of a [delivery OR read receipt] email from the correct address.]

9.3 Notices[ and other communications] shall be sent to:

9.3.1 [insert name of Party A][ for the attention of [insert name and/or position]] at:

[insert address]

[[insert email address]; and]

[copied to [insert name] at [insert address];][ and]

9.3.2 [insert name of Party B][ for the attention of [insert name and/or position]] at:

[insert address]

[[insert email address]]; and]

[copied to [insert name] at [insert address];] and]

9.4 Any change to the contact details of a party as set out in clause 9.3 shall be notified to the other parties in accordance with clause 9.1 and shall be effective:

9.4.1 on the date specified in the notice as being the date of such change; or

9.4.2 if no date is so specified, [insert figure] Business Days after the notice is deemed to be received.

9.5 All references to time are to the local time at the place of deemed receipt.

9.6 This clause does not apply to notices given in legal proceedings or arbitration.

9.7 [A notice given under this Agreement is not validly served if sent by email.]

## **10 Entire agreement**

10.1 Each of the parties agrees that this Agreement [and [any documents entered into pursuant to it OR [insert names of specific documents]]] constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

10.2 Each of the parties acknowledges that it has not entered into this Agreement[ or [any documents entered into pursuant to it OR [insert names of specific documents]]] in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement[ or [any documents entered into pursuant to it OR [insert names of specified documents]]]. Each of the parties shall not have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

10.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

## **11 Further assurance**

Each party shall at the request of any of the others, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

## **12 Variation**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

### **13 Assignment and transfer of rights**

Each party not shall not (without the others' prior written consent) assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part.

### **14 Cumulative rights**

The rights and remedies provided for in this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise provided by law or in equity. No exercise by a party of any one right or remedy shall operate so as to hinder or prevent the exercise by it of any other right or remedy.

### **15 Set off**

Each party shall pay all sums that it owes to the other parties under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

### **16 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee, and this Agreement does not establish any joint venture between them, other than the contractual relationship expressly provided for in it. Each party shall not have, nor shall represent that it has, any authority to make any commitment on another party's behalf.

### **17 Severance**

17.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

17.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

### **18 Waiver**

18.1 No failure, delay or omission by any party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

- 18.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 18.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

## **19 Compliance with law**

Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under this Agreement, its Representatives and Authorised Persons will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach of this clause 19 to the extent that such breach is directly caused or contributed to by any breach of this Agreement by the other party (or their Representatives or Authorised Persons).

## **20 Counterparts**

- 20.1 This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.
- 20.2 Each party may evidence their signature of this Agreement by transmitting by [ fax or by ] email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement. Each party adopting this method of signing shall, following circulation by [ fax or by ] email, provide the original, hard copy signed signature page to the other parties as soon as reasonably practicable.

## **21 Announcements**

Neither party will make, permit, procure or solicit or assist any other person to make or procure any announcement or disclosure concerning its prospective interest in the Purpose or any project related to the Purpose.

## **22 Costs and expenses**

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

## **23 Language**

- 23.1 The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.

23.2 If this Agreement and any document relating to it is translated, the English version shall prevail.

**24 Third party rights**

Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement. The parties shall not, however, be required to notify or obtain the consent of any third party in order to rescind or vary this Agreement.

**25 Governing law**

This Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of (country).

**26 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have [exclusive OR non-exclusive] jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or its formation (including non-contractual disputes or claims).

AGREED by the parties on the date set out at the head of this Agreement

Signed by <i>[insert full name of director/authorised signatory]</i>	.....
for and on behalf of	<b>[Director OR Authorised signatory]</b>
<i>[insert name of Party A]</i>	

and

Signed by <i>[insert full name of director/authorised signatory]</i>	.....
for and on behalf of	<b>[Director OR Authorised signatory]</b>
<i>[insert name of Party B]</i>	



**SCHEDULE 1 [CONFIDENTIAL INFORMATION**

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*[Insert details of Confidential Information to be disclosed by Parties A, B and C as appropriate].]*





## SCHEDULE 2 [AUTHORISED PERSONS]

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*[[Insert details of named Authorised Persons here]]*