

# **MUTUAL NON-DISCLOSURE AGREEMENT**

TRG Law Limited  
Lyndhurst  
Guildford Road  
Woking  
Surrey  
GU22 7UT

© Copyright TRG Law Limited 2015

## CONTENTS

---

### CLAUSE

1.	Definitions and interpretation	3
2.	Obligations of confidentiality	4
3.	Return of information	5
4.	Reservation of rights and acknowledgement	5
5.	Warranties	5
6.	Term and termination	5
7.	Entire agreement and variation	6
8.	No waiver	6
9.	Assignment	6
10.	Notices	6
11.	No partnership	6
12.	Third party rights	6

**THIS AGREEMENT** sets out the basis upon which each party wishes to disclose to the other party and to receive from the other party Confidential Information in relation to the Purpose. Each party wishes to ensure that the other party maintains the confidentiality of its Confidential Information. In consideration of the benefits to the parties of the disclosure of the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement:

**Business Day:** a business day (not being a day which is regarded as being part of the weekend or any generally applicable public holiday) in the country where the recipient of any notice given under this Agreement is primarily based according to the address for notices notified by a party for that purpose in accordance with clause 10.1.

**Confidential Information:** all confidential information (however recorded or disclosed) disclosed by a party or its Representatives to the other party and that party's Representatives including but not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) any information that should reasonably be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, customers, suppliers, plans, intentions or market opportunities of the Disclosing Party or of the Disclosing Party's Group; and/or
  - (ii) the operations, processes, product/services information, know-how, designs, trade secrets or technology of the Disclosing Party or of the Disclosing Party's Group;
- (c) any information or analysis derived from the Confidential Information.

When used in this Agreement the term Confidential Information shall include individual elements of the Confidential Information and the provisions of this Agreement shall apply equally in relation to individual elements as they do to the entirety of the Confidential Information. Any compilation or combination of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information.

Confidential Information shall not include information that:

- (d) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this Agreement; or
- (e) was, is or becomes available to the Recipient on a non-confidential basis from a person who is not bound, directly or indirectly, by an obligation of confidentiality towards the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or
- (f) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or
- (g) is developed by or for the Recipient independently of the information disclosed by the Disclosing Party.

**Disclosing Party:** a party to this Agreement which directly or indirectly discloses or makes available Confidential Information.

**Group:** in relation to a company, that company, each and any subsidiary or holding company from time to time of that company and each and any subsidiary from time to time of a holding company of that company.

**Purpose:** means the specific potential project or transaction that the parties have agreed in writing should be the subject of mutual confidentiality obligations.

**Recipient:** a party to this Agreement which receives or obtains directly or indirectly Confidential Information.

**Representative:** employees, officers, auditors and professional advisers of the Recipient and any Group company.

1.2 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## 2. OBLIGATIONS OF CONFIDENTIALITY

2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall:

- (a) not use or exploit the Confidential Information in any way except in connection with the Purpose;
- (b) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
- (c) not make copies of the Confidential Information except as strictly necessary in connection with the Purpose (and the Disclosing Party's rights in relation to the Confidential Information shall apply equally to all such copies);
- (d) apply the same security measures and degree of care to safeguarding the Confidential Information as the Recipient applies to its own confidential information, which the Recipient undertakes shall be not less than reasonable care.

2.2 The Recipient may disclose the Disclosing Party's Confidential Information to those Representatives who reasonably need to know this Confidential Information in connection with the Purpose, provided that:

- (a) it informs its Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with confidentiality obligations in line with those set out in this Agreement,

and it shall at all times be liable for the failure of any Representative to comply with the terms of this Agreement.

2.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, any governmental or other regulatory authority or by a court or other authority of competent jurisdiction (including, without limitation, any relevant securities exchange) provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure requirement as possible. Where notice of the disclosure requirement is not prohibited and is given in accordance with this clause **Error! Reference source not found.**, the Recipient must reasonably cooperate with the Disclosing Party to limit the extent of the disclosure. Where prior notice of the disclosure is prohibited, the Recipient shall only disclose that information which is strictly required to be disclosed.

2.4 No party shall make, or permit any person to make, any public announcement concerning this Agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other party except as required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction (including, without limitation, any relevant securities exchange).

2.5 If the Recipient knows or suspects on reasonable grounds that any of the Confidential Information of the Disclosing Party has been used, disclosed or accessed by anybody in breach of this Agreement or outside the scope of the use, disclosure or access expressly permitted by this Agreement, it shall promptly notify the Disclosing Party and consult with the Disclosing Party regarding the action to be taken to limit any further unauthorised use, disclosure or access. The Recipient shall take reasonable action to limit any further unauthorised use, disclosure or access.

**3. RETURN OF INFORMATION**

3.1 This Agreement shall not oblige either party to continue discussions with the other relating to the Purpose. Either party may at any time decide to end the discussions and, if so, it shall inform the other party reasonably promptly.

3.2 At the request of the Disclosing Party, the Recipient shall:

- (a) destroy or return to the Disclosing Party all hard copy documents and materials containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information; and
- (b) certify to the Disclosing Party that it has complied with the requirements of this clause.

3.3 The Recipient may retain electronic copies of all documents and materials containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information on the strict condition that the Recipient does not make any use of any such copies (other than for archive/liability management purposes) once either party has notified the other that it no longer wishes to pursue discussions relating to the Purpose in accordance with clause 6.2.

3.4 The provisions of this Agreement shall continue to apply to any copies containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information retained by the Recipient.

**4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

4.1 All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No licence or other rights in respect of a party's Confidential Information or any related intellectual property rights are granted to the Recipient and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.

4.2 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information or the accuracy or completeness of the Confidential Information.

4.3 The disclosure of Confidential Information by the Disclosing Party shall not commit the Disclosing Party to enter into any further agreement in relation to the Purpose or the development, supply or acquisition of any product or service to which the Confidential Information relates.

4.4 The Recipient acknowledges that damages alone may not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to seek injunctive relief concerning any threatened or actual breach of any of the provisions of this Agreement.

**5. WARRANTIES**

5.1 Each Disclosing Party warrants that:

- (a) it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information in connection with the Purpose; and
- (b) so far as it is aware, the Confidential Information it discloses will not be misleading in any material respect. The Disclosing Party's only obligation in relation to this warranty is to notify the other party reasonably promptly upon becoming aware of the misleading nature of the information and to take reasonable steps to correct the misleading impression.

**6. TERM AND TERMINATION**

6.1 This Agreement shall continue to apply whilst discussions between the parties relating to the Purpose continue and neither party has notified the other party that it wishes to cease discussions in accordance with clause 6.2.

6.2 If either party wishes to cease the discussions between the parties relating to the Purpose or decides not to become or continue to be involved in the Purpose with the other party, it shall notify the other party reasonably promptly.

6.3 This Agreement may also cease to apply in respect of future dealings between the parties if expressly superseded by a subsequent contract entered into between the parties as a result of the discussions between the parties in relation to the Purpose.

6.4 The obligations of each party shall, notwithstanding any termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of 6 years from the termination of discussions.

6.5 Termination of discussions shall not affect any accrued rights or remedies to which either party is entitled.

**7. ENTIRE AGREEMENT AND VARIATION**

7.1 This Agreement constitutes the entire agreement between the parties relating to the Confidential Information exchanged between them and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

7.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement shall be for breach of contract.

7.3 No variation of this Agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

**8. NO WAIVER**

8.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

8.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

**9. ASSIGNMENT**

No party may assign, sub-contract or deal in any way with, any of its rights or obligations under this Agreement.

**10. NOTICES**

10.1 Any notice or other communication required to be given under this Agreement shall be sent by e-mail, pre-paid first class post, airmail, recorded delivery or commercial courier, to each party required to receive the notice or communication at its address as notified for that purpose.

10.2 Any notice or other communication shall be deemed to have been duly received unless the contrary can be established:

- (a) if sent by e-mail, on the Business Day the relevant e-mail was sent; or
- (b) if sent by pre-paid first class post, airmail or recorded delivery, on the third Business Day after posting; or
- (c) if delivered by commercial courier, on the Business Day that the courier's delivery receipt is signed.

10.3 Requirements for notices or other matters under or in connection with this Agreement to be 'in writing' can be satisfied by scanned electronic copies of the notice in question.

**11. NO PARTNERSHIP**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

**12. THIRD PARTY RIGHTS**

No person who is not a party to this Agreement shall have any rights under or in connection with it.